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Private investigators still digging on West Coast

Twelve months ago the government told state coal company Solid Energy that using paid informants to infiltrate environment groups was 'not acceptable' and that it had to stop. Solid Energy is adamant it has complied. The private investigators however appear to have defied the order. Nicky Hager reports.

When Christchurch man Rob Gilchrist walked out of his local M+M Minimarket one Tuesday afternoon in February, Auckland private investigator Gavin Clark was standing waiting for him.

Clark said it was "just a coincidence" he was passing and invited Gilchrist, who runs a small electronics company, to meet for coffee. Two hours later, on a park bench in Christchurch's Hagley Park, Clark asked Gilchrist to work undercover for his private investigation company, Thompson and Clark Investigations (TCIL). The target: spying on environment groups and other community groups for his company's corporate clients.

Gilchrist was shocked and insulted. He was a long-term supporter of many of the groups he was being asked to betray. But what made it most weird is that this was an exact rerun of earlier spying on environment, peace and animal rights groups uncovered by the Sunday Star-Times in May last year.

The Star-Times story revolved around an informer, Ryan Paterson-Rouse, who was planted by the same Gavin Clark inside the small environment group Save Happy Valley. The spying was being paid for by the state-owned coal company Solid Energy, whose plans for a massive new open-cast coal mine are opposed by Save Happy Valley.

Why the interest in this small environmental protest group ?The answer is that Solid Energy is planning a dramatic increase in coal mining and coal exports to countries such as China, right at a time of growing world concern about climate change. Solid Energy's response has been a vigorous public relations campaign to justify continued coal use, which last year included going as far as hiring private investigators to infiltrate and help it out-manoeuvre its environmental critics.

At the time Prime Minister Helen Clark declared the spying to be "unacceptable behaviour from a state-owned enterprise" and said it should cease. SOE Minister Trevor Mallard said it went "over the limit of what we expect in New Zealand" and ordered Solid Energy to stop the practice. These orders were communicated formally to the state company's board. Yet who was Gavin Clark primarily asking Gilchrist to spy on in February this year? Save Happy Valley.

Gilchrist agreed to meet Clark but took a tape recorder with him to Hagley Park. He phoned the Sunday Star-Times straight afterwards. In the weeks since, he has co-operated in the newspaper's investigation. The Hagley Park tape, and two from following meetings, provide clear proof that TCIL has pressed on with its attempts to infiltrate Save Happy Valley.

Solid Energy CEO Don Elder says his company complied with Mallard's directive and instructed the private investigators to stop using "paid-for" informants. In a statement to the Sunday Star Times he was emphatic that "Solid Energy is not aware of anything that would indicate the TCIL... have not complied with the company's directive."

TCIL, it would appear, had a different understanding of what that directive meant.

Gavin Clark, a former police officer, began the Hagley Park meeting coming straight to the point. "I wanted to see," he said, "whether, you know, there's any way I can help you out, and you can help me out." He said, "we like to keep an eye on things, but nothing too dangerous". He offered to pay well for information. It was soon clear that his main interest was Save Happy Valley. He asked Gilchrist to give him passwords to access Save Happy Valley's internal communications "so I can go and have a look every now and then, that sort of thing". Five times more during the meeting he pressed Gilchrist to give him the Save Happy Valley passwords.

"If you could give me your log-on ... I mean, like, you could give it to me now. I'll give you a couple of hundred bucks... And then I'll have a look at it and we can work out a price [for ongoing access] based on that." There is a long pause on the tape, then Clark asks again, "What do you reckon?" Gilchrist dodges the question.

Clark told Gilchrist, "you might be able to help us in many areas, you know". He pushed Clark to attend industry conferences where animal rights groups might be protesting. About an upcoming meat industry conference (TCIL also works for the Pork Industry Board) he said, "What's the action? Give me a bit of faith." Gilchrist avoided the question so he tried again. "Do you think the meat [conference] will involve any demos or anything like that?" Gilchrist said, "At this stage, I don't know", so Clark returned to asking for the Save Happy Valley passwords.

Clark's attempts to recruit Gilchrist raise an obvious question: if Solid Energy's chief executive, Don Elder, had clearly instructed TCIL to stop this sort of spying, why was the private investigator still trying to recruit a Happy Valley informant? Perhaps the private investigators were confident they could keep the activities secret from the public and the government. "You've got to trust

me," he said to Gilchrist, "and, you know, you've got to know that I'm not going to compromise you." He referred to how their last Save Happy Valley informer was uncovered, when a computer fault in the TCIL office sent an intercepted email back to a Save Happy Valley member. "That backfired," he said, "we won't be doing that again... You know, the email scenario."

He said, "We're not in a business where we can afford to make any mistakes." Gilchrist replied: "I think you could find that you might be the front page of the Sunday paper again." Clark said: "Yeah, that wouldn't be a good look, would it."

When confronted by the Sunday Star-Times last year about paying Ryan Paterson-Rouse and a Wellington woman Somali Young to infiltrate groups, Clark's approach had been to deny everything. "It's a pretty outrageous suggestion," he said. "I don't know these two individuals... I don't know what you are talking about... It is nothing to do with Thompson and Clark."

Sitting in Hagley Park, he merely criticised Paterson-Rouse for owning up to the spying. "The situation with Ryan was his own fault really," Clark said. "He should have kept his mouth shut."

The tape of the meeting makes painful listening as Clark ingratiates and cajoles. He calls Gilchrist "mate" throughout and has a strange, disingenuous laugh. He butters up his prospective informer by declaring his sympathy for political activists: "I don't underestimate their intelligence," he said. "It's almost part and parcel of being an activist, being intelligent. Because you're conscientious, you're thinking. A lot of people go through life and don't think about their impact on the world. The average activist is totally conscious. Kind of, in a way, that's why I like dealing with them."

On Gilchrist's beliefs, he said: "I suppose, for me, like, I can see exactly where you're coming from, and I think it's good you've got social values; you know, things that keep things in check. But sometimes people's ideas are so extreme that, you know, I don't

know if the world could sustain a population of all vegans. We'd be overpopulated." He assured Gilchrist that he didn't want to stop the targeted groups protesting: "At the end of the day, I don't want to piss on your fireworks, or your fun," he said. But always he steered back to his purpose: the passwords, details of upcoming actions, questions about individual group members' lives and keeping it all secret. As they parted that first day he offered Gilchrist \$200, "just for taking the time to talk". Gilchrist declined the money. He described the whole experience as "slimy".

Gilchrist, 39, has no idea why he was targeted by Clark but said it could be because he had a different background from many activists, having been in the army for eight years until the early 1990s. He suspects he had been recommended by an existing TCIL informant he said it wasn't as if he needed the money because he had a successful business.

For their second meeting, Clark played spies to check if Gilchrist had brought someone with him. He arranged to meet Gilchrist at the same park bench and then gave directions by mobile phone about which paths and turns he should take through the park, presumably watching him as he walked. Eventually he directed Gilchrist into the Christchurch Museum, where they talked while strolling around the exhibits.

Clark told Gilchrist he thought he would be good for the job and emphasised how much easy money he could make. He assured him there would be no risk and again repeatedly pressed to be given the Save Happy Valley passwords.

At their third and final meeting, two weeks ago, Clark flew from Auckland to Christchurch for a morning to meet Gilchrist and, he thought, cement their business relationship. They met in Denny's 24-hour restaurant in Moorhouse Ave in central Christchurch. Gilchrist again took a tape recorder to record the discussion.

After 30 minutes of chatting, Clark got down to business. It became clear he wanted an exact repeat of the spying against Solid Energy's environmental opponents for which he had paid Ryan Paterson-Rouse the year before. The only difference was that instead of arranging for an informer to join the group, he was recruiting someone who already took part in the group's activities. There would be three parts to the job: reporting on meetings and other events, providing access to the private communications of Save Happy Valley and other groups and providing information about individuals in the groups.

He requested that whenever Gilchrist knew of an upcoming meeting or event, "you give me a call and say 'look, well, they're looking to do this. What do you think we can do?' and we'll say 'OK, we want to know about it'". Next, of course, was getting access to the Save Happy Valley passwords. Clark then discussed a wide range of other groups whose internal communications he would like to access. He said TCIL already had access to some groups "We're already on some of those lists" but he particularly wanted Gilchrist's co-operation to access Save Happy Valley and animal rights groups. "What I'd like to do is to have a look at the information and then we can pay you for setting me up," he said. And again: "So how about you give me access to these forums and I'll have a look at it and see what it is worth and then we'll set something up?"

At the end of the meeting, they came to the subject of payment. Clark asked, "what sort of figure did you have in your mind?"

After discussion he agreed to pay Gilchrist \$500 per week for reporting on the groups, plus accommodation, travel expenses and bonuses for valuable information. Clark flew out of Christchurch believing he had secured a new informer inside Save Happy Valley and the other groups. In the following days he called and texted Gilchrist repeatedly, urging him to get started on the work. But Gilchrist had played along for as long as he was comfortable in order to help expose the private investigator's intentions.

Gavin Clark's agreement to pay \$500 a week is interesting, since Clark defended last year's spying on Save Happy Valley in a court challenge earlier this year by saying they hadn't been paying Ryan Paterson-Rouse, but merely giving him occasional "rewards".

Last month, the Registrar of Private Investigators Gary Harrison dismissed a complaint of unlawful actions by TCIL, saying that "there was no employment relationship between the informant and TCIL, nor even one where the informant could be considered to be an independent contractor."

He accepted TCIL's explanation that Paterson-Rouse was just paid "from time to time, according to the information he was able to pass on".

However, the case of Rob Gilchrist shows Clark actively recruiting a spy and negotiating to pay him regular pay and expenses.

But the necessary basis for all of it was total secrecy. Near the end of the meeting at Denny's, Clark expressed his concern about TCIL getting any publicity. Gilchrist joked again, "So what are you gonna do when you're on the front page of the Sunday Star-Times?" Clark reacted: "Oh mate, not me, I'll, I'll scream, because, um, I don't need publicity, and I know it, and I know it." Then he abruptly changed direction and said: "It'd be good. It'd be fabulous. Because I really wanna do the f---ing Times [after] last time... We don't need that, mate. But this time they'll be right off the mark. That'll be good for me."

Time will tell if he was right.

THE STORY SO FAR

April-May 2006: State-owned power companies Solid Energy and Mighty River Power admit hiring spies to monitor the activities of protest groups, including Save Happy Valley, a group occupying the site of a proposed West Coast mine. The spies are recruited by an Auckland private investigation company, Thompson and Clark.

May 2007: Investigative journalist Nicky Hager reveals in the Sunday Star-Times that Thompson and Clark are trying to recruit Save Happy Valley protesters to betray other members of the group by leaking information from within the network. One of the protesters admits that he was paid by Thompson and Clark to spy. Solid Energy CEO Don Elder said he was unconcerned about the activities and the SOE had acted "legally, ethically and morally". State-Owned Enterprises Minister Trevor Mallard and Prime Minister Helen Clark say the infiltration is "unacceptable".

March 2008: Three protest groups who complained Thompson and Clark broke the law by employing unlicensed agents to infiltrate the groups fail in a complaint to the Registrar of Private Investigators and Security Guards. The groups, Save Happy Valley Coalition, Peace Action Wellington and Wellington Animal Rights Network, were told their complaint failed because the paid informants in the case didn't meet the legal standard of employees. There was no contract, set pay, tax deducted or control exercised over them by the investigation firm.

April 2008: Hager reveals Thompson and Clark is again trying to recruit spies from within the ranks of the protest groups clearly flouting the government's clear advice.