

## LEGAL



NICK COBBING

*<http://www.McSpotlight.org>, London 1996: co-Defendants Helen Steel and Dave Morris*

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# McPrisoners of conscience

McDonald's took London Greenpeace to court for libel. It's already the longest running trial in British history and by the time the expected judgement in favour of McDonald's is given, will have brought Britain's archaic and draconian libel laws into serious disrepute

HERE'S something to bear in mind the next time you see the Golden Arches: from February 1986 to October 1990 the McDonald's Corporation threatened to take at least 45 different British groups to court for saying uncomplimentary things about their burgers. The objects of these threats ranged from major news organisations like Granada Television, the *Daily Mail* and the BBC to the Bromley and Hayes *News Shopper*, the *Nuneaton and Bedworth Trader* and the *Leeds Student Magazine*. In every case the threats worked: retractions were issued, apologies offered, material withheld from broadcast or publication.

Then, in September 1990, the American fast food giant issued libel writs against five members of London Greenpeace — a tiny anarchist groupuscule with no connection to Greenpeace International. Facing the prospect of a potentially ruinous trial and, like all libel defendants in Britain, denied legal aid, the five were advised to settle. Given that it can cost £100,000 in legal fees before a case even gets to court, with barristers, junior barristers, solicitors and clerks adding thousands of pounds a day once a trial starts, this was realistic advice. 'There is no other area of the law where the defendant is so much at the mercy of the plaintiff's wealth,' says Geoffrey Robertson QC.

Three members of London Greenpeace did settle. But Helen Steel, a former gardener from Yorkshire, and Dave Morris, a redundant London postal worker, decided to fight. Though Morris and Steel denied either writing or distributing 'What's wrong with McDonald's?', a six-page broadside criticising the company's record on health, the environment, animal rights and labour relations, they said that they agreed with the contents and would defend them in court if necessary.

In pre-trial hearings McDonald's argued that the issues involved were too complicated for a jury to understand. Besides, said Richard Rampton QC, a jury trial might take as long as six or seven weeks, as opposed to 'three to four weeks for judge alone...more likely three than four, I would guess.' Mr Justice Rodger Bell agreed, and in June 1994, after losing an appeal on legal aid at the European Court of Human Rights, the trial began, with Morris and Steel defending themselves. By the time they had finished, in December 1996, *McDonald's v Morris and Steel* had entered the record books as the longest-running trial in British history.

In its early stages the case attracted little notice among either the press or human rights organisations. As the trial wore on, however, the David versus Goliath nature of the contest, and the record-setting length of the

proceedings, began to attract media attention. This was bad news for McDonald's, whose actions throughout the trial have made it look remarkably like the greedy, bullying corporate behemoth (hiding behind the grinning rictus of Ronald McDonald) depicted on the cover of 'What's wrong with McDonald's?'

Worse yet, in February 1995, after months of unsavoury revelations about the company's practices — including the news that McDonald's hired two separate firms of private detectives to infiltrate the dozen or so members of London Greenpeace — supporters of Morris and Steel launched McSpotlight, a World Wide Web site devoted to 'McDonald's, McLibel, Multinationals'. Based in Holland (beyond the reach of British law), McSpotlight links 100 megabytes of material including the banned 'What's wrong with McDonald's' (available in 14 languages), a complete, indexed transcript of the trial, an order form for McLibel T-shirts and badges, and nearly every film clip, cartoon, or article McDonald's has ever tried to suppress — not to mention promos for *McLibel: Burger Culture on Trial*, Morris and Steel's book on the case, coming soon from Macmillan to a bookshop near you.

Or maybe not so soon. Neil Hamilton MP recently managed to persuade a number of British booksellers not to stock *Sleaze: The Corruption of Parliament*, two *Guardian* reporters' account of the parliamentary cash-for-questions scandal, simply by threatening to issue writs. 'This is something [Sir James] Goldsmith started and [Robert] Maxwell took up,' said *Guardian* editor Alan Rusbridger. 'Threatening to sue booksellers and distributors is quite a potent weapon.'

The judge's decision in McLibel is not expected before the end of March, but Dave Morris is realistic about his chances: 'Most of the judgement will be bad news for McDonald's, but that's going to be in the small print.' That the headlines would proclaim victory for McDonald's was practically a foregone conclusion — if not from the moment the writs were served, certainly from the moment Morris and Steel were denied a jury trial. 'The judge didn't even include our case in his summing up,' said Alan Rusbridger just days after the *Guardian* won a suit brought by the Police Federation. 'We'd have lost without a jury.'

If Morris and Steel do lose, they will be held liable for McDonald's legal costs. The company, despite frequent public statements to the contrary, has also asked for £100,000 in damages. Given the defendants' combined income of £7,500 a year, 'we could have an amount deducted



American companies seldom bother to bring such claims into US courts for the simple reason that they would lose. Under US law the burden of proof in a libel action is on the plaintiff, who must prove they have been falsely defamed, rather than on the defendant. And since the Supreme Court ruling in *New York Times v Sullivan* in 1964, any plaintiff who qualifies as a 'public figure' — a category broad enough to include McDonald's, members of the Royal Family and most government officials — has to prove the offending statements were made in malicious or reckless disregard of the truth.

Nor are British corporations reluctant to use the libel laws to discourage scrutiny. Eric Barendt, Goodman professor of media law at University College, London, named British Nuclear Fuels as one of several UK companies with litigious reputations. The number of suits which go to trial is quite small, said Professor Barendt. But as Justin Walford, the in-house lawyer for Express Newspapers, points out, in most cases a telephone call, a letter, or a writ is sufficient. 'Maxwell didn't actually sue all that often,' he said. In the long run, says Walford, McDonald's costs in McLibel may be a sound investment. 'Anyone else tempted to criticise them on similar grounds will know they are dealing with a company prepared to spend six years and £10 million. Would you risk it?'

If the Labour Party win the next election, they have promised to incorporate the European Convention on Human Rights into British law. It would then be up to British judges to decide how to apply Article 10 guaranteeing freedom of expression. The problem, says Alan Rusbridger, is that 'English judges are very cautious about expanding the law of qualified privilege' to create a kind of 'public figure' category. Martin Soames, a solicitor who often works on libel cases, suggests that Parliament might agree to creating such an exemption as 'a quid pro quo for a privacy law'. Geoffrey Robertson is sceptical: 'You won't get any sense out of Parliament because it's politicians who make the most money out of libel.'

If neither the courts nor Parliament are prepared to act, is free speech to remain forever at the mercy of corporate predators? Perhaps not. Andrew Clapham, an attorney with Amnesty International, points out that international law is beginning to grapple with what he calls 'the privatisation of human rights'. While we usually think of human rights as being restrictions on state action, says Clapham, 'the effect is the same

whether you're being strip-searched by the state or by a private security company.'

Clapham argues that the use of libel laws to suppress dissent — even if the dissent is over the links between diet and health — is already a violation of international law. Clapham points to *The Sunday Times* case when the European Court of Human Rights, in finding that the newspaper had a right to publish material relating to the effects of the drug Thalidomide despite a court order not to do so, effectively overruled a House of Lords decision affirming the British contempt of court law.

Could the same thing happen in McLibel? Keir Starmer thinks it should. Starmer, who says he will represent Morris and Steel if they appeal to Strasbourg, says the current law is absurd. 'If I run you down in the road and break your legs, I'm only liable for damages if I failed to exercise reasonable care. Our libel laws place a higher value on reputation than on personal security or indeed life itself.'

If the libel law is overturned, those politicians charged with drafting a replacement might want to consider the more vigorous protections for free speech recently enacted in New York and California. There, too, corporations — particularly property developers and logging companies — have used libel to intimidate critics. Though the suits were seldom successful, getting dragged into court was both costly and time-consuming. In order to combat the chilling effects of what are known in the US as SLAPP (Strategic Lawsuits Against Public Participation), legislators in both states passed laws protecting potential defendants who, in the words of the California statute, exercise their 'right of petition or free speech...in connection with a public issue'.

'It doesn't stop them from being sued,' says Victor Kovner, a First Amendment specialist in New York. 'But it allows a judge to dismiss a case very early, and provides for recovery of costs' and, in some cases, punitive damages. The basic issue, says Andrew Clapham, 'is how to get, say, Robert Maxwell, to be held liable for violating your freedom of expression.' For Morris and Steel, no change in the law will give them back the two years spent in Mr Justice Bell's courtroom. But then, no decision of a British court will be able to silence McSpotlight. □

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