

Science and Libel

'How dangerous is the acquirement of knowledge...' Frankenstein

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Published in the spring 2011 issue of *The Author*, the journal of the Society of Authors

Human rights groups have for a long time protested that English libel law is among the most restrictive in the world, but it is only relatively recently that its global impact on scientific and medical discussions has come to light and has helped to catalyse a public campaign and support for reform among policymakers.

Many people will be aware of the recent case of the science writer Simon Singh, who was sued by the British Chiropractic Association for his critical comment in the *Guardian* about the lack of evidence for chiropractors' claims to treat infant conditions. Many will also know that his appeals against the meaning given to his words by the judge were eventually successful, making him one of the few defendants to win a libel case. Fewer will know that it cost him £200,000 and 18 anxious months just to reach that 'early' resolution. Singh is unlikely to recover much above 70% of those costs and he will of course never recover the hundreds of hours spent preparing legal documents and correspondence on every aspect of his short article. It is not surprising that such a prolific popular science author has written no further books in that time. And if that is what 'winning' a case amounts to, it is even less surprising that the threat of such a libel action chills many writers into silence and self-censorship.

Eighteen months is relatively quick. A case brought against the British cardiologist Peter Wilmshurst by a US implant manufacturer, NMT Medical, is heading for its fourth anniversary. Dr Wilmshurst is being sued for making comments at an American medical conference, to a Canadian writer, about a clinical trial of a heart device in which he was a principal investigator. He had refused to put his name to a paper publishing the results in a clinical journal because he felt that it overstated the benefits and understated the risks of the procedure. Almost a year later, he was sued by NMT in London. He and his lawyers have already incurred over £100,000 in costs and they are still only dealing with the preliminaries. No statements have been served, no experts have reported, and no procedural steps had occurred in almost a year until, at the close of 2010, Dr Wilmshurst succeeded in his application that NMT pay money into court as security for costs.

When Dr Wilmshurst's case eventually comes to court, we may learn more about the risks and benefits of NMT's product. We may learn nothing. This is because a courtroom is not the place to resolve scientific disputes. Science and medicine advance through critical exchange and revision. Every Friday at all major hospitals, Grand Rounds take place, in which consultants pick over and criticise the treatment of a case, and in which the reputations of those concerned are firmly secondary to the aim of improving knowledge and patient care. In most scientific journals the correspondence pages carry critical disputes about

the conclusions of recent research papers, mortifying to some researchers but necessary to advancing knowledge in the field. Court proceedings chill that debate, ossifying positions at the point the dispute broke out. Fear of further legal action takes over. Hence I hesitate here to share the details of the NMT trial, knowing that even if I do your Editor will have to think about whether your publication could afford a costly libel action. So we deal instead in euphemisms. I say 'risks and benefits' rather than discuss the specific things that happened to patients in that trial.

Dr Wilmshurst felt he didn't have that choice when faced with libel action. As a doctor registered with the General Medical Council, he is obliged to act in the best interests of patients rather than in fear of his own financial security. A radiology professor faced the same obligation in a case brought (and dropped) by the US company GE when he criticised the contrast agent used in medical scans. The medical writer Ben Goldacre fought an action by a German vitamin salesman because the alternative would have been to fall silent about the man's promotion of vitamins as an HIV medication in Africa. Do we really want a situation where the obligation to speak up is overwhelmed by legal fears? What will be the impact on the next person who contemplates voicing concerns about a medical practice or about safety valves in an oil well?

As readers, consumers and patients, we tend to assume that we have something close to the full story in circulation. When healthcare providers assess the benefits of a medicine, we imagine that they have access to all the research. It is shocking to discover that fear of libel action means some of this may be held back. The last Government's plans to roll out a new lie detector for pension and benefit claimants were formed in the absence of a critical review by language experts, because a libel threat from the manufacturer had resulted in a journal withdrawing their paper. The consumer magazine *Which?* battles legal threats to tell us about the safety of products, sometimes unsuccessfully. Science journals confess that their news and comment writers do not investigate many stories of fraud or misconduct because they would risk being bankrupted by a libel action before they ever got to defend themselves in court.

Sense About Science has spent much of the past decade encouraging scientists into public discussion, urging them to address pseudoscience and misrepresentation of evidence publicly, instead of grumbling about it in private. Before the action against Simon Singh, we had already encountered growing reticence among some scientists about speaking openly. After that it became even more difficult. In fact on the day after Singh's first hearing we failed to persuade anyone to appear on a television show to counter dangerous claims about treatments for ovarian cysts; all cited what had happened to Simon Singh.

When we began to publicise the impact of these cases in open, transparent discussion, we were inundated with examples of scientific researchers, patient groups and publishers around the world who had been threatened with libel action in London.

It is the prospect of living in a chilled world of euphemism and partial information that animates the campaign for libel reform among scientists. We pay this high social price for a law that does not even deliver what it sets out to do. Few small organisations or individuals, however wronged by a damaging claim, have the stomach or cash for a lengthy High Court action. As our partners in the libel reform campaign, English PEN and Index on Censorship, have shown repeatedly, English libel law works well for wealthy bullies.

The campaign, with the support of over 50,000 people, the majority of MPs in the last Parliament and indeed the Society of Authors, has set out the need to protect free expression – and the Government has now promised legislation. The publication and scrutiny of the Government's Bill this year will be the first real opportunity in a century for us all to decide how defamation disputes can be resolved without all this costly damage to free expression and the public interest.

Tracey Brown is Chief Executive of Sense about Science, www.senseaboutscience.org. To sign up to the libel reform campaign please visit www.libelreform.org.