

Britain: libel verdict vs. exposé of Bosnia War propaganda bankrupts independent journal

The Editorial Board
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On March 15 a London High Court jury found that the story “The Picture that Fooled the World” published by the independent magazine *LM* had libelled Independent Television News (ITN) and two of its journalists. The maximum damages suggested by Justice Morland were awarded against the magazine's editors, Michael Hume and Helene Guldberg, and its publishers, Informing (LM) Ltd.

ITN was awarded £75,000, and journalists Penny Marshall and Ian Williams were awarded £150,000 each. Together with court costs, *LM* faces a total bill estimated at £600,000—which will bankrupt the magazine.

The libel verdict against *LM* has major implications for democratic rights and press freedom. ITN is a multimillion-pound corporation that provides news for three of Britain's major TV channels and has millions of viewers. *LM* has a circulation of around 10,000-15,000 copies per edition. It began life as *Living Marxism*, the journal of the Revolutionary Communist Party. Following the collapse of the Stalinist regime in the USSR, the organisation proclaimed that the project of establishing socialism was dead. Three years ago the journal was re-launched as *LM* by two of its former writers, Helene Guldberg and Claire Fox, with the slogan that the new magazine would be “challenging everything”.

The libel case concerned *LM*'s publishing of an article by German freelance journalist Thomas Deichmann in its first edition in February 1997. The article was based on Deichmann's investigation of an ITN news report shot on August 5, 1992. Marshall and Williams were part of a television crew invited by Bosnian Serb leader Radovan Karadzic to inspect compounds holding Muslims, in order to refute allegations that the Serbian authorities had established concentration camps during the Bosnian civil war.

Williams and Marshall visited two camps in northern Bosnia, at Trnopolje and Omarska. Their footage broadcast from the Trnopolje camp concentrated on a single image of a Bosnian inmate, Fikret Alic, standing behind barbed wire, his ribs protruding through his emaciated frame.

ITN won a string of awards for the report, which was credited as the first proof of Serb-run concentration camps. The picture of Fikret Alic was shown around the world, and played an important role in justifying Western intervention in Bosnia. US President George Bush likened it directly to images of the Nazi death camps.

In 1996, Dutch lawyer Professor Mischa Wladimiroff asked Deichmann to provide expert testimony on German media coverage of the war in the trial of Dusko Tadic, a Bosnian Serb accused of war crimes. Deichmann recalled that in looking back through the media coverage, the ITN image kept reappearing. On closer observation he noticed that the posts holding up the barbed wire in the photograph were on the side of the fence where the prisoners were standing, not the outside, as would be expected.

Deichmann went to Bosnia to investigate the Trnopolje camp, a former school building. His article asserted that there was no barbed wire around the camp—which he said was a collection centre for refugees and not a prison—but was, in fact, around a small enclosure next to the camp from where the news team had been filming.

“Whatever the British news team's intentions may have been, their pictures were seen around the world as the first hard evidence of concentration camps in Bosnia,” he wrote. However, “an important element of that ‘key image’ had been produced by camera angles and editing.”

Deichmann wrote that Muslim refugees had set up the collection centre in May 1992 on the grounds of a school as a refuge after Serbs took control of Kozarac. He quoted former British Liberal Democratic Party leader Paddy Ashdown—who visited the camp a few days after Marshall and Williams' news team—from the August 13 *Independent* newspaper: “They have gathered here because they had to go somewhere. Their houses have been burnt and their lives threatened. Muslim extremists pressure the men to join up with the guerrillas, so they have come here for safety. But on most recent nights the unprotected camp has been raided by Serbian extremists who beat them, rob them of what little they have left and, it is claimed, rape the women. Things are better now.”

The article was widely published in Europe at the time and is included in the book *NATO in the Balkans: Voices of Opposition*, edited by Ramsey Clark and published by the International Action Center (NY). It is still available on a number of web sites, though, due to ITN's libel action, it cannot be reproduced in Britain.

ITN threatened *LM* with legal action, demanding that they pulp all issues of the February 1997 magazine prior to distribution. *LM* refused and issued a press release (also the subject of the libel action) defending their right to publish. They organised a press conference where they repeated Deichmann's allegations and secured the support of 150 public figures opposed to ITN's attack on freedom of speech—including former London *Times* editor Harold Evans and writers Doris Lessing, Fay Weldon, William Boyd and Auberon Waugh.

ITN, Marshall and Williams then began libel proceedings. Other British news sources that had carried the story, such as the *Financial Times*, published retractions so as to avoid potentially costly fines.

Much of ITN's legal argument centred on the alleged pro-Serb bias of *LM*, which, the media corporation claims, led the magazine to conceal Serbian war crimes. *LM* deny this. Writing in the *Independent* January 11, *LM* publisher Claire Fox said, “We published it [Deichmann's article], not to make excuses for atrocities, but to demonstrate our belief that there was no comparison between the Nazi death camps and what happened in Bosnia ... which could both distort our view of the conflict in somewhere like the Balkans, and belittle the true horror of the Nazis' Final Solution.”

Britain is renowned as one of the best places in the world to take out a libel action. Its laws are notoriously biased in favour of wealthy litigants, offering a better chance of success and higher awards. English libel law is not subject to constitutional constraints defending free speech; nor is there a statutory press code. It is directed at the protection of private reputation at the expense of freedom of expression.

Consequently, the burden is on the defendant, who must prove the truth of his statement, as opposed to the US and other countries where the

plaintiff must prove its falsity. British law also presupposes that a libel has caused loss (both financial and personal), and consequently no actual damage need be proven. In addition, the loser normally pays both sides' legal costs.

Journalists are treated the same as private citizens. The ITN action was groundbreaking because it is normally the media and journalists who are the target of such libel actions, not the litigators.

The factual veracity of the Deichmann article was not made an issue in the libel action. Rather it was the *motives* that *LM* had supposedly attributed to ITN and its journalists—that they had deliberately misled the public through “editing and camera angles”.

In his closing remarks, Justice Morland stated that: “It is the thrust of the defendants' case that Ian Williams and Penny Marshall must have known and did know that the men were not caged in behind barbed wire but it was they, with their TV teams, that were enclosed by the barbed wire fence which surrounded the barn area... *Clearly Ian Williams and Penny Marshall and their TV teams were mistaken in thinking they were not enclosed by the old barbed wire fence, but does it matter?*” (emphasis added).

A spokeswoman for ITN made the same point. “They [the Bosnians] were prisoners, that was the issue, not the barbed wire,” said Nina Bialoguski, ITN's media relations officer.

The key claim by ITN and the two journalists was that they were not aware of the barbed wire fence when they shot the footage, and so allegations that they had *deliberately* misled were false. ITN's legal team sought to establish that the camp was in fact a prison and not a collection centre, to prove that their picture accurately portrayed its function. Its legal team produced witnesses who testified that Muslims were held against their will at the camp, and that many were beaten, tortured and underfed. In total, ITN fielded 18 witnesses, 17 who worked in TV broadcasting.

LM was extended no such license to prove its case. Justice Morland ruled out all of *LM*'s witnesses on the grounds that none were present at the time of the report in 1992. (The magazine had subpoenaed BBC's World Affairs Editor John Simpson and Phillip Knightley, author of *The First Casualty* and an authority on press censorship during war.) Only Deichmann and Hume were permitted to take the stand. Even then, in his summation, Justice Morland said he was not going to refer to anything they had presented. Their testimony was also deemed irrelevant, as they had not been present in 1992.

Any objective observer reading this record of biased judicial treatment would be forced to conclude that the trial's verdict was shaped by political hostility to *LM*, rather than the merits of ITN's case, which was entirely framed as an attack on *LM*'s politics. *LM* co-editor Helene Guldberg informed the *World Socialist Web Site* that the libel charge initially brought against the magazine was one of malicious intent, on the grounds that *LM* was seeking to further the cause of revolutionary communism.

ITN's lawyers claimed that *LM* had run their story so as to defend the only remaining “communist” bastion—Serbia—following the collapse of the USSR. In court, ITN lawyer Tom Shields, QC, said Hume was “intent on adopting a hostile stance to journalists of the West and Western powers”. As Hume himself pointed out in court, he is a Western journalist. What was really being objected to, he said, was any expression of political hostility to journalism that echoed the stance of the Western governments.

LM had sought to bring out this aspect of ITN's libel action. BBC's World Affairs Editor John Simpson, whom they had attempted to call as a witness, has spoken out against what he calls “journalism of attachment” in connection with ITN's libel action against *LM*. In the *Sunday Telegraph* of September 14, 1997 he condemned reporters who go to war zones “not to tell us who is winning or who is behind it all”, but “which side is good and which is evil”. Simpson was subjected to a vicious witch-hunt for reporting the impact of NATO's bombing of Belgrade last year.

One of the foremost defenders of ITN's decision to prosecute *LM* was *Guardian* journalist Ed Vulliamy, who was with Marshall and Williams during their 1992 trip. Nevertheless, in his first article on their visit, published on August 7 1992, he stated that “Trnopolje cannot be called a ‘concentration camp’ and is nowhere as sinister as Omarska: it is very grim, something between a civilian prison and a transit camp”. He interviewed Muslims and stated that “some people have fled voluntarily to Trnopolje simply to avoid the raging battles in the villages around”.

But following *LM*'s defeat in the High Court he wrote, “ITN reported the truth when, in August 1992, it revealed the gulag of horrific concentration camps run by the Serbs for their Muslims and Croatian quarry in Bosnia.” He told APBnews.com, “To split hairs over the exact position of the fence is to miss the full picture.... The moral and political stakes are high. Who shouldn't do what over libel is a side-show.”

What were the political stakes in the ITN libel action, which outweighed all considerations of factual accuracy and free speech?

A verdict against *LM* was crucial, and not just for the reputation of ITN and its journalists. ITN's pictures of Fikrit Alic have become so closely identified with official justifications of NATO's intervention against Serbia, that to throw doubt about the former inevitably raises questions concerning the latter. The same day the ITN libel action opened, last February 28, a War Crimes Tribunal at the Hague began hearing the case against three Bosnian Serbs accused of committing torture, rape and murder at the Omarska prison camp. The picture of Fikrit Alic was presented in evidence, despite having been shot at Trnopolje. Opening the trial, the Australian prosecutor Grant Niemann said, “the images of skeletal malnutrition . . . sent shock waves around the world”.

The implications of the verdict against *LM* go far beyond restrictions on the ability to make critical comment about NATO's actions in the Balkans, Iraq and elsewhere. Aside from upholding the factual accuracy of their article, *LM*'s defence was based upon “fair comment”. This defence means that the comment is one that a fair-minded person *could* make based on the facts proved. It is regarded as an important legal bulwark safeguarding writers of editorials and commentary pieces. However, under English law, there is no absolute protection for certain comments or statements of opinion and, if malice can be proven on the part of the defendant, the plea of fair comment can be defeated.

In this case, malice has been defined as any questioning of the political motivations of either the major news corporations or, by extension, Western governments. Coverage by the big business media of every major war in the last decade has been characterised by an embrace of the rationale advanced by Britain, the US and other NATO powers. During NATO's Kosovo campaign last year, the *WSWS* noted, “It is impossible to obtain an objective picture of what is happening in Kosovo—the extent of Serb violence, the role of the KLA in attacking Kosovan Serbs, the destructive impact of NATO bombing on the Kosovars—under conditions in which official and media reports are dictated by the political and military aims of the US and its KLA allies.”

This characterisation of the relationship between government and the mass media has been amply confirmed by the ITN action against *LM*. Not only does ITN defend its right to present a partisan account of NATO's war, while portraying itself as an unbiased news source, it has also given notice that anyone questioning this will be subjected to crushing financial sanctions by the British legal system.

Moreover, based on the ruling against *LM*, a critique of biased or inaccurate news coverage of an industrial dispute, anti-immigrant legislation or any other social policy could suffer the same fate. Conversely, by wielding its economic might to crush *LM*, ITN has demonstrated that the big business media are at liberty to attribute the basest motives to their critics with impunity. Vulliamy responded to the verdict with an article for ITN Online in which he declared that *LM* “was motivated by the fact that in their heart of hearts, these people applauded

those camps and sympathised with their cause”.



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