British media gagged in toxic dumping case

Ann Talbot
17 October 2009

Some days ago Labour MP Paul Farrelly tabled a series of parliamentary questions for written answer. There was nothing unusual about that. It is the daily business of the House of Commons. What was unusual was that until 2:00 p.m. Tuesday afternoon, when a court injunction was lifted, those questions could not be reported by any British news media, although they appeared on the parliamentary web site and had been published on the parliamentary order paper.

The freedom to report the proceedings of Parliament was established in the course of the 18th century, most notably by John Wilkes in 1771, who championed the right of the press to publish verbatim accounts of debates. Wilkes successfully established the principle of parliamentary privilege, which protects MPs from civil proceedings under the libel laws.

In 1938 Duncan Sandys claimed parliamentary privilege when he was threatened with prosecution under the Official Secrets Act after he raised questions about national security. But perhaps more often the principle has been used by parliamentarians to prevent public scrutiny of their affairs. Parliamentary privilege has often meant just that.

It has, however, become a means by which journalists can get a story into the public domain if there is not overwhelming opposition from the state. In the case of the Zircon affair, journalist Duncan Campbell failed in his attempt to use parliamentary privilege to have a documentary shown after the government banned it.

What is new in this case is that no direct state interests are involved and that it is the courts that have intervened against Parliament and to prevent publication or public discussion of its proceedings.

The issue concerned requires careful reporting. But this is what appears on the parliamentary order paper:

60 **N: Paul Farrelly** (Newcastle-under-Lyme): To ask the Secretary of State for Justice, what assessment he has made of the Court of Appeal judgment in May 2009 in the case of Michael Napier and Irwin Mitchell v Pressdram Limited in respect of press freedom to report proceedings in court.

61 **N: Paul Farrelly** (Newcastle-under-Lyme): To ask the Secretary of State for Justice, what assessment he has made of the effectiveness of legislation to protect (a) whistleblowers and (b) press freedom following the injunctions obtained in the High Court by (i) Barclays and Freshfields solicitors on 19 March 2009 on the publication of internal Barclays reports documenting alleged tax avoidance schemes and (ii) Trafigura and Carter-Ruck solicitors on 11 September 2009 on the publication of the Minton report on the alleged dumping of toxic waste in the Ivory Coast, commissioned by Trafigura.

62 **N: Paul Farrelly** (Newcastle-under-Lyme): To ask the Secretary of State for Justice, if he will (a) collect and (b) publish statistics on the number of non-reportable injunctions issued by the High Court in each of the last five years.

63 **N: Paul Farrelly** (Newcastle-under-Lyme): To ask the Secretary of State for Justice, what mechanisms HM Court Service uses to draw up rosters of duty judges for the purpose of considering time of the essence applications for the issuing of injunctions by the High Court.

According to the *Lawyer*, Freshfields Bruckhaus Deringer secured a temporary gagging order against the *Guardian* on behalf of Barclays Bank, in March of this year, after the paper alleged that the bank had been involved in tax avoidance.

Pressdram is the company that owns the satirical magazine *Private Eye*.

According to the company web site, “Trafigura trades commodities, such as crude oil, refined products, ores, concentrates and refined metals and provides the ships and facilities to store and transport them.”

Again according to the company’s web site, “In the oil sector, Trafigura has access to over 30 million barrels of storage facilities through a combination of owned terminals under its PUMA network and long-term lease agreements with third party oil terminals; we also time charter in excess of 60 vessels worldwide.

“In the metals and minerals sector, Trafigura currently owns and operates concentrate storage facilities and one mine in Peru. Additionally, Trafigura is a significant stakeholder in various publicly listed mining entities.

“Capitalising on resource trading and investment expertise Trafigura has diversified into asset management through the development of offshore hedge funds.”

In 2007 Trafigura agreed to a $198 million out-of-court settlement with the Ivory Coast government, after petrochemical waste was dumped on open sites causing the deaths of 16 people and illness among many thousands. Under the settlement Trafigura was exempted from any legal action in Ivory Coast.

In September of this year, Trafigura agreed to pay compensation to 31,000 Ivorians who have suffered ill effects from the waste. The decision followed a United Nations report on the case which stated that there was “strong prima facie evidence that the reported deaths and adverse health consequences are related to the dumping of the waste from the cargo ship.”

© World Socialist Web Site

Trafigura has denied responsibility for the dumping. But the waste came from a ship called the Probo Koala, which the company had chartered to move coker naptha from an oil refinery in Mexico. According to internal emails obtained by the BBC's "Newsnight," the company was aware of the hazardous nature of the waste. It was ultimately passed to an Ivorian company called Tommy, which had no facilities for dealing with toxic waste. The company's owner, Solomon Ugburogbu, is now serving a 20-year sentence in Ivory Coast for dumping the waste.

Trafigura told "Newsnight," "With regard to Trafigura's proposals for handling the treatment and disposal of the slops, Trafigura always sought to comply with the laws and regulations of the jurisdictions in which it operates."

Many aspects of the cases Farrelly mentions in his questions have still not been aired in the British press and can only be found on Internet sites outside the jurisdiction of the English courts.

Even after the injunction was lifted the *Guardian* admitted that it "is still forbidden by the terms of the existing injunction, granted by a vacation duty judge, Mr. Justice Maddison, to give further information about the Minton report, or its contents."

The affair has been hailed as a victory for blogosphere and the twitterati, where it was discussed heavily.

The gagging order was the result of a new type of injunction, which is being called the super-injunction, that prevents the news media from revealing that they have been gagged, what the case concerns, who is involved and even which judge issued the injunction or when it was issued. There are suggestions that the *Guardian* has been served 12 such injunctions this year. No one knows which other news organisation have been served with similar injunctions in these or any other cases.

This form of injunction has international implications. England has some of the most draconian libel laws in the world. London has become the libel capital of the world since the Russian oligarch Boris Berezovsky sued *Forbes Magazine* in 2000. Last year the *New York Times* wrote, "Britain remains a comfortable destination for the rich in search of friendly courts."

Publishing firms are already hesitating to publish books in Britain that might be open to being sued.

The *Times* quoted Sandra Baron, executive director of the Media Law Resource Center in New York, who said, "It came to our attention in the early to mid-'90s and the sense is that it's picked up some speed. What the rich Russians have started, the Saudis have seized on."

In the past those who brought libel cases have always had to run the risk that they would attract unwelcome publicity to their activities by taking court action. The super-injunctions remove that danger because a blanket of secrecy is imposed on the entire proceedings.

It is not clear whether this new type of injunction stems from primary legislation, of which a great deal has been smuggled through Parliament with little scrutiny under the Labour government, or whether it is an interpretation of existing law. Either way, under English Common Law the precedent set by these rulings has the effect of making law.

Trafigura, which is in the process of launching a major art prize, refused to press its case because of the bad publicity. But the legal precedent—that a court can ban reporting of Parliament—still stands. Nor has the principle of super-injunction been overturned.

The super-injunction remains a powerful weapon in the hands of rich individuals, powerful corporations and the government. Its appearance testifies to the way in which the courts have become the pliant servants of the criminal clique that dominates the world economy.

In pre-revolutionary France a powerful aristocrat could apply for a *lettre de cachet* to silence a troublesome journalist. The super-injunction offers the modern financial oligarchy a similar facility. In modern Britain the journalists may not disappear into an unknown prison on unknown charges, but their news outlets can be silenced. No one knows how much of the British media is currently operating under such orders because a newspaper, television or radio programme is banned from reporting the fact they have had such an injunction placed on them.

The response of the *Guardian* has been to call on Justice Secretary Jack Straw to change the law. But the government has itself used gagging orders when its own interests have been threatened. Former SAS soldier Ben Griffin has alleged that British soldiers in Iraq routinely handed prisoners over to US forces, knowing that they would be tortured. He was subsequently served with an injunction and prevented from repeating his allegations. The same government that uses court injunctions to prevent free speech is not about to come to the rescue of the news media in this matter.

What the Trafigura-Carter Ruck case highlights is the way in which all branches of the state have been subordinated to the interests of a wealthy oligarchy. On occasions differences within this group throw up a controversial case and aspects of it reach the public eye. Trafigura and their lawyers have been caught by a combination of the old ploy of getting an MP to ask a question under parliamentary privilege and the new media of the Internet. But if, as seems to be the case, there are other such injunctions in force, some of them on the *Guardian*, why have they not been similarly exposed? One can only conclude that they touch on interests more central to the global financial and political elite.

To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact

© World Socialist Web Site