

speech acts

Britain's libel laws, the harshest in the democratic world, have increasingly been deployed to suppress freedom of expression. Can a diverse new coalition of scientists and writers make the United Kingdom safe for free speech?

SALIL TRIPATHI



BETTMANN / CORBIS

WITH HIS SPIKY HAIR, round-rimmed glasses and impish grin, Simon Singh looks like an older version of Harry Potter. Like the fictional wizard, Singh is curious about phenomena that cannot

be easily explained; unlike Potter, he wants to test the science and make the knowledge accessible to all.

Singh is one of Britain's outstanding science writers. Over the past two decades, through his journalism and best-selling books, Singh has shared his enthusiasm for demystifying science with a growing number of readers. Singh's 1997 book, *Fermat's Last Theorem*, was a dramatic account of the researchers who finally proved "mathematics' hardest problem" in the 1990s, and it became the first book on maths to top the British best-seller list in 1997. In *The Code Book*, two years later, Singh chronicled the mysteries of cryptography, ciphers and code breaking—and explained how science helped the allies defeat the Nazis during World War II. For his third book, *Big Bang*, published in 2005, he turned his attention to the origins of the universe.

Singh's trajectory into the world of science was an unusual one. Trade and business run in his family. His parents, Mehnga Singh and Swaran Kaur, migrated to the West Country, as southwestern England is known, from Phagwara in the Punjab in 1951. His father worked at first as a door-to-door trader, and later set up a clothing shop. Singh's parents gave their children Western names (Simon's brothers are Tom and George, his sister Christine) because, he says, "No one out there in those days could have pronounced an Indian name." Tom built the family brand,

FACING PAGE: The halcyon days of English Judges in wigs: circa 1937.

New Look, which opened its first store in Taunton in 1969 and has now become a major retail chain with nearly 1,000 stores worldwide. (Last year, the Queen honoured Tom with the Order of the British Empire.)

I met Singh at an alfresco café near Richmond Green, close to his home in a prosperous part of south London. He explained that while his family built the business, he had been allowed to indulge in his hobbies, which included science. "My parents did wonder if I was wasting time, but as I was the youngest, I got some leeway," he says. Singh went on to read physics at Imperial College in London, and then got his doctorate at Cambridge. He spent two years at the European Organisation for Nuclear Research, known by its French acronym, CERN, on the Swiss-French border. This is the lab where earlier this year, the Large Hadron Collider began to smash together subatomic particles as part of an ambitious experiment to answer some of the most fundamental questions in physics. Singh became animated as he described the science behind the supercollider, using both hands—as if banging two coconuts together—to show me how tiny particles might disintegrate inside the collider. The table between us is not used to so much kinetic energy, and it wobbles when Singh reaches the climax, showing me how the atom splits. When the wide sweep of his hands stops, he spills his cappuccino.

Singh has a real passion for science, but he also relishes an argument, particularly with those who make what he regards as outlandish claims on behalf of unusual cures and treatments. He has published exposés of homeopaths who claimed their pills could protect travellers in tropical countries from malaria and attacked a BBC documentary that suggested acupuncture could be used as an anesthetic during heart surgery. Millions had seen the programme—and some of them must have been surgeons or anaesthetists—but Singh spoke out because others didn't. "If you grumble and moan, nothing happens, so I pursued it," he says. "This was an important issue, because the images were mislead-

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ing: a fraction of the two million viewers would have aches and pains and would be persuaded to rush off to a traditional Chinese healer. That is a problem: misinformation about science can affect people's lives."

Singh is a fervent believer in the standards of scientific evidence—in the process where one party provides the data to back up its assertion, and another party tests its validity. It is only through such dynamic friction that a theory is strengthened—or it collapses.

One precondition for Singh's scepticism and combativeness to thrive is an environment that protects free speech. The fight between faith and reason is an old one, and where freedom of expression has been restricted, scientific progress has often suffered: recall the ordeal of Galileo Galilei, whose robust defence of the idea that the earth revolved around the sun eventually brought him into conflict with the Catholic Church and led to his conviction for heresy.

We live in a different era, of course: Britain today is an old democracy with a lively media, a powerful parliament, and a judiciary respected around the world for its independence and fairness. In such a country, you might think, even the most outspoken scientist would have little to fear when challenging dubious theories and spurious medical claims; a science writer investigating matters of public interest should feel comfortable in doing so.

Singh is an award-winning and best-selling author, and yet—as many journalists, activists, writers, editors and publishers have learned—he must watch his words, because Britain's libel law, one of the harshest in the democratic world, allows the opponents of free expression extraordinary means to suppress criticism or exposure of their conduct.

Under English law, a litigant from any country can file suit in the English courts against writers or publications located anywhere on earth—even if neither party has a substantial presence in Britain. What's more, the burden of proof rests with the defendant, whose guilt is presumed until he or she demonstrates the truth of the contested statements or claims. English judges have been lenient in admitting cases, and while the penalties can be large, the costs of mounting a defence are equally punishing; many defendants opt to withdraw their claims rather than fight libel writs in court.

Those stung by the sharp bite of the English libel law include an American professor who accused a wealthy Saudi businessman of funding terrorism; a British cardiologist who questioned a technical claim made by a manufacturer



ELDER NEVILLE / CORBIS SYGMA

of a heart valve; a British journalist who exposed an Indian holy man; a Danish newspaper which said an Icelandic bank was avoiding taxes; and a small Ukrainian online magazine which took on a local oligarch.

As an increasing number of doctors, scientists, writers and researchers have felt the chill of libel threats, facing suits from companies or organisations which seek to silence their critics with libel claims, a new challenge to Britain's libel laws has taken shape. A remarkable coalition, composed of scientists, free-speech advocates, lawyers and academics, has come together to call for radical reforms to English libel law. More than 50,000 people have added their signatures to a petition demanding libel reform, and a peer in the House of Lords has drafted a bill to alter the law. The new Conservative-Liberal Democrat coalition plans to incorporate this proposal into a comprehensive reform bill, and the opposition Labour Party has also signalled its support for the principle of libel reform. Britain's archaic libel statutes, in full force for centuries, may be on the cusp of being transformed as a result of the unusually rapid mobilisation of public opinion in favour of reform. The unlikely hero of this movement was none other than Simon Singh—



RICHARD SMITH / CORBIS

ABOVE: Science writer Simon Singh in his London office.
LEFT: The Royal Courts of Justice in Westminster where the Hamilton/Fayed ‘Cash for Questions’ case took place.

who has spent the last two years and tens of thousands of pounds, defending himself against a libel claim.

SINGH’S TROUBLE WITH THE LAW began with a few sentences he wrote in the *Guardian* on 19 April 2008, challenging some of the more dramatic claims of Britain’s chiropractors, who were marking British Chiropractic Awareness Week. Chiropractors manipulate the spine in an attempt to provide relief from back pain and other ailments. It is the part about the ‘other ailments’ that bothered Singh; he was exasperated by the proliferation of alternative therapists who had made unsubstantiated claims. So in an article called ‘Beware of the Spinal Trap,’ Singh wrote:

The British Chiropractic Association claims that their members can help treat children with colic, sleeping and feeding problems, frequent ear infections, asthma and prolonged crying, even though there is not a jot of evidence. This organisation is the respectable face of the chiropractic profession and yet it happily promotes bogus treatments.

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Few things excite the British media as much as a health scare. Eat this and avoid cancer; don't eat that, and you will not become obese. Many people in Britain instinctively distrust big business and big pharmaceutical companies, but they are open-minded and sympathetic toward alternative therapies. The lawyer Cherie Blair, the wife of former Prime Minister Tony Blair, had a fondness for ayurveda and aromatherapy. Other celebrities have touted mind-boggling miracle cures or weight-loss programmes. Silé Lane, a stem-cell scientist who works at Sense About Science, a charity devoted to promoting public understanding of science, suggested that the only way to rebut these claims is to enlist a roster of scientists and researchers willing to challenge them. Some people in Britain, she says, now believe that goat's blood serum can cure multiple sclerosis; others eagerly bought into the former tennis player Annabel Croft's claim that homeopathy cured her ovarian cysts. But many scientists, Lane said, now avoid challenging the alternative practitioners—fearing libel suits like the one that Simon Singh faced.

Alternative therapies like aromatherapy, homoeopathy, herbalism and reflexology are now a growing business: one media survey in 2000 estimated the size of the market at 1.6 billion pounds. Their biggest cheerleader is Prince Charles, who has likened traditional Western medicine to the Leaning Tower of Pisa, calling it “slightly off-balance.” The Prince's Foundation for Integrated Health played an influential role in shaping opinion, but it was closed earlier this year after instances of financial mismanagement and fraud were reported. “Is it right for the royal family to have such influence? Charles is someone with little medical qualification or understanding, and yet he plays an important role in this area,” Singh says. “He is a problem.”

In 2008, Singh wrote a book with Edzard Ernst, a professor of complementary medicine at Exeter, called *Trick or Treatment?*, in which the two investigated the effectiveness of alternative medicines. (Lovingly, the authors dedicated the book to Prince Charles.) In April that year, as the chiropractors were celebrating their awareness week, Singh decided to act. Singh knew that many of the chiropractors' claims were not backed by solid evidence; indeed, Britain's Advertising Standards Authority had upheld a complaint made against a chiropractor who said he could treat children with colic and learning difficulties. Moreover, the General Chiropractic Council is currently investigating one in four of British chiropractors for allegedly misleading claims made in advertisements or on websites. The chiropractors, Singh says in a droll tone, were unlikely to make the public aware of the lack of evidence behind their treatments, “so I decided to spread some public awareness.”

The chiropractors were not amused by Singh's attempt to rain on their parade. The British Chiropractic Association (BCA), which represents more than half of Britain's chiropractors, complained and asked the *Guardian* to withdraw the article and Singh to apologise. The *Guardian* offered the BCA a right of reply in order to allow them to publish evidence contradicting Singh's article and also offered to issue



POOL PHOTOGRAPH / CORBIS

ABOVE: Aromatherapy with Prince Charles.

FACING PAGE: Gesticulating at Speakers' Corner in Hyde Park.

a clarification—offers the association did not take up. The newspaper removed the article from its electronic archives, but Singh stayed firm and refused to apologise. In July, the association sued Singh for libel. Singh decided to fight. “If I have said something true,” he explains, “I don't like someone stopping me from saying the truth.”

Singh expected that the BCA would provide evidence for its claims in court and challenge him to refute them; instead, the association's complaint alleged that Singh had accused the chiropractors of dishonesty—that they were knowingly promoting treatments they knew to be useless. Singh nevertheless believed he was on firm ground, and few thought the case against him would succeed. But a year later, in May 2009, Britain's then senior libel judge, Mr Justice Eady, ruled that Singh indeed had a case to answer, because he had implied that the association was deliberately misleading the public. Justice Eady argued that Singh's use of the word “bogus” implied “deliberate dishonesty” on the part of the chiropractors.

Singh was stunned. He later wrote on a blog: “By forcing an accusation of dishonesty onto my article, Justice Eady was asking me to prove something that I had never intended to write. His ruling almost caused me to buckle, abandon my defence, and question my sanity.” Later, Singh told me: “When the judgment came out, I was flat out on the floor. It looked like it was all over. People thought I couldn't win. The chance of a successful appeal was small, because the judge had ruled on the meaning of the word, which was subjective. I was at my lowest ebb.”

The chiropractors' association sensed victory. In a statement, the association said: “Since his day in Court when the decision went against him, we now see Dr Singh arguing for what he wished he had said, rather than what he did say. As a diversion and to detract attention from the nub of this case, which relates to his defamatory comments against the



BRIAN DAVID STEVENS / CORBIS

Britain's archaic libel statutes, in full force for centuries, may be on the cusp of being overturned as a result of the unusually rapid mobilisation of public opinion in favour of reform. The unlikely hero of this movement was none other than Simon Singh—who has spent the last two years, and tens of thousands of pounds, defending himself against a libel claim.

BCA, he mounts a spurious case for free speech and reform the libel laws of England.”

But Singh was not alone: he quickly attracted the support of a nascent movement of scientists, science writers and enthusiasts, sceptics and other committed rationalists, many of them bloggers, who had also sensed the danger to free expression represented by Justice Eady's judgment. David Allen Green, a media lawyer whose lucid blog about law and liberties has been shortlisted for the George Orwell Prize, jumped into the fray. He sent word through social media like Twitter and Facebook, inviting Singh's supporters to rally. They were to meet at Penderel's Oak, a pub near Holborn in central London, within days of the judgment, and Singh would speak there.

I went there that evening, along with some 200 people in the basement of the pub. The mood was sombre. The author Nick Cohen described those who came as “men and women who with straight faces introduced themselves by the titles of their blogs.”

Cohen saw Ben Goldacre, a doctor who writes the ‘Bad Science’ column in the *Guardian* and describes himself as

one “who specialises in unpicking dodgy scientific claims made by scaremongering journalists, dodgy government reports, evil pharmaceutical corporations, PR companies, and quacks.” Cohen told him: “The nerds are on the march. I wouldn’t like to be the one standing in their way.”

Goldacre called upon his “brothers and sisters in nerdiness” to fight, because ideas and practices are proved only when they are challenged. Everyone in the room knew that fighting a libel case was not easy. First, there is the money: an effective defence can cost as much as a quarter million pounds. Then, time: the process can take at least a year; with appeals that can go all the way to the European Court of Human Rights, it can extend to several years. Singh could go to trial, settle, or appeal Justice Eady’s judgment. He told the audience honestly: “My instinct is to appeal, but I cannot say more than that.” If he were to fight, it would take at least a year off his life, distracting him from other projects. But if he accepted and rolled over, others would feel emboldened to sue writers who challenged their claims.

For scientists, the libel challenge was new—they were used to facing critical comments in peer reviews, not legal threats from disgruntled companies or organisations. Scientists don’t get the kind of training British reporters do, who are trained in reporting allegations to reduce the likelihood of being sued. Scientists don’t have such training. At most British newspapers, lawyers read the copy of sensitive topics, helping craft precise language that makes it harder for the subjects of articles to file successful suits. Caution reigns. Some publishers have agreed to pulp books after they’ve received threatening letters from litigants. Book distributors don’t import certain titles in the UK. These two worlds—the one of reporters, academics, social scientists and authors, and that of scientists—had a similar concern: the protection of free speech. But they operated in separate silos. Could this cause unite them?

On 7 May 1959, at the Senate House in Cambridge, the British scientist and novelist CP Snow gave the Rede Lecture, in which he noted the breakdown in communication between the “two cultures” of society—science and humanities. That, he said, was a major hindrance in ending the world’s problems. Snow would have been pleased by what he saw emerge from that meeting in Holborn—the confluence of scientists and science writers, with Sense About Science leading the science wing, and free speech champions, authors, poets, and lawyers on the other, led by the English chapter of PEN and the magazine *Index on Censorship*. Together, the coalition would draw the support of over 50,000 people across Britain, and force all the major political parties to accept that the country’s libel laws needed to be changed.

ANYONE WHO HAS SEEN LATE NIGHT comedians on British television or satirical puppet shows like *Spitting Image*, read aggressive columnists or watched a tenacious interviewer like Jeremy Paxman making ministers squirm with his sharp, stubborn and persistent questioning, or, indeed, seen cranks and crackpots holding forth at Speaker’s Corner in London’s



ABOVE: Dr Charles Snow and Pamela Hansford Johnson in 1950, after their marriage in the Chapel of Christ’s College, Cambridge, where Dr Snow was a Fellow.

What makes the libel law particularly restrictive is that it places the burden of proof on the defendant. Under criminal law, a defendant is innocent until guilt is established. But under the English libel law, a libelous statement is assumed to be false, and so the defendant has to prove that it is true.

Hyde Park, warning the handful of curious onlookers and tourists about some impending doom, might think the critics are complaining too much: after all, Britain has a robust culture protecting free speech.

That it does. But there is an unwritten code: journalists know how far they can go, what questions they can ask and how, and the precise way sentences should be crafted to avoid legal threats.

Those threats can't be taken lightly. Robert Dougans, the solicitor who represented Singh, told me: "Defamation cases are like in the film *Spinal Tap*: the lawyers turn the knob up to 11. Unlike business disputes, where the lawyers on both sides know the virtue of a compromise, libel claims somehow bring out the most aggressive instincts in the lawyers involved." He likens it to what Henry Kissinger said about academic politics—they are so vicious because the stakes are so low.

Libel law intends to protect a person's reputation. "When you sit around a club in Pall Mall, your reputation matters a lot," Dougans says. If someone makes deliberately false statements that damage an individual's reputation, the individual has the right to sue that person and seek damages.

The problem with the English libel law is that from this outwardly reasonable principle, it has expanded. A plaintiff has to show only the most tenuous link with England to have his or her case admitted, and there is virtually no limit on how far back the complainant can go. In 1848, the Duke of Brunswick sent his servant to the British Museum to find a copy of *The Weekly Dispatch* that had been published 17 years earlier, which the Duke alleged contained a libelous article about him. The court ruled in the Duke's favour. That precedent, lawyers argue, can be catastrophic with the spread of the internet, because anyone can access anything anytime, even years after the original publication. Technology has outpaced the law, as "clearing" the internet of such articles is nearly impossible, explains Gautam Patel, a Mumbai-based lawyer with an abiding interest in free speech.

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Privacy complicates the issue further, Dougans says. While the European Convention on Human Rights protects free speech under Article 10, it also protects privacy under Article 8. This means the target of an investigative report can seek restrictions on a controversial story by saying its publication would hurt his privacy, when what he really seeks to protect is his reputation. The Oxford-educated Dougans is a big fan of the American constitution, and believes that English law should seek inspiration from the US rather than from Europe, which has a more restricted view of freedom of expression.

American law is more liberal in part due to the First Amendment of the Constitution, which prevents the state from passing any law that could restrict freedom of the

press. Subsequent US Supreme Court decisions have upheld these protections: in a landmark 1964 case, *The New York Times versus Sullivan*, the court held that the First Amendment even protects the publication of false statements about the conduct of public officials, so long as the statements are made without malice.

English law is light years behind such an expansive view of freedom. It does, however, have the Reynolds Privilege. In 1999, the House of Lords ruled in *Reynolds versus Times Newspapers Ltd.* that a newspaper could demonstrate a duty to publish information, even if it subsequently turned out to be untrue, provided that the information was of public concern and that efforts to verify its accuracy had been made. The court also ruled that the *Wall Street Journal's* European edition acted in the 'public interest' when it reported in 2002 that Saudi Arabia, at American request, had been monitoring the accounts of several prominent businesses in case they were financing terror groups.

The English law is also remarkably lenient in allowing foreigners to use the English legal system to sue those who they say have defamed them. As a result, powerful foreigners with only tangential links to England have been able to use the reputation of the country's impartial judiciary to silence critics—even if those critics or their publications have little or no presence in England. Americans with no hopes of winning a case at home have used the English libel law to go after their critics. This means that far from protecting the rights of the vulnerable from an intrusive, wealthy and powerful media, the courts have become the handmaiden of the rich, protecting the powerful against a feisty, even if flawed, press.

"People on the edge of respectability are using the English law to silence their critics. Britain should not be liberty's enemy," said author and journalist Nick Cohen. Christopher Walker of the American watchdog organisation Freedom House told the *Economist* that English libel laws are like "manna from heaven for deeply illiberal and fantastically wealthy ex-Soviet oligarchs and Middle Eastern oil tycoons. Everyone knows the potency of English laws and everyone takes it into account, at an incalculable cost to free speech."

The man who enjoyed his day in courts the most was the late Sheikh Khalid bin Mahfouz, a wealthy Saudi Arabian businessman with a fortune once estimated by *Forbes* at 3.1 billion dollars. In his lifetime, the Sheikh filed over 30 cases against authors over allegations that he supported al-Qaeda. His most celebrated battle was with the American-Israeli criminologist and director of the New York-based American Center for Democracy, Rachel Ehrenfeld, who alleged in her 2003 book, *Funding Evil: How Terrorism is Financed and How to Stop It*, that the Sheikh financed extremist groups that promote terrorism.

He sued Ehrenfeld in 2005 in London rather than in the United States, although only 23 copies of her book had been sold in Britain. When she refused to answer the charges, the judge entered a default judgment asking her to destroy copies of her book, to publish prominent apologies in the British media, and to pay bin Mahfouz nearly 225,000 dollars in

damages. The United States has since passed a law to prevent the implementation of foreign judgments against US-based authors, saying such laws curbed free-speech.

To be sure, Britain values freedom of speech. From the clown who makes fun of the King in Shakespearean plays, to the cartoonist who ridicules politicians today, Britain has a long tradition of supporting such freedoms. English jurists get misty-eyed when they turn to the polemical tract ‘Areopagitica,’ by John Milton, published in 1644, in which he defended free speech and publication of books.

And yet, a direct consequence of the libel law has been that books have been withdrawn from distribution, pulped and apologised for. The court has also entertained claims from foreigners against foreign publications: a Ukrainian businessman, Rinat Akhmetov, sued two Ukraine-oriented publications—the English-language *Kyiv Post* and the online magazine *Obozrevatel*. Prominent American magazines like *Forbes* and *The New Yorker*, which have only limited circulation in the UK, have been sued or threatened with lawsuits in Britain. The filmmaker Roman Polanski, himself a fugitive from the US legal system, won a case in London against *Vanity Fair*. Kaupthing, an Icelandic bank, settled a suit it filed against *Ekstra Bladet*, a Danish tabloid, which alleged that the bank—now collapsed—over its business dealings.

Libel writs have fallen in number, from 452 in 1997 to only 64 a decade later. But this happy figure may be misleading, because defendants have increasingly opted to settle claims out of court—editors and publishers, sometimes pressured by their insurers, have chosen early settlement to prevent legal bills from rising too high (typically, lawyers’ fees range from 400 to 800 pounds an hour). Editors have sometimes dropped controversial topics involving litigious people or complex stories involving large corporations. Cases that go to trial involve high awards—at the Royal Courts of Justice, total claims in 2008 reached 259, of which some 30 percent were for more than 50,000 pounds, up from 0.8 percent in 2002. English libel costs are 140 times higher than those in the rest of Europe, according to an Oxford University report. The impact on the media in Britain has been ruinous, given the industry’s dire financial state.

THIS WAS THE BACKGROUND when Simon Singh wrote about chiropractors. He had probably never thought that his article would be the catalyst to bring scientists and free-speech advocates together. But Justice Eady’s judgment shook many out of their complacency.

Singh is not the only scientist or science writer who has faced threats from libel litigants. Peter Wilmshurst is a cardiologist who lives in Shrewsbury in Shropshire, the town where Charles Darwin was born. Wilmshurst was the principal cardiologist in a research trial for a device called STARflex, manufactured by an American company called NMT Medical. The device closes a hole between the right and left atriums of the heart to reduce migraine.

The STARflex trial’s outcome was not positive for the company, according to Wilmshurst. “We found that the

procedure did not cure people’s migraines,” Wilmshurst said when we talked on the phone. In October 2007, Wilmshurst was in Washington, DC, where he spoke with Shelly Wood, a reporter for a medical website called Heartwire. She sensed a big story. Wilmshurst’s theory was that in the STARflex trial the device did not seal off the shunts/defects as well as he had anticipated, and that may have contributed to the negative outcome. NMT Medical then sued him, for pointing out that trial data had been withheld and what had been presented and published was inaccurate. Wilmshurst says his position has largely been vindicated by the fact that the published paper about the trial was followed by a very long (1.5 page) correction, a new version of the paper, and a four-page data supplement.

Singh is angry about the lawsuit against Wilmshurst. “He was challenging clinical data, and he got sued for libel. I have huge respect for the sacrifice that he has made,” he says. Wilmshurst adds: “The English High Court is being used to silence people. The threat of such lawsuits means that you have to be very careful about anything you say about medical products, about things that should be in the public domain. How does one blow the whistle on misconduct if you are going to be sued for expressing your concerns? Imagine Toyota suing engineers who express concerns about its brakes. The libel law stifles the ability to raise concerns.”

Lane of Sense About Science says that the threat of lawsuits has made it difficult for the organisation to find scientists willing to speak out against outlandish claims. The case against Singh was the turning point. “It made us sit up,” she said in her office on Shaftesbury Avenue, across the street from London’s Chinatown, where shops by the dozen sell acupuncture treatments and myriad other miracle cures. “It is worrying that people with chronic illnesses are vulnerable, because they do a search on the internet and read about a miracle cure and try to cure themselves. We’d like to provide tools for people to make a sense of the claims. As long as we have the tools, we will get to the truth,” she said.

Sense About Science had a simple message: keep libel out of science. PEN and *Index on Censorship* saw libel curbing free expression. They had already waged a successful campaign to secure crucial amendments to protect free speech in proposed laws to criminalise the incitement of hatred against religion. They had published a critical report pointing out the chilling effects of the libel law, but had not explored its baleful effects on science. Singh, being a writer and a scientist, became the bridge for the two cultures to meet.

When Britain went to the polls in May, there were many burning issues before the electorate: concern over the economy; bailouts for banks; pulling out troops from Afghanistan; relations with Europe; the increasing number of immigrants from the new member-states of the European Union coming to Britain. And yet, in response to the campaign for libel reform, the three major parties all agreed that changes to the law were needed.

Mass lobbying can help influence politicians, and the first to pick up the gauntlet was Lord Lester of Herne Hill, one of Britain’s distinguished human rights lawyers. A Liberal

Democrat, Lord Lester is credited with helping frame Britain's Human Rights Act, and has represented many victims of human rights abuses in important cases. He has also been the moving force behind the government passing laws to outlaw forced marriages. Educated at Cambridge and Harvard, Lester has a firm grasp of human rights and is known internationally for his work in the field.

Soon after the elections in May, I met Lord Lester in an awe-inspiring room of the House of Lords over tea, with portraits of various titled noblemen surrounding us. The room was ornate, and the carpet deep. Freshly minted parliamentarians walked around quickly, some with a spring in their step, as the Conservative-Liberal Democrat alliance had just been formed. While in opposition, Lord Lester was influential in ensuring that criminal and seditious libel laws were abolished last year. Now the Liberal Democrats are part of the government, and Lord Lester is likely to be taken even more seriously, and he'd find it easier to realise some of his cherished goals.

His interest in free speech is old. When he returned from Harvard in 1962, he found that as Britain did not have a written constitution and free speech was an orphan. You figured out what the law said about free speech by looking at all other aspects of the law which were codified, such as contempt of court, confidentiality, libel, criminal law and so on.

"Free speech was the space that had not been interfered with," said Lester. "There was no positive right of free expression, and it was not recognised as such. So most of my life has been spent in getting our courts to recognise positive rights of free speech, subject to some exceptions. The law needs change, because the chilling effect is real. Our law is more draconian because we don't have the criminal burden of proof, which makes it easy to launch proceedings. Costs usually exceed damages, so the chilling effect is even greater. The problem about the British position and also in other common law systems is that the protection for reputation is too strong and free speech protection is too weak."

Lord Lester wanted to strike a better balance. He drafted a bill to reform the law that contained stronger and clearer defences and allowed the common law to adapt to technological advances in publishing. It also reversed the presumption in favour of jury trial in order to reduce costs and encourage the early resolution of disputes. The bill was immediately taken up for reading, and in response to the second reading debate the government announced its intention to draft its own bill, using Lord Lester's bill as a starting point.

SOME COMMONWEALTH COUNTRIES, like Malaysia and Singapore, have highly restrictive libel laws like those in Britain. In India, the situation is different: cases take a long time before they come to trial, there are frequent procedural delays and courts are overburdened. As a result, libel is not the biggest threat facing the media. Those who have grievance have shown their anger in other forms: attacks on newspaper offices, editors and journalists. Advertisers—including the government—have with-



IAN NICHOLSON/WPA POOL/GETTY IMAGES

ABOVE: A view of the courtroom at the Royal Courts of Justice.

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drawn support to newspapers they don't agree with.

This does not mean, however, that powerful entities have not tried to silence their critics; businesses have often threatened to target writers—especially bloggers—whose opinions they find inconvenient. NDTV threatened to sue Cheytanya Kunte, an Indian engineer based in the Netherlands, after he criticised the way Indian networks covered the terrorist attacks in Mumbai in November 2008. Kunte was critical of the network's anchor and managing editor, Barkha Dutt, calling her conduct unethical and suggesting that her actions may have jeopardised some hostages' lives. In response to its threat, NDTV obtained an unqualified apology from Kunte, now displayed prominently on his blog.

In 2003, the journalist Pradyuman Maheshwari had launched a blog called Mediaah!, which carried juicy stories about the Indian media. *The Times of India*, being India's largest daily, was a frequent target of his criticism. It threatened a lawsuit unless Maheshwari removed 19 offending posts. He chose to suspend his blog.

Then in 2005, a youth magazine challenged claims made by the Indian Institute of Planning and Management (IIPM) about its placement record, the calibre of its faculty, and the facilities it offered its students. An IBM marketing executive, Gaurav Sabnis, linked that article to his blog, in which he called the school "a fraud." The IIPM sent him a legal notice, saying it was going to launch criminal proceedings against him. Sabnis told his readers about the threat. The IIPM then approached Sabnis's bosses at IBM, saying it would cancel its orders and that its students would burn IBM laptops in protest. IBM did not cave in: Sabnis had broken no law, and he had not violated IBM's own code of conduct. But to prevent embarrassment to his employer, Sabnis left the company. He later went to the US for a doctoral programme.

The pattern in India is to go after the individual blogger, not necessarily the publishing house. Most bloggers have given up. In Britain, Singh chose to fight back.

ONE DAY IN EARLY APRIL this year, my Twitter feed showed a one-word post from David Allen Green, the lawyer who had organised the meeting in the Holborn pub where it all began.

"WIN!"

The Court of Appeal had ruled comprehensively in favour of Simon Singh, as the appeals judges overturned Justice Eady's ruling. The judges said the litigation had had "a chilling effect on public debate which might have otherwise assisted potential patients to make informed choices about the possible use of chiropractic." The English judges, adopted the comment of an American judge, Justice Easterbrook, in a similar case, *Underwager versus Salter*, where he wrote:

[Plaintiffs] cannot, by simply filing suit and crying 'character assassination!', silence those who hold divergent views, no matter how adverse those views may be to plaintiffs' interests. Scientific controversies must be settled by the methods of science rather than by the



ROLAND HOSKINS-VIPA POOL/GETTY IMAGES

methods of litigation... More papers, more discussion, better data, and more satisfactory models—not larger awards of damages—mark the path towards superior understanding of the world around us.

The English judges concluded that "the opinion may be mistaken, but to allow the party which has been denounced on the basis of it to compel its author to prove in court what he has asserted by way of argument is to invite the court to become an Orwellian ministry of truth."

Faced with such a judgment, the BCA decided to fold tent. The association's president, Richard Brown, said in a statement: "In the face of this remarkable judgment, the BCA had no option but to withdraw from the case. It seems that the right to reputation has taken a battering and the responsibility that comes with the right to free expression has been seriously diluted." (The BCA did not officially comment for this article; a public relations firm representing the association instead sent me statements the BCA had made on the trial.) Two weeks later, the *Guardian* reinstat-



ABOVE: Deputy Prime Minister Nick Clegg delivers a speech setting out the Government's plans for political reform, including a review of existing libel laws, at the City and Islington College on 19 May 2010 in London.

ABOVE RIGHT: NDTV was quick to support their star reporter Barkha Dutt and file a libel case on her behalf after her methods were questioned by a blogger.



ed Singh's original article on its website.

While victorious, Singh pointed out that the two-year battle had cost him 200,000 pounds, with loss of earnings on top of this, since he spent the bulk of his time on the case. He could afford to fight; other defendants aren't as lucky and risk bankruptcy. While Singh would recover some of his legal costs—of which courts typically approve only about 75 percent—which means he will be set back by at least around 50,000 pounds. "This is the price Simon has paid for writing an article criticising the BCA for making claims that the Advertising Standards Authority ruled can no longer be made," Dougans told me.

Although his victory has removed a huge burden from his shoulders, Singh wants people to know the law's regressive elements. Cases with little merit continue to clog the courts. In a recent case, Robert Dee, a tennis pro who holds the record of 54 straight-set losses on the international circuit, sued the *Daily Telegraph* because the newspaper called him the world's worst tennis player. The judge threw out the claim in no time. Jeet Singh, a man who claims to be the rightful successor of Sant Baba Harbhajan Singh, a holy man who died in India in 2002, has sued Hardeep Singh, a British journalist, for an article he wrote in *The Sikh Times* in 2007. Jeet Singh lives in India, and is not known to have visited Britain at any time. The case remains undecided.

Simon Singh sighs when he recounts these cases. There is relief over his vindication. But there is also personal joy. His son Hari was born on 20 March, eleven days before the judgment. As he and his wife Anita, a broadcaster, leave with Hari in the pram towards their home, they look like a family out on a weekend stroll, concealing the tumultuous battle they fought together.

Reason may not have all the right answers; but it can prevent us from going in the wrong direction. As the German playwright Bertolt Brecht wrote in *Leben des Galilei* (The Life of Galileo): "The aim of science is not to open the door to infinite wisdom, but to set a limit to infinite error."

For years Singh has been going to schools and colleges, speaking about science. Now, he tends to speak as often about free speech. The two cultures that Snow feared were far apart are slowly coming together. ■