How the libel laws helped Maxwell get away with it

The public interest is ill served when the mere threat of a writ prevents revelation of fraud. DAVID HOOPER urges changes to a system that protects the rich and powerful

ROBERT Maxwell's comprehensive exposure as a crook raises important questions of whether the law of libel strikes a proper balance between the right of the public to know and the protection of the private reputation of the rich. Sycophantic tributes have been paid to the larger-than-life, dear old Captain Bob since his death a month ago, but a number of journalists had in varying degrees rumbled him while he was alive. Maxwell's skilful use of the law of libel made sure that many unpalatable truths remained concealed.

The law of libel starts with the noble idea of the protection of a priceless reputation, but the way it works in practice is a little different. Crooks with deep pockets are well protected, while writers and broadcasters have to assess the considerable risks involved in publishing what they know. Maxwell was an excellent example of how ill served the public can be by the law of libel. Journalists who took him on were not trying to write about his private life or produce salacious gossip-column pieces. They were trying to unravel his business dealings in the public interest: Mirror pensioners would not need much persuading of that today. Maxwell worked the law of libel in his favour to the limit. The way he did so raises important legal questions which go far beyond the worthy tinkering and piecemeal reform presently being undertaken by the Lord Chancellor.

Maxwell made a vicious circle even more vicious. He fired off writs in staggering numbers. He knew that the recipient of the writ would have to spend substantial sums proving that what was said was true or fair comment on a matter of public interest. He knew, too, that the person he sued would be reluctant to spend such sums and would be happy, if only for economic reasons, to pay a modest sum in damages and costs and make a public apology to get out of the libel action. He also knew that the defendant would soon discover, if he didn't know it already, that witnesses would be reluctant to give evidence against a man of his power, particularly if they earned their livelihood in journalism or printing. The result was that editors tended to spike stories critical of Maxwell.

In his policy of suppressing what he disliked or generally deterring editors, Maxwell — and there are others in the same mould — could sue on remarkably trivial matters. Private Eye was sued for an intentional transposition of photographs of Maxwell and one of the Kray twins. He won his case and made his point.

A plaintiff in a libel action does not have to prove that what was written was false; nor does he have to file an affidavit verifying the facts which underlie his claims. He simply picks up the telephone to his lawyers and tells them to get on with it. If a number of allegations have been made, the plaintiff can carefully select the one on which he sues. It may in practice be very difficult for a defendant to be allowed to produce evidence of other wrongdoing on the part of the plaintiff or of his general bad reputation.

The defendant then has the costly exercise of establishing his defence: even the most trivial case can cost £50,000, others vastly more. Often the defendant finds that those who spoke in confidence will not sign the statement essential to raise a defence of justification (truth). This means he does not even get to first base. Without such a defence he never sees the documents belonging to the plaintiff which might have shown his defence to be perfectly true. The white flag has to be unfurled and the plaintiff laughs all the way to his undeserved exoneration in a widely publicised statement in open court in which the defendant apologises in terms that the plaintiff finds acceptable.

It is little wonder that newspaper clippings libraries are full of apologies to powerful plaintiffs or that, at one time, newspapers in Oxford, where Maxwell lived, had to donate large sums to the local Labour party after publishing stories that displeased him.

MAXWELL was probably the most litigious British libel plaintiff ever. Horatio Bottomley — who like Maxwell progressed from MP to publisher and crooked businessman — was also fond of the libel writ, but on a lesser scale. At the time of his death, Maxwell probably had about 100 writs outstanding.

The abuse of power which the law of libel confers on people like Maxwell is well illustrated by his attempt to suppress Tom Bower's biography, Maxwell: The Outsider. The book (together with another unauthorised biography) spawned some 15 writs, half a dozen attempts to obtain injunctions and nearly four years of litigation, in which I acted as Mr Bower's solicitor. It led to an authorised biography written by Joe Haines but copyrighted in Maxwell's name. Bookshops that would not give Maxwell a signed undertaking not to stock Bower's books were themselves sued. Those that stood up to Maxwell saw their prospective profits disappear on the first visit to their lawyer's offices.

Maxwell never bothered to prepare his case for court. Why should he? — he had by then terrorised the book trade into not stocking Tom Bower's book. When publishers seemed likely to bring out a paperback edition, they were sued. On one occasion Maxwell even bought the publisher that owned the paperback rights.

A lesson needs to be learnt from what is now known about the true reputation of this incessant libel litigant. The pendulum has swung too far in favour of the protection of the reputation of the rich and powerful — and this at a time when moves elsewhere are in favour of greater freedom of information.

Those who advocate that the reputation of the dead should receive the same protection as the living for two or five years should think again. So should those who advocate a blanket law of privacy that would prevent any investigation of a person's private business dealings.

Needless intrusion into personal matters is unacceptable, but a strict law of privacy tempered only by a vague exception of public interest — which could be hard to establish — should be viewed with scepticism.

Invoking the public interest is fine if you have exposed a felon who has removed millions from a pension fund. It might be much harder to prove public interest in mid-investigation, and a determined litigant might find it easy to suppress such investigations on the grounds of intrusion of privacy.

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