

# Coming for the publishers



Media lawyer David Hooper

**Beyond** public relations advisers and strategic philanthropy, the world's wealthy and powerful have been using the SLAPP tool to bolster their reputations.

Rather than addressing a genuine legal issue, Strategic Lawsuits Against Public Participation seek to use the financial and administrative costs of litigation to crush unfavourable critics and their criticism.

Under the guise of a valid legal claim, complainants can use late service of proceedings, multiple claims, and bellicose language while targeting journalists, media companies, and publishers – often those with insufficient resources to defend protected defamation actions.

Media lawyer David Hooper tracks the development of the UK's version of SLAPP in his book *Buying Silence: How oligarchs, corporations and plutocrats use the law to gag their critics*.

Hooper's extensive experience, acting primarily for defendants in media and freedom of speech cases informs much of the book. He's now retired to the Brecon Beacons.

At one stage he found himself the subject of a SLAPP action in Greece, based on evidence he had given to a Greek Supreme Court judge.

The book traces these strategic lawsuits from the resurrection of criminal libel in the 1970s with Sir James Goldsmith and the legal bullying tactics of Robert Maxwell through to its contemporary extension into privacy and data protection actions.

After *Private Eye* published an article referencing Goldsmith, he commenced proceedings against the editor, the publisher, the main distributor, along with thirty-seven distributors – among others.



Goldsmith: father of the British SLAPP

The magazine accused him of a conspiracy to obstruct justice in relation to the fugitive Lord Lucan.

Hooper points out that, bar Lord Denning's dissent, the Court of Appeal found it was not an abuse of process to sue all the distributors – providing a basis for future SLAPPs.

While Goldsmith was suing as many people as possible, Maxwell was issuing writs for libel and breach of confidence, even before he had seen or read the work in question.

Hooper explores how these practices have been utilised by the wealthy to silence their critics, under the guise of protecting their reputations.

Accepting a certain amount of criticism, using philanthropy or public relations techniques would have been cheaper and more effective.

Seamlessly interweaving his own experiences into the tales of a town called Sue, Hooper constructs a concerning picture of the modern media landscape, where freedom of speech is unduly threatened by the wealthy and powerful.

Investigative journalists are particularly at risk. When a reporter sends a request for comment from a subject, seeking to fact-check a story, they may instead receive a legal notice in response, and become the subject of a SLAPP action.

Journalist Catherine Belton was subject to multiple SLAPP actions from various Russian oligarchs. She is a former Moscow correspondent for the *Financial Times* and author of *Putin's People: How the KGB Took Back Russia and Then Took On the West*.

Belton and HarperCollins were sued by at least five Russian oligarchs and the energy company Rosneft. *The Observer* described the litigation as “a pile-on from Russian billionaires on a scale this country has never witnessed” – adding “London's lawyers are hard at work. Carter-Ruck, CMS, Harbottle & Lewis and Taylor Wessing have a billionaire apiece in a kind of socialism of the litigious”.

Many of the claims were ultimately dismissed, discontinued, or resolved with minor alterations to the text.



Belton: Russian pile-on

Another case, initiated by the Eurasian Natural Resources Corporation, a global mining company with a controversial history, against investigative journalist Tom Burgis and his book *Kleptopia: How Dirty Money is Conquering the World* was thrown out by Justice Matthew Nicklin.

With a number of concurrent claims in progress, Burgis had received more than 600 pages of legal correspondence, double the length of his book.

Despite the limited success of these SLAPP actions for the oligarchs or plutocrats initiating them, they continue to be utilised.

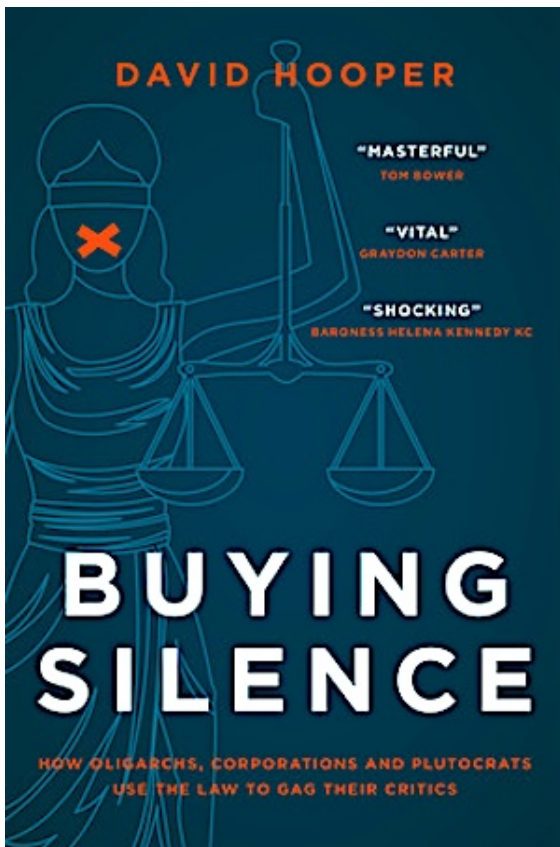
Hooper contends it is not a simple matter to balance an individual's right to legal advice and representation with the public interest and freedom of speech.

Not all SLAPP actions are known publicly. There are cases and threats that are never revealed.

“Lurking under the surface are all the unpublished articles and books and unbroadcast TV programmes.”

There are also countless potential stories that haven't been investigated for fear of legal action.

Hooper crafts a compelling argument for legislative reform, shifting the balance away from the wealthy oligarchs, plutocrats and companies currently exploiting the system.



He sees a need for reform in the approach adopted by law firms. Appreciating that clients will want their lawyers to pursue every means available, and lawyers want to please their clients, particularly their wealthy ones, Hooper argues that the change must come from the law itself, likely in the form of a broader and simpler public interest test.

Hooper argues that firms should be required to review the source of the funds for litigation against the public interest, rather than unquestioningly accepting instructions – and they should have an ethical right to decline to act where appropriate.

Hooper suggests that the courts must be able to intervene as early as possible before enormous legal fees have accrued.

Judges should have the capacity to determine issues of jurisdiction and abuse of process at the initiation of a case, thereby culling SLAPP actions from the courts.

Hooper's [\*Buying Silence: How oligarchs, corporations and plutocrats use the law to gag their critics\*](#) provides a comprehensive picture of how wealth and legal loopholes unduly limit freedom of speech and investigative journalism, but also how, with the right reform, they don't have to.

Veronica Lenard