Prometheus
Vol. 29, No. 1, March 2011, 83–85

Routledge
Taylor & Francis Group

RESPONSE

Please don't sue, it's just my opinion

Richard Lanigan*

Kingston upon Thames, Surrey, UK

Richard Lanigan has worked in the Cuban health care system and now owns a number of spinal health care clinics in the UK. These take an integrated approach to spinal health and wellbeing without the use of drugs. Before resigning from the chiropractic profession, he was an elected member of the General Chiropractic Council and a Fellow of the College of Chiropractors. He is an inveterate blogger and has commented extensively on the Simon Singh case.

Many organisations do not like those who are too keen to express their opinions. Why would they? People who are in power are usually reluctant to surrender it; they surround themselves with the like-minded, people who pose little threat to the authority of the old boys' clubs.

I was brought up to distrust people in authority. They have their own agendas, my mother would say. My grandfather was one of the players in the first Bloody Sunday in 1920, his best friend shot by British paramilitaries (the Black and Tans) while keeping goal at Croke Park in Dublin. My mother was born in 1930s' Ireland. To describe her as an activist would be an understatement. She spoke her mind in Catholic Ireland. Aged 16, she was expelled from a convent and ran off to England, where she trained as a nurse. She was on all the early CND marches, protested against the war in Vietnam, and was anti-apartheid well before it was fashionable. I was with her in the House of Commons on 2 February 1972 when she was arrested after the second Bloody Sunday for calling the British home secretary, Reginald Maudling, a 'murdering Tory bastard'. She would have loved the Internet.

The Internet makes it easier for people to protest and express opinions. Anybody with an opinion has an outlet and if they have a good Google ranking, that opinion will be heard regardless of the merits of the argument or whether the source of information is credible. In academia, a recognised hierarchy of journals has been established in most disciplines, with publication in specific journals accorded reputational benefits. With the Internet, the hierarchy is usually set by Google and depends on such factors as how many people have linked to your website.

The process of critical appraisal drives science. Serious debate may be stifled by England's libel laws, which put the onus on the defendant to prove that what he wrote is true. In the current climate, would a scientist have had the courage to state on Twitter that Thalidomide was causing deformities in infants? Critical appraisal helps to stop mistakes being made and to improve the practice of health care practitioners. However, the threat of libel prevents credible contributors becoming involved in discussions. Companies realise that if Joe Bloggs says something, suing would only

*Email: richard@spinaljoint.com

ISSN 0810-9028 print/ISSN 1470-1030 online

DOI: 10.1080/08109028.2011.570991
http://www.informaworld.com

draw attention to the statements; but, if someone like Peter Wilmshurst or Simon Singh writes something, their opinions are taken seriously and the organisation may act if the defamation can be claimed in a British court.

Those who face a defamation claim in the High Court will seek to raise a defence of honest comment, innocent dissemination or some form of qualified privilege. This is governed by both statute and common law and particularly addresses comments made without malice. However, these laws are open to legal interpretation and encourage libel tourism where foreign organisations want to silence critics.

I have twice been threatened with defamation writs. The first was in 2006 and was over posts I had written on my blog about the chiropractic regulator, the General Chiropractic Council (GCC). The GCC wanted me to remove 70 postings which they said defamed some executive officers. The GCC also sought a High Court order to identify various people who were commenting on my postings. They identified only three people and no action was taken over my postings. On this occasion, I took a chance and did not instruct solicitors.

The following year, I was elected to sit on the GCC. While on the council, I sent an email to other council members stating an executive officer had misled the council and lied. This accusation was more difficult to defend. Even if the information the executive officer had passed on was incorrect, it did not necessarily make the person a liar; they may have been mistaken. Calling someone a liar will seem malicious to most people. I was advised I would need very deep pockets to defend this charge of defamation, so I withdrew the remark and apologised. For an opinionated blogger like me, this did no damage to my reputation. However, others earn their living by commenting, and must go to court to defend themselves and their livelihood. I am certain many complaints would be solved faster and cheaper if mediators rather than lawyers were involved at the initial stage of a complaint.

The law should enable people to repair damaged reputations, not stifle debate. Peter Wilmshurst, a consultant cardiologist, was a co-principal investigator in a migraine trial (MIST), examining a product owned by a Canadian company, NMT Medical. At a conference in the US, Wilmshurst gave a lecture and touched on the MIST trial in his talk. Afterwards, a medical journalist asked him about the trial and wrote an article. As far as Peter Wilmshurst was concerned, he had genuine concerns about conclusions being drawn from the trial and he expressed them to other academics in relation to his published work. This might be expected to invite critical appraisal and debate rather than a libel writ.

NMT took the view that Wilmshurst's comments were made maliciously and that he was accusing NMT of covering up trial data, a serious accusation to make against any company in the medical field. After taking legal advice, NMT decided to sue him in the English courts. No doubt lawyers dissected every word Peter Wilmshurst had said, words spoken without the benefit of legal advice. If they win, they can have Wilmshurst publish something more agreeable to NMT. This case, and that of Danish radiologist Henrik Thompsen, make clear the need to reform the UK's libel laws so scientists can exchange views with their peers without the fear of legal action.

The case that has received most attention in relation to reforming the libel laws is the defamation case the British Chiropractic Association (BCA) brought against another scientist, Simon Singh, for an article he wrote in the *Guardian* newspaper. The decision by the BCA to sue Simon Singh must have generated at least £500,000 for the legal profession. The BCA claimed that the motivation for its legal action was that

it believed the article alleged that the BCA was a dishonest organisation. However, according to Simon Singh, the BCA's original charge was that:

> It is untrue and grossly libellous for you to allege that the claims made by our client happily promotes bogus treatments for which there is not a jot of evidence. There is, as you are or should be well aware, a substantial body of evidence to support these claims.

For Simon Singh, the dispute centred around the fact that the BCA claimed that there is 'a substantial body of evidence' supporting the efficacy of chiropractic treatment while Singh stated that 'there was not a jot of evidence' to support the specific conditions he was talking about (such as colic, *otis media*, and asthma, which make up a very small percentage of the problems chiropractors treat). Initially, the *Guardian* offered the BCA a right of reply in the paper which the BCA turned down, no doubt on the advice of lawyers.

The Particulars of Claim for the court stated that Simon Singh clearly implied that the BCA 'knowingly promotes bogus treatments'. The case went to court and Judge Eady found in favour of the BCA on an interpretation of the word 'bogus' which he believed implied that the BCA were being dishonest. There followed a huge public outcry and a campaign to Keep Libel out of Science and reform the libel law. Judge Eady's decision was overturned on appeal and the BCA withdrew its allegation of defamation.

No one really knows for sure what motivated the BCA leaders to sue Simon Singh. It has cost the chiropractic profession dear. Singh had a book to sell (Singh and Ernst, 2008); his article in the *Guardian* (Singh, 2008) could easily have been rebutted. Singh is a scientist, but his Ph.D. is in particle physics rather than anatomy, physiology or chiropractic. My partner has a Ph.D. in chemistry and her opinions on chiropractic are no more valid than those of our newsagent.

The fact that Simon is a scientist gave his opinion on chiropractic an authority it did not deserve. Many of Singh's assertions were based on the lack of randomised controlled trials to support chiropractic, but chiropractic intervention is very different from administering a drug. Like a surgeon, the experience and knowledge base of a chiropractor is far more important than the scientific evidence.

Singh made generalisations based on the origins of chiropractic as if it were a religion. The hypothesis of D.D. Palmer, the founder of chiropractic, is that interfering with nerve function would affect well being. Palmer's theory is as valid now as it has ever been. However, his understanding of physiology and the effects of spinal manipulation is a product of his time (the late nineteenth century), when surgery had a mortality rate of 76% and a surgeon would operate in street clothes without a mask. Defining chiropractic in this generalised manner is like defining medicine as what Harold Shipman practised. Simon Singh has every right to his views and the chiropractic profession should have rebutted them openly rather than getting libel lawyers to do it for them. I am reminded of the saying that knowledge is knowing a tomato is a fruit, wisdom is not putting it in a fruit salad.

References

Singh, S. (2008) 'Beware the spinal trap', *Guardian,* 19 April.

Singh, S. and Ernst, E. (2008) *Trick or Treatment: Alternative Medicine on Trial,* Bantam, London.