



## LIBEL TOURISM—A GROWING THREAT TO FREE SPEECH

“Libel tourism”—forum shopping for laws and courts that are particularly plaintiff-friendly—has emerged as a serious transnational threat to free speech. Given the dramatic chilling effect of such libel laws and the prominence of British courts in this phenomenon, [Freedom House](#) and [Article 19](#) recently convened a panel of experts in London to shine a light on this subject.

The event took place on May 2 at the Foreign Press Association, in conjunction with World Press Freedom Day. Participants included Julia Apostle, legal counsel for the *Financial Times*; Nick Cohen, columnist for the *Observer*; Gavin Millar of Doughty Street Chambers; and Mark Stephens of Finers Stephens Innocent. Christopher Walker of Freedom House moderated the discussion.

Libel tourism is not a new phenomenon, but it is gaining traction and putting greater pressure on the free exchange of ideas. In the United Kingdom, the burden of proof lies with the defendant in such cases. This factor, combined with the UK’s image as a paragon of high jurisprudential standards, makes the country an attractive venue for plaintiffs seeking to silence critics. Those who sue successfully can obtain the validation and imprimatur of the UK courts, which carry considerable weight in public relations.

The experience of *Forbes* magazine highlights the challenges presented by UK libel law. In 1996, Boris Berezovsky, one of Russia’s billionaire “oligarchs,” filed a claim against the magazine for an article entitled “[Godfather of the Kremlin](#).” Berezovsky successfully sued *Forbes* in London, even though it is based in New York and sold only a modest number of copies in the UK. More recently, powerful plaintiffs from other authoritarian settings in the former Soviet Union and oil-rich countries in the Middle East have filed similar claims in the UK in order to muzzle critics. The case of *Funding Evil: How Terrorism is Financed and How to Stop It*, a book authored by Rachel Ehrenfeld, is emblematic of the problem. Despite selling only a handful of copies in the UK, Ehrenfeld was sued for libel in a British court by Sheikh Khalid bin Mahfouz, a wealthy Saudi accused of financing terrorist groups. In 2005, he won a default judgment that ordered the author to apologize, destroy copies of her book, and pay him nearly a quarter of a million dollars in damages.

As Article 19 Executive Director Agnes Callamard observed, “It’s a disgrace that a country such as the UK, which represents itself as a pioneer of democracy, should be the first port of call for the rich and powerful looking to not only silence but seek retaliation for criticisms made against them.” Once a haven for controversial published works, the UK now finds itself without access to such material. To avoid potential suits in British courts, authors are choosing not to sell contentious books in the UK.

## **Raising Public Awareness**

Fortunately, awareness of the issue has slowly begun to spread. A number of recent articles have focused on the dangers to free speech posed by libel tourism.

In a [commentary](#) published by the *Times*, lawyer Mark Stephens writes that “too many foreigners jet in to sue foreign publications, authors and broadcasters before our plaintiff-friendly libel courts. Foreigners unable or unwilling to take their chances before their own courts come to [the UK].” He further notes that “books are already being cancelled by publishers because the economics of publishing are such that they cannot sustain the costs of a libel action.” Incredibly, Cambridge University Press recently pulped a book (*Alms for Jihad: Charity and Terrorism in the Islamic World* by Robert O. Collins, a professor emeritus of history at the University of California, and J. Millard Burr, a former U.S. State Department employee) on the simple threat of a suit.

Well-known First Amendment lawyer Floyd Abrams also sounded the call in a sharp [op-ed in the Wall Street Journal](#), underscoring the fact that these expansive libel laws are “increasingly being used to limit public debate about terrorism.” The *Economist*, meanwhile, ran an [article](#) on the issue of libel tourism in its May 8, 2008, edition, noting the case of Ukrainian oligarch Rinat Akhmetov, who has used high-powered London lawyers to sue Ukrainian news outlets such as the English-language *Kyiv Post* and the online Ukrainian-language *Obozrevatel*. The *Economist* noted the following on the UK’s plaintiff-friendly legal regime: “It is not just that defending a libel action costs the equivalent of \$200,000-plus up front, and much more if you lose. The plaintiff has to prove only that a statement was defamatory; it is up to the defendant to justify it, usually on grounds of truth or fairness.”

## **New York’s “Libel Tourism Terrorism Act”**

In response to the increasing pressures on free speech, the New York State Legislature advanced the [Libel Tourism Terrorism Act](#), which Governor David Paterson signed into law on April 30. Among its provisions, the legislation stipulates that foreign libel judgments are unenforceable in New York State unless a court determines that the foreign law under which they were obtained provides as much protection for free speech as the New York and U.S. constitutions. The New York law was inspired by the case brought against author Rachel Ehrenfeld by Sheikh Khalid bin Mahfouz, who has sued using UK libel laws more than two dozen times.

## **Conclusion**

The practice of intimidating and silencing journalists and authors from other countries under British libel law has earned the UK a reputation for being the “Libel Capital of the World.” But such plaintiff-friendly laws are not restricted to the British Isles. Common law-based systems in Asia, for example, open the door for influential moneyed interests to gain an enormous legal advantage, at great cost to free speech. In fact, this can be seen as part of a [larger global trend](#) identified by Freedom House, in which countries are increasingly using strict lopsided libel laws to punish and muzzle journalists, authors, and publishers. Terrorist financing and corruption-related topics have often been the objects of such suits, bringing larger public-policy concerns into the equation. The pernicious and far-reaching damage caused by libel tourism makes more vocal and effective advocacy on this issue an imperative.