Some Observations on the Law and the Freedom of the Press

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The subject of my contribution – the law and freedom of the Press – warrants by way of introduction a brief general comment: by and large, the Press is free and has, in particular, freedom of opportunity under English law. In the light of that observation it is only fair to add that I very much like the American Bill of Rights – and the First Article – and it is consistent with my thinking that there should be in this country a Bill of Rights which ought specifically to declare and protect the freedom of the Press.

What I also believe is needed is a Freedom of Information Act. I have little doubt that the Watergate affair, had it occurred in London, would not have been exposed. The reason for that, however, is not in our laws but in our practice of Government. What is needed much more than any specific removal of restraints from the Press is a Freedom of Information Act, compelling fuller disclosure by Government of what they are doing, what they have done and, to some extent, what their plans are for the future. I feel very strongly that we have not yet analysed correctly where the real mischief is. The mischief is not in our general common law approach to the Press but in the secretive practices of government.

FUTURE DANGER POINTS

The danger points in the future for the law relating to the Press are two: first, the use that can be made by the courts of the weapon of contempt of court – and I think that could fairly be described as...
having, if it goes too far, a mischievous effect; and, secondly, a very different constraint – and it may be a necessary one – namely the extent to which the development of an effective law on privacy will constrain the Press.

A law on privacy may develop and I think it should, but one has to recognise that it represents a threat to some of the legitimate freedoms of the Press and I believe this to be a difficult area which we have not fully explored. There is a reluctance to provide a legal remedy to protect privacy; and it is an honourable and honest reluctance. I do not think it should stand in the way of the development of a law on privacy but it is a reluctance which we must respect and do what we can to meet the point behind it.

I find it very difficult as a lawyer to draw an understandable line of demarcation between private life and what is in the public interest to be published. For instance, if a judge ‘misbehaves’ in private life – I do not mean commits unlawful acts but misbehaves in a social sense – I think that is a matter of public interest because it bears directly on his standing in the exercise of his public function. But if my son was to get into trouble of one sort or another, he not being in any way in public life but being the son of a public figure, is there a case for saying that his trouble should be treated as being within the private domain and entitled to protection from publicity? That is an immensely difficult question to answer and I certainly would not give a doctrinaire answer. My inclination is, however painful it be, that, if there is doubt, it should be resolved in favour of freedom of the Press to publish, subject always of course to the laws of defamation.

It will be seen from this how difficult I find this subject, and how very little advanced is my own thinking. Indeed, I would counsel people against moving too fast or too far in developing a law on privacy. I know the Younger Committee reported some years ago and nothing has been done and so, one can say, we are moving neither too far nor too fast – and that is true – but let us not underrate the difficulties. At the end of the day we have got to remain a free, open and tolerant society and if we all live in little secret hideouts there is bound to be a loss of communication and, perhaps, a loss of freedom. Therefore, I am very troubled about law reform in the matter of privacy.

If any developments do come, I think they can come in the world of physical intrusion into other peoples’ privacy by the use of the camera, by people who will try and secrete themselves in