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RES GESTAE

THE LAW SCHOOL
WEEKLY
U of MICHIGAN
ANN ARBOR
AUGUST 2, 1973

UK - FREE PRESS - US

LONDON — Imagine that a British general election is on and that agents of the Committee to Re-elect the Conservative Government have been caught installing bugs at Labor party headquarters. Scotland Yard investigates, and in due course the burglars are prosecuted. The Labor party brings a civil suit for damages against the Conservative committee.

If that unlikely scenario ever occurred over here, a result amazing to Americans would follow: The British press would be barred by law from doing any serious investigative or analytical stories on the role of Conservative leaders in the break-in and its aftermath.

That stringent restriction would be imposed by judges under a redefinition of contempt law recently produced by this country's highest court, the House of Lords. And its ruling is in fact even more severe than the simple parallel with Watergate suggests.

The restriction on press comment would continue even if all criminal investigations and prosecutions finished—as long as the civil suit was pending. Even if Parliament debated the case, the news media could publish or broadcast no independent findings or conclusions of their own.

To the American press such restrictions would seem a nightmare. They could not be reality while the First Amendment existed and was enforced by the courts. But Britain has no written constitution, and the traditions and understandings that are called her "constitution" do not include the same high place for freedom of the press.

The case that produced the House of Lords judgment concerned not any near-equivalent of Watergate but Britain's thalidomide children. There are some 400 children born in 1961 with terrible bodily deformities—no legs or arms or shoulder bones—after their mothers had taken the tranquilizer thalidomide.

The parents sued the Distillers Company, which distributed the drug in Britain. Over the years settlement negotiations dragged on. The company offered a total of about \$7.5-million, if all the plaintiffs would accept that. But some held out.

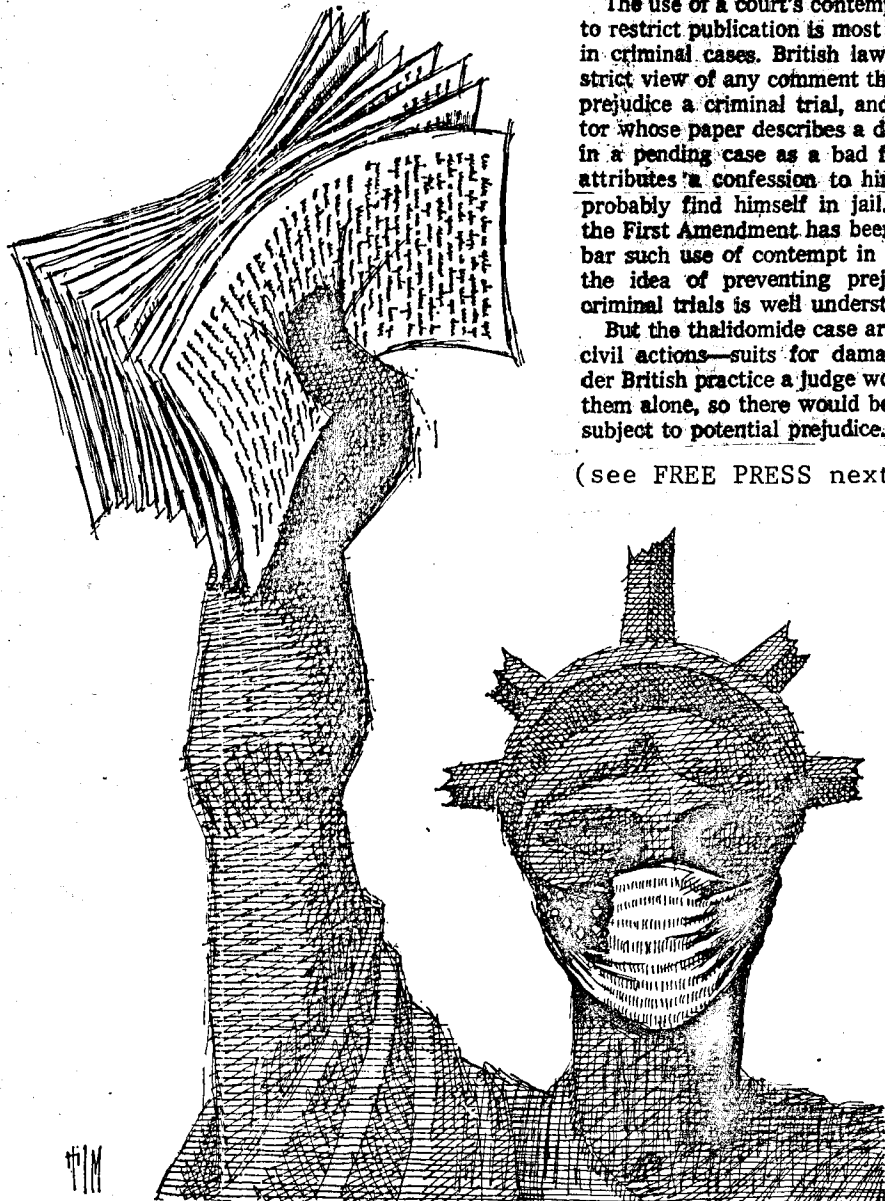
Last September The Sunday Times of London decided to look into the thalidomide affair. It published a number of articles on the situation of the children and their families—often desperate—and on the long history of the litigation here and in other countries. The public and Parliament remembered the children, for the first time in years, and began to show concern.

Then The Sunday Times prepared a long piece on how thalidomide had been developed, tested and marketed—a piece evidently suggesting negligence or worse. In order to be fair, and because of concern about possible contempt of court, it showed the article to Distillers first. The result, just confirmed, was an injunction forbidding publication on pain of punishment for contempt.

The use of a court's contempt power to restrict publication is most common in criminal cases. British law takes a strict view of any comment that might prejudice a criminal trial, and an editor whose paper describes a defendant in a pending case as a bad fellow or attributes a confession to him would probably find himself in jail. Though the First Amendment has been held to bar such use of contempt in America, the idea of preventing prejudice in criminal trials is well understood.

But the thalidomide case arose from civil actions—suits for damages. Under British practice a judge would hear them alone, so there would be no jury subject to potential prejudice.

(see FREE PRESS next page)



LETTERS



STUDENT UPSET ABOUT SOMETHING-OR-OTHER

To the Editor:

There has been much rumor, innuendo, and just plain poppycock being blatted around lately by many new "Summer Starters". Not the least of this gossip regards the alleged "sexist attitudes" of Professor Croft and/or Professor Gray. I submit that it does not speak well of "the finest starting class ever at Michigan" that many of its members are ready, willing, and eager to impute nasty doings to their teachers without any credible evidence and without apparent regard for the teachers' reputations and/or sensitivities. A little good faith is acceptable and desirable even among non-merchants.

James H. Dautremont

(FREE PRESS cont'd from p.1)

In upholding the injunction against The Sunday Times article, the House of Lords did not see any risk to fair trial. It based its view on something much broader, the alleged social danger of any "trial by newspaper." Lord Reid put it simply: "It is not permissible to prejudge issues in pending cases."

In human terms, the result will be to deprive plaintiffs like the thalidomide parents of the help of public sympathy. That undoubtedly did help in this case. Distillers raised its settlement offer to \$50-million after the publicity started, and the parents accepted.

Lord Simon, in his opinion, said coldly: "Dwelling on the peculiar horror of this particular case is apt to cloud judgment." The public pressure on Distillers to settle was undoubtedly one of the factors that troubled the judges. On the other hand, critics of the decision argued that Distillers, one of Britain's largest companies, might have been in a position to hold out forever in the litigation unless put in the public spotlight.

The larger concern of the critics was the public interest in discussion of such an important issue. Twelve years

after the horror of these births there has still been no real look at drug testing, safety standards and similar issues in Britain. Harold Wilson, the leader of the Labor party, made the point that Parliament often could not debate a problem usefully unless first informed by press inquiry.

All the newspapers, regardless of their place in the political spectrum, attacked the House of Lords decision as one that could stifle the most important public discussion. Politicians other than Mr. Wilson expressed unease, too, and there were calls for the Government to offer corrective legislation. But the skepticism of the press runs high in this country: journalists sit below the salt in social terms, and in a recent poll 34 per cent of those asked voted the press "least trusted" among professions—worse even than politicians. The prospects for significant liberalization of the contempt rule look dim.

—ANTHONY LEWIS

New York Times,
July 29, 1973

SUMMER
1973

FILM SHOW CASE

All film series begin at seven o'clock P.M. in Auditorium 3 of the Modern Languages Bldg.

THURSDAY – JULY 26

Film Study

Cinema: The Living Camera (22 min.)
World (6 min.)
Mothlight (4 min.)
Breathdeath (15 min.)
Cria (4 min.)
Angel (7 min.)
David Lean: A Self-Portrait (60 min.)

FRIDAY – JULY 27

Film Classic

The Dentist (19 min.)
The Blue Angel (90 min.)

MONDAY – JULY 30

Women's Studies

Anything You Want to Be (9 min.)
Growing Up Female: As Six Become One (60 min.)
It Happens to Us (30 min.)
Caring More Than a Day (20 min.)

TUESDAY – JULY 31

Humanity at Work

Dam at Nagarjunasagar (9 min.)
Blue Collar Trap (51 min.)
No. 00173 (9 min.)
They Want to Make Work Human Again (17 min.)
Maple Sugar Farmer (29 min.)

WEDNESDAY – AUGUST 1

Poets

Dylan Thomas Memoir (28 min.)
World of Piri Thomas (60 min.)
E. E. Cummings: The Making of a Poet (24 min.)

HAVE YOU
BENT OVER ONCE TOO OFTEN?