

# McLibel: Burger Culture on Trial

by John Vidal, Macmillan, London, 1997, x pp, 301 pp, trial diary 302–310 pp, afterword 311–315 pp, references 316 pp, index 317–326 pp.

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‘Have you nearly concluded your argument?’  
‘Mlud, no — variety of points — feel it my duty tsubmit — ludship’  
— Mr Tangle in the trial of *Jarndyce v Jarndyce*:  
Charles Dickens: *Bleak House*<sup>1</sup>

There are numerous references made in *McLibel: Burger Culture on Trial*<sup>2</sup> to the less than favourable opinion of the law held by the great Victorian writer Charles Dickens. The notion that the common law has evolved to work against the interests of justice and the common person, and for the interests of lawyers and big business is canvassed at length in *McLibel: Burger Culture on Trial*. Vidal, a journalist with the *Guardian*, documents the history of the parties, the day to day details in court and the ramifications of the longest trial in English legal history.

Totalling a massive 313 days in court, *McDonald’s Corporation and McDonald’s Restaurants Ltd (UK) v Steel and Morris*<sup>3</sup> (hereafter referred to as McLibel) has captured attention world wide, much to the delight of the unemployed anarchist defendants and the regret of the plaintiff mega-corporation. The global significance of this case has produced not just McLibel the book, but also McLibel the movie<sup>4</sup> plus a website<sup>5</sup> that has been accessed by millions around the world. Indeed this could arguably be one of the most important trials of the decade, not only from a legal perspective but from a cultural and socio-economic viewpoint also. It is, therefore, hardly surprising that Vidal has catered for a cross section of interests by producing a work that is part legal textbook, part economic theory<sup>6</sup> and part journalistic narrative — and all with a dash of humour and keen sense of the David and Goliath drama to keep the momentum flowing.

## I. So what is McLibel?

In 1985, leaflets entitled ‘What’s wrong with McDonald’s: Everything they don’t want you to know’ were distributed by a Green/Left group called London Greenpeace.<sup>7</sup> As well as a broad range of criticisms levelled at McDonald’s, the leaflet contained satirical graphics of the golden arches with the words: ‘McTorture’, ‘McCancer’, ‘McMurder’, ‘McGreedy’, ‘McDollars’ and ‘McProfits’.<sup>8</sup> In 1990 writs were served by McDonald’s on five members of the London Greenpeace group. It was later established that the choice of the five was based on information provided by McDonald’s employees who had infiltrated

1 Vidal J, *McLibel: Burger Culture on Trial*, Macmillan, London, 1997 at 295.

2 Note 1.

3 There are four cited hearings: *McDonald’s Corporation v Steel & Morris* [1995] 3 All ER 615; *McDonald’s Corporation v Steel & Morris (No. 2)* QBENF 96/0192C, CA; *McDonald’s Corporation v Steel & Morris (No. 3)*, Times, November 22, 1996, CA; *McDonald’s Corporation v Steel & Morris (No. 4)* QBD 1997 (unreported). It is the fourth hearing that is the subject of *McLibel: Burger Culture on Trial*.

4 *McLibel: two worlds collide*, director: Franny Armstrong, 53 minutes, One-Off Productions, London, 1997.

5 <<http://www.mcspotlight.org>>

6 See for example, Vidal’s fascinating and detailed account of the parallels between Milton Friedman and the Chicago School of Economics and Ray Kroc and his fledgling burger company McDonald’s and their respective rise to world dominance; Note 1 at 31–48.

7 It should be noted that this group is not related to the International Greenpeace organisation; Note 1 at 52.

8 Note 1 at 52.

London Greenpeace in order to spy upon them.<sup>9</sup> The statement of claim lodged by McDonald's alleged that the leaflet had 'greatly damaged' the corporation in 'its trading reputation' and that the corporation had 'been brought into public scandal, odium and contempt.'<sup>10</sup> The main problem for any potential defendant to the statement of claim was that every single comment made in the leaflet was alleged to be libellous, including such accepted and seemingly obvious statements as 'diet is linked to ill health.'<sup>11</sup> The five were given two hours free advice under a legal aid scheme and were told that this was the only help they would be given and that the only advice to give was to 'Get Out Fast'.<sup>12</sup> Only two of the five were brave or foolish enough to refuse an apology to McDonald's. Thus began this battle of epic proportions. McDonald's were represented by English expert counsel on libel, Richard Rampton QC, plus a host of legal advisers and juniors. Steel and Morris were represented by Steel and Morris.

The details of the trial are discussed at length in *McLibel: Burger Culture on Trial*. Chapter One, titled 'Day 222', takes the reader through an ordinary day in the life of McLibel. The personalities of plaintiff, defendants, judge and counsel are all conveyed with the lifelike detail one would expect from a journalist of Vidal's calibre. The portrait of Mr Justice Bell is particularly interesting for those with a legal background. He patiently and painstakingly attempts to explain and tutor his self-defended defendants in the twists and turns of English libel law. Comments such as 'No, not that law book, this one . . .', 'Can I give you an example from this case . . .' and 'What I think you are trying to say is . . .'<sup>13</sup> all lead to an empathy for the judge's predicament, that all lawyers or students of law, who have ever tried to explain a very complicated legal principle to a lay person, must share.

On 19 June 1997, Mr Justice Bell delivered his judgment. He found that Steel and Morris had libelled McDonald's regarding rainforest destruction, packaging, food poisoning, starvation in the third world, heart disease and cancer and bad working conditions. However, more significantly, it was held that Steel and Morris had proved that McDonald's advertising exploits children, falsely advertise their food as nutritious, risk the health of their long-term regular customers, are 'culpably responsible' for cruelty to animals reared for their products, are 'strongly apathetic to unions', and that they pay their workers low wages.<sup>14</sup> As only half of the libel had been made out, McDonald's were awarded only half of the damages claimed — a paltry sixty thousand pounds — as compared with legal fees estimated at in excess of 10 million pounds.<sup>15</sup> Not a bad effort for defendants with no legal background, knowledge or experience who also happened to be defending themselves.

McDonald's have not sought their damages, costs or an injunction preventing further dissemination of the libellous London Greenpeace leaflet. Indeed, it was famously reported that the first thing David Morris did upon leaving court on the final day of the trial was to ask whether anyone wanted a leaflet — the very same document that was the subject of the libel.<sup>16</sup> McDonald's seem to be subscribing to the theory that if one ignores something long enough then it will just go away.

9 Note 1 at 70. See also Chapter Thirteen: Spy vs. Spy at 192–196.

10 Note 1 at 1.

11 Note 1 at 75.

12 Note 1 at 74.

13 Note 1 at 13.

14 <<http://www.mcspotlight.org/case/trial/verdict/index.html>>

15 It should be noted that in April 1999, a decision from the Court of Appeal further added to McDonald's woes. Pill, May and Keane LJJ, reduced the damages by twenty thousand pounds due to two further parts of the libel being proved by Morris and Steel. It was held that McDonald's food poses a 'very real risk' of heart disease and that McDonald's employees are paid low wages; 'McDonald's judged a risk to health' *The Courier Mail*, April 3, 1999 at 17.

16 Note 1 at 298.

## II. Why is McLibel important?

There are myriad reasons why this case is so important, all of which are dealt with in *McLibel: Burger Culture on Trial*. Vidal uses catchy chapter titles to describe and explain each stage of the trial.<sup>17</sup> This humorous touch gives the work an upbeat feel, but this often belies the seriousness of the issues involved. Of particular relevance to lawyers is the extreme difficulty that two ordinary citizens had in understanding the specific libel law and the broader rules of court procedure. Vidal frames this difficulty beautifully when he describes the pre-trial procedure of a libel case as 'somewhere between a courtly dance, a sword fight and two football teams checking each other out before the match.'<sup>18</sup>

The archaic language of English libel law combined with alien legal concepts and the high onus of proof meant that the possibility of Steel and Morris receiving a fair trial on a reasonably level playing field was slim to non-existent. Legal aid was not available in defamation cases, apparently to prevent petty claims clogging the courts.<sup>19</sup> The ultimate blow came when McDonald's successfully argued that the trial should be heard before a judge only, as no jury could be expected to comprehend a case as complicated as McLibel.<sup>20</sup> This seems illogical when the self-represented defendants were expected to cope with the volume and complexity of material. Furthermore, it was held that a judge sitting alone would determine the matter rapidly, an argument that in retrospect seems farcical.

*McLibel: Burger Culture on Trial* provides a perfect illustration of the time, cost and sheer stress of going to trial and in so doing strengthens the argument that it is best to avoid litigation wherever possible. By settling out of court the hardships of trial can be avoided, even if this means sacrificing honestly held opinion and kowtowing to an entity that you cannot respect.

This in turn raises broader issues of access to justice and the eternal problem of the law being the recourse for the wealthy and the poor having no recourse at all. The fact that multinational companies often have more economic sway and lobbying power than most of the third world combined means that they present a foe with inexhaustible resources. Governments are increasingly hesitant to take on a major multinational, so what possible hope would an individual have? A further question that has been raised by the facts of McLibel is whether law suits, or even veiled threats of legal action, are being used to censor critics and thereby control the information available to consumers? It should be noted at this point that, although no answer can be given to the previous question in definitive terms, the list of McDonald's initiated or threatened libel actions proves telling indeed — the organisations include the BBC, Channel 4, the *Guardian*, Today and many other vegetarian, green and labour movements.<sup>21</sup>

In the wake of McLibel there has been a vocal and persistent push for modification of libel laws in Britain.<sup>22</sup> It has been argued that governments are no longer able to sue for defamation, so therefore, if many companies are more powerful and wealthy than most governments, the reasoning follows that companies should not be protected from public comment and free expression of opinion.

17 For example, chapter fifteen on worker's conditions is titled 'Heigh-ho, heigh-ho, it's off to . . .' (at 213–235); chapter four discussing the initial stages of the trial is titled 'M'lud on their Boots'(at 73–98); and chapter twelve about the welfare and conditions of animals used in McDonald's production is titled 'Eee-i-eee-i-oh' (179–191).

18 Note 1 at 78.

19 Note 1 at 74.

20 Note 1 at 89–92.

21 Note 1 at 1.

22 Note 21. Jeremy Corbyn, MP, has been dogged in his support of reform for libel laws.

### III. McLibel — from whose point of view?

It is stated at the outset<sup>23</sup> and in an epilogue<sup>24</sup> that Vidal made repeated attempts to have McDonald's give their side of events and contribute to his account of the case, and its significance. The corporation, not surprisingly, has been tight lipped about the whole affair. There was no McDonald's participation in *McLibel: Burger Culture on Trial* and there is no information about the trial available on their website.<sup>25</sup> This 'no-comment' stance is unfortunate as it makes balanced assessment and unbiased coverage of the case, and the circumstances surrounding it, very difficult.

If there is a criticism to be levelled at *McLibel: Burger Culture on Trial* then this is it — that the reader only gets a keen sense of the suffering of Morris and Steel. Any detriment to the company is dismissed as inconsequential, for Vidal is quick to point out that corporations are only a legal entity with no human feeling or sensibilities to offend. The huge divergence in opinion and belief between the McDonald's executives and Steel and Morris is always made clear by Vidal. Neither side can understand nor relate to the other. However, the possibility that there are executives and senior employees at McDonald's who genuinely believe that their company makes the world a better place, and that Steel and Morris and other protesters like them should not be able to say anything they please without being put to proof, is never really considered by Vidal. This feeling of one-sidedness can make for frustrating reading at times, particularly during the concluding chapters.

Vidal states in the preface to *McLibel* that he is not of the same political persuasion as Steel and Morris and that had they chosen to write this account of the trial they would have done it rather differently, and that most tellingly, he would not necessarily have reached the same conclusions as Steel and Morris.<sup>26</sup> After such an obvious attempt to distance himself from the politics of the case, Vidal goes on to present a fairly passionate plea of support for the defendants and what they stand for. This includes two chapters at the end of the work that would not look out of place in a political pamphlet. The chapters titled 'But it's not just McDonalds'<sup>27</sup> and 'And it's not just Morris and Steel'<sup>28</sup> attempt to relate the facts of McLibel to countless other struggles with evil companies world wide. The focus tends to wander at this point. Both the chapters are very long and are filled with claims, statistics and predictions that, from a legal perspective, seem to be unsubstantiated generalities. There are few precise references, which gives the impression that Vidal is expressing his own opinion. This is despite the fact that he has already clearly told us he does not share the opinion of Steel and Morris. Thus, although addressing the very real issues of cultural deprivation in the wake of corporate imperialism, Vidal's persuasive and emotive tone at some points verges on propaganda that is no less skilful than the spin doctoring of many multinational companies.

Still, this is a minor criticism of what is otherwise a fascinating and entertaining account of a trial that is both global in scope and personal in detail. In *McLibel: Burger Culture on Trial*, John Vidal weaves a vivid and somewhat terrifying tale of the nightmare the common law can present when encountered by the common man. Finding a balance between corporate protection from damaging and false comment and the freedom of citizens to express their opinion must surely be the goal of all civilised countries. In *McLibel: Burger Culture on Trial*, the reason for having such a goal is made clear. For those who fear the increasing power and control that many companies exert over the

23 Note 1 at vi–vii.

24 Note 1 at 300–301.

25 <<http://www.mcdonalds.com>>

26 Note 1 at vi.

27 Note 1 at 236–263.

28 Note 1 at 264–294.

hapless consumer, *McLibel: Burger Culture on Trial* will confirm your worst fears. But for those who enjoy the odd hamburger, it may interest you to know that children around the world recognise and respond to the golden arches over and above any other sign or symbol. The real question is whether as a society we are happy with this state of affairs. If not, then it might be wise to express any dissatisfaction quietly.