"The law relating to contempt of court is fraught with difficulties and uncertainties", we are reminded in *In re Lonrho p.l.c.* [1989] 3 W.L.R. 535, in which three Law Lords (Lords Bridge, Goff and Jauncey) had to determine, as a tribunal of first instance, whether there had been contempt of the House of Lords itself. The proceedings arose from events which occurred before and during the hearing of an appeal to the House of Lords concerning applications for judicial review. Judicial review had been sought *inter alia* to challenge the Secretary of State’s decision to defer publication of an inspectors’ report on the acquisition of House of Fraser—which controlled Harrods—by the Al Fayed brothers in 1985. The applications had been brought by Lonrho as part of a protracted campaign against the take-over. In January 1989 the Court of Appeal (reversing the Divisional Court) ruled against Lonrho; and on 18 May the House of Lords dismissed the appeal (*R. v. Secretary of State for Trade and Industry, ex p. Lonrho p.l.c.* [1989] 1 W.L.R. 525).

In late March two unauthorised copies of the inspectors’ report fell into the hands of Mr Rowland, the chief executive of Lonrho. A few days later, on 30 March, a special mid-week edition of The Observer, a Sunday newspaper owned by Lonrho, was widely distributed to newsagents before the Secretary of State obtained a belated *ex parte* injunction. The special edition contained, in addition to extracts from the inspectors’ report, editorial comment which accused the Secretary of State of bad faith in his decision to defer publication. Numerous copies of the special edition were sent by post to persons whose names appeared on a mailing list used by Lonrho in its campaign; and four of the five Lords of Appeal, who were to hear the appeal on the issues of judicial review, were among
the recipients. Some days after judgment in the judicial review proceedings was delivered, the same five Law Lords met to consider allegations of contempt, but objections were made on various grounds to the composition of this Appellate Committee. Without enthusiasm, their Lordships decided not to hear the proceedings. Two other Law Lords subsequently felt it appropriate to recuse themselves, and finally a second Appellate Committee consisting of three members only was convened.

This Committee moved speedily to clear the decks. In particular, it decided not to proceed with charges of contempt arising from direct communication with members of the first Appellate Committee. The remaining live issue was whether publication of the special edition of The Observer amounted to contempt. This could be approached, first, by recourse to common law contempt (expressly preserved by section 6(1) of the Contempt of Court Act 1981) based on allegations of intention to impede or prejudice the administration of justice. It will be recalled that common law contempt was given a new lease of life in the Spycatcher litigation (Attorney-General v. Newspaper Publishing p.l.c. [1988] Ch. 333, C.A.). In Lonrho, however, the second Appellate Committee, acutely aware of the difficulty of proving intention beyond doubt, did not pursue the allegations of common law contempt. The publication of the special edition could nevertheless be approached, secondly, by recourse to statutory contempt (i.e., strict liability contempt under the Contempt of Court Act); it was here that the Committee paused to hear arguments about prejudgment and pre-emption before finally deciding unanimously that no case of contempt had been made out.

On prejudgment, with the emphasis on the editorial comment in The Observer, the Committee quoted extensively from judicial comments in the thalidomide case (Attorney-General v. Times Newspapers Ltd. [1974] A.C. 273). These earlier pronouncements on prejudgment, however, were regarded as having been undermined by the combined effect of criticism in the Phillimore Report (Cmnd. 5794 of 1974), the decision of the European Court of Human Rights in the thalidomide litigation (Sunday Times v. U.K. [1979] 2 E.H.R.R. 245), and the presumption that the 1981 Act should be interpreted so as “to avoid future conflicts between the law of contempt of Court in the United Kingdom and the obligations of the United Kingdom under the convention”. Looking at the statutory language without any preconceptions based on the thalidomide decision, the Appellate Committee took into account that publication took place at a late appellate stage of the judicial review proceedings. Could the editorial comment be said to have created a substantial risk that the course of justice in those proceedings would be seriously impeded or
prejudiced? The Appellate Committee thought not. Only in exceptional circumstances would an appellant or respondent be likely to be influenced, and it was “difficult to visualise circumstances” where an appellate tribunal would be likely to be influenced. It was pointed out that discussion and criticism of decisions at first instance or of the Court of Appeal are “a commonplace in legal journals” and that, on matters of more general public interest, criticism in the general press is allowed on “criminal convictions, sentences imposed, damages awarded in libel actions and other court decisions which arouse public controversy”. Presumably the only (and very remote) check on such discussion and criticism is contempt by “scandalising the court”, but that does not in the recent past appear to have deterred some very eminent academic lawyers from commenting with vigour on decisions of any courts—including the House of Lords.

On pre-emption, the second Appellate Committee was more troubled. The emphasis now was on publication of extracts from the inspectors’ report, with the suggestion that Lonrho and its directors had “taken the law into their own hands” and effectively destroyed much of the confidentiality of the report. The judicial review proceedings had been to no small extent concerned with the lawfulness of the Secretary of State’s decision to protect that confidentiality, and it could be argued that Lonrho had employed “extraneous means” to achieve its objective, thus pre-empting the appellate decision of the House of Lords. Whatever the rights and wrongs of Lonrho’s and The Observer’s actions, however, the Appellate Committee saw serious anomalies arising from any application of the law of contempt, and as a matter of principle their Lordships suggested “that it would be a novel extension of the law of contempt to hold that direct action taken by a litigant to secure the substance of a remedy which he was seeking in judicial proceedings amounted to a contempt in relation to those proceedings”. Arguments drawn by analogy from theSpycatcherlitigation ([1988] Ch. 333) were not regarded as providing any support for a contrary view. The second Appellate Committee was prepared, it seems, to adopt a common sense view about the desirable or proper ambit of criminal contempt.

The “difficulties and uncertainties” of the law of contempt are amply demonstrated in this decision of the House of Lords. A final appellate tribunal is likely to be ill at ease when obliged to act as a tribunal of first instance; and the second Appellate Committee expressly referred to its hesitations and anxieties, suggesting that the range of the law of criminal contempt ought to be determined, as far as possible, only with “the advantages which accrue from the refinement of issues occurring in the course of the appellate process and the consideration of the views expressed by judges in the court
below”. Such refinement may not have been available in Lonrho. Even so, the contempt proceedings were untidy and, in retrospect at least, it would perhaps have been wise for the House of Lords to have left well alone.

D.G.T. Williams.

CHILD ABUSE REGISTERS AND JUDICIAL REVIEW

Every social services department keeps a register of “non-accidental injuries” to children, listing the names of those children in its area who have been subjected to, or are thought to be at risk of, physical, mental or emotional abuse, together with the names of their known or suspected abuser. Child abuse registers are not recognised by statute, but guidance is provided by the Department of Health to ensure that they are standardised throughout the country. This guidance emphasises the need for parental involvement at every stage of an investigation, but until recently it was unclear whether, and if so to what extent, a right to involvement is secured by law to parents and others suspected of abuse. Welcome clarification has now been provided by the decisions of Waite J. in R. v. Norfolk County Council, ex p. M [1989] 3 W.L.R. 502 and of the Court of Appeal (Butler-Sloss L.J., Woolf and Fox L.JJ. concurring) in R. v. Harrow London Borough Council, ex p. D [1989] 3 W.L.R. 1239.

The applicant in the Norfolk case was a plumber, a married man of good character, who was accused by K, a girl of 12, of behaving indecently towards her while working at her home. M strenuously denied the allegation and the police decided to take no action, but social services convened a case conference. It there emerged that K had already been twice registered as the victim of sexual abuse by two different men, that she led an unsettled home life, dressed and behaved precociously and had “very evident” emotional problems. The police representative reported on M’s denials, but M’s side of the story otherwise went unheard.

The conference decided that the names of both K and M should be entered on the child abuse register, and also that M’s employer should be made aware of the situation, despite the council’s declared policy of confidentiality for register entries. M was informed of these decisions by letter. He protested at the procedure that had been followed, and the council offered to reconvene the conference to permit him to “make his observations personally”. M declined this belated offer and instead applied for judicial review, alleging breach of natural justice and Wednesbury unreasonableness.

The council’s first and most optimistic argument was that review