Neutral Citation Number: [2004] EWHC 2786 (QB)

Case No: HQ03X02026

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/12/2004

Before :

THE HONOURABLE MR JUSTICE EADY

- -

Between :

George Galloway MP	**Claimant**
- and -	
Telegraph Group Limited	**Defendant**

- -
- -

Richard Rampton QC and Heather Rogers (instructed by **Davenport Lyons**) for the Claimant
James Price QC and Matthew Nicklin (instructed by **Dechert**) for the Defendant

Hearing dates: 15th, 16th, 17th and 19th November 2004

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Approved Judgment

Mr Justice Eady :

Introduction: The parties and the articles sued upon

1. The Claimant in these proceedings is Mr George Galloway who has been since 1992 the Member of Parliament for the Glasgow Kelvin Constituency. Prior to that, he had been the Member for Glasgow Hillhead from 1987. Having been an active member of the Labour Party from 1967 (when he was aged 13), he was eventually expelled on 23rd October 2003 for allegedly "bringing the Labour Party into disrepute". Thereafter he became a founding member of a new political movement known as RESPECT, which is an acronym for "Respect, equality, socialism, peace, environment, community and trade unionism". Its foundation conference held on 25th January 2004 was attended by some 1,500 activists. The movement has its origins in the widespread opposition to the military action against Iraq in 2003. It has among its objectives those of challenging New Labour, bringing an end to the hostilities in Iraq and the severing of the "special relationship" with the current government of the United States.

2. Over the years Mr Galloway has attracted a good deal of public and media attention, mainly in the context of his activities and public statements over Iraq and the Middle East more generally. In these defamation proceedings, he sues the Telegraph Group Limited over articles appearing in *The Daily Telegraph* on 22nd and 23rd April 2003, just over a month after the invasion of Iraq by coalition forces and at a time when British and American troops were still heavily engaged in fighting. Those articles were said to be based upon documents found in badly damaged government offices in Baghdad. The first article published was on the front page under the heading "Galloway in Saddam's pay, say secret Iraqi documents". Underneath appeared three bullet point sub-headings as follows:

   - "Labour MP 'received at least £375,000 a year'"
   - "Cash came from oil for food programme"
   - "Papers could have been forged, he says"

3. The article is attributed to Mr David Blair "in Baghdad". The whole of the article is complained of in the particulars of claim. For present purposes, however, the flavour is sufficiently conveyed by the introductory paragraphs:

> "GEORGE GALLOWAY, the Labour backbencher received money from Saddam Hussein's regime, taking a slice of oil earnings worth at least £375,000 a year, according to Iraqi intelligence documents found by *The Daily Telegraph* in Baghdad.
>
> A confidential memorandum sent to Saddam by his spy chief said that Mr Galloway asked an agent of the Mukhabarat secret service for a greater cut of Iraq's exports under the oil for food programme.
>
> He also said that Mr Galloway was profiting from food contracts and sought 'exceptional' business deals".

4. Complaint is also made of an article appearing on page 3 of the same issue which has the headings "The go-between" and "Loyal Ba'athist 'supplied Saddam with weapons'". Again, the article is attributed to Mr Blair in Baghdad. It is introduced by the following two paragraphs:

> "GEORGE Galloway's Jordanian intermediary has a family history of loyalty to Saddam Hussein's Ba'ath Party, according to his Iraqi intelligence profile.
>
> Fawaz Abdullah Zureikat, 53, would clearly be an ideal choice to conduct any business dealings with the Iraqi regime.
>
> His Mukhabarat secret service profile, attached to the intelligence chief's memorandum to Saddam's office on Mr Galloway, refers to him warmly as a 'sympathiser with Iraq'".

5. The article continues with a brief description of Mr Zureikat's background and business activities. It also refers to him as Mr Galloway's "representative in 2000" and to his company having been mentioned (in one of the documents found) "as a front for Mr Galloway's business dealings in Iraq".

6. On page four of the same issue alongside a photograph of Mr Galloway, sitting smiling with Saddam Hussein, there appears an article attributed to Anton La Guardia, Diplomatic Editor. It is headed "Oil for food" and "Billions poured through holes in sanctions". It is introduced by the following paragraphs:

> "FOR years, Saddam Hussein abused the United Nations oil-for-food programme to fund Iraq's own illegal activities and reward the regime's favoured friends.
>
> The embargo may have been designed to 'contain' Saddam, but several loopholes allowed him to earn billions of pounds in illegal revenues through oil sales.
>
> The papers found in Baghdad suggest that George Galloway, through his associates, was granted two kinds of deal.
>
> The first was the right to buy Iraq's oil, under the oil-for-food programme, at concessionary prices and sell it on at a profit. The second was to sell food and perhaps other civilian supplies to Iraq".

7. The fourth and final article selected for complaint in the issue of 22nd April 2003 consisted of a leader headed "Saddam's little helper", which was the only leader published in *The Daily Telegraph* that day. It will require close consideration in due course, but the flavour may be gathered from the first three paragraphs:

> "It doesn't get much worse than this. George Galloway is Britain's most active and visible peace campaigner. The Labour MP for Glasgow Kelvin did not just oppose the recent campaign against Saddam Hussein; he lobbied equally aggressively against the first Gulf war, and - during the years in between – for an end to sanctions. Yesterday, *The Daily*

> *Telegraph's* correspondent in Baghdad, David Blair, unearthed papers detailing alleged payments from Saddam's intelligence service to Mr Galloway through a Jordanian intermediary.
>
> There is a word for taking money from enemy regimes: treason. What makes this allegation especially worrying, however, is that the documents suggest that the money has been coming out of Iraq's oil-for-food programme. In other words, the alleged payments did not come from some personal bank account of Saddam's, but out of the revenue intended to pay for food and medicines for Iraqi civilians: the very people whom Mr Galloway has been so fond of invoking.
>
> Speaking from abroad yesterday, Mr Galloway was reduced to suggesting that the whole thing was a *Daily Telegraph* forgery, but the files could hardly be more specific. One memo comments: 'His projects and future plans for the benefit of the country need financial support to become a motive for him to do more work, and because of the sensitivity of getting money directly from Iraq it is necessary to grant him oil contracts and special commercial opportunities to provide him with a financial income under commercial cover without being connected to him directly'".

8. In the particulars of claim the Claimant attributes four natural and ordinary meanings to the articles complained of from the 22nd April issue. No distinction is drawn between the articles for this purpose:

   (i) "That the Claimant was in the pay of Saddam Hussein and had secretly received at least £375,000 a year from Saddam Hussein's regime;

   (ii) That the Claimant had made very substantial secret profits from Saddam Hussein and his regime, firstly by receiving money from the 'Oil for Food' programme (the Claimant's share being 10-15 cents per barrel on three million barrels of oil every six months) and secondly by receiving a percentage of the profit on a number of food contracts the Claimant had obtained from the Iraqi Ministry of Trade;

   (iii) That, not satisfied with the very substantial personal profits referred to above, the Claimant had, at a meeting on 26th December 1999, asked an Iraqi intelligence agent for even more money for himself;

   (iv) That the Claimant used the Mariam Appeal as a front to conceal his secret commercial dealings with the Iraqi intelligence service, through which commercial dealings he sought to obtain very substantial sums of money for himself".

9. The story was followed up by more articles the next day. On the front page there was a large photograph of the Claimant alongside a poster of Saddam Hussein. Above this, alongside one another, there were three "bullet point" headlines in the following terms:

- "Telegraph reveals damning new evidence on Labour MP.
- Bluster, two homes and the unanswered questions.
- Tory party donor is named as key partner in oil contracts."

There is then a bolder headline: " Memo from Saddam: We can't afford to pay Galloway more".

10. The front page article is again attributed to Mr Blair in Baghdad and the key allegations may perhaps be gathered from the following extracts:

> "SADDAM HUSSEIN rejected a request from George Galloway for more money, saying that the Labour backbencher's 'exceptional' demands were not affordable, according to an official document found by *The Daily Telegraph* in Baghdad.
>
> The letter from Saddam's most senior aide was sent in response to Mr Galloway's reported demand for additional funds. This was outlined in a memorandum from the Iraqi intelligence chief disclosed in *The Daily Telegraph* yesterday.
>
> Mr Galloway denies receiving any money from the regime…
>
> Saddam was rejecting two specific requests allegedly made by Mr Galloway, as recorded in the intelligence chief's memorandum.
>
> The first was for a greater share of the profits from oil exports. The memorandum said that Mr Galloway was already receiving between 10 and 15 cents per barrel of three million barrels exported every six months: an annual sum of at least £375,000.
>
> Mr Galloway's second reported request was for 'exceptional commercial and contractual' opportunities with three ministries and the state electricity commission. These requests for more sources of income fell on deaf ears, but Saddam's decision not to allow them did not apply to Mr Galloway's existing deals. Before Saddam issued his rejection, Mr Galloway sent his 'work programme' for 2000 to Mr Aziz…"

11. The second complaint in relation to the issue for 23rd April concerns solely the headline on pages two and three, which was in these terms "MP in Saddam's pay defends himself from £250,000 villa in the Algarve".

12. The third complaint is of the article appearing on the right hand page under the headline described above, which is attributed to Sally Pook in Burgau and Nicola Woolcock. As part of the context of this article I should record that there were photographs published alongside it, including of Mr Galloway's "converted farmhouse near Burgau in the western Algarve" and of his home in Streatham

"estimated to be worth around £800,000". The article refers to those houses and to a former home "in Glasgow's fashionable West End", thought to have been sold about two years before the article. There is also reference to a Range Rover and a Mercedes.

13. The fourth and final complaint is of an article appearing on page 25 under the heading "Galloway's gall". This again is a leader, which was the only one published that day. It referred to Mr Galloway's "characteristic bravado" and to his "bluster". It contains a number of opinions expressed on a conditional basis, for example:

> "If Mr Galloway did receive this money, what precisely has he done wrong? First and foremost, it is a betrayal of trust. He has betrayed those who, out of genuine philanthropy, donated money to his campaigns. He has betrayed his fellow campaigners against war and sanctions. He has betrayed the voters of Glasgow. He has betrayed the Labour Party, both locally and nationally. He has betrayed Parliament. He has betrayed his country. Whether or not he has committed a criminal offence, he has done great damage, not only to his own reputation, but also to that of Parliament. Those who have fought alongside him would be wise not to fall for his conspiracy theories, or defend him out of a misplaced sense of loyalty or solidarity. Mr Galloway is a greater menace to his political friends than to his enemies, as the Labour Party has evidently realised".

14. The Claimant's natural and ordinary meanings are attributed to the 23rd April articles compendiously. The pleaded meanings are precisely the same as those set out above in respect of the 22nd April issue.

15. There is no plea of justification; that is to say, it is no part of the Defendants' case to allege that what they published was true in any sense that was defamatory of Mr Galloway. So that there should be no confusion, I need to make clear that despite references in their submissions to a "strong *prima facie* case" and to the desirability of a "full investigation" the Defendants do not allege that the words are true in the sense that there were "reasonable grounds to suspect" or "grounds to investigate": see e.g. *Chase v News Group Newspapers* [2003] EMLR 218.

16. Because context is so often crucial in libel proceedings, it is important to note that there are a number of other articles contained within the relevant issues of the newspaper dealing broadly with the same subject matter, of which no complaint is made. In particular, the Defendants attach great weight to the fact that the critical documents, as discovered by Mr Blair in the Foreign Ministry in Baghdad, were themselves published in full, in facsimile and translation, and that the circumstances in which they were found were accurately set out for readers to judge for themselves what to make of them. They are not in themselves the subject of complaint in these proceedings; yet anyone reading this judgment would not be in a position to understand the issues fully without seeing the text of those two Arabic language documents which appeared on page 2 of the 22nd April issue. I set them out in translation:

(1) "In the name of Allah the Compassionate and Merciful

Republic of Iraq

President's Office

Iraqi Intelligence Service

Confidential and Personal

Letter no. 140/4/5

3/1/2000

To: The President's Office – Secretariat

Subject: Mariam Campaign

1. We have been informed by our Jordanian friend Mr Fawaz Abdullah Zureikat (full information about him attached appendix no. 1), who is an envoy of Mr George Galloway because he participated with him in all the Mariam Campaign's activities in Jordan and Iraq, the following:

(a) The mentioned campaign has achieved its goals on different levels, Arabic, international and local, but it is clear that by conducting this campaign and everything involved in it, he puts his future as a British member of parliament in a circle surrounded by many question marks and doubts.

As much as he gained many supporters and friends, he made many enemies at the same time.

(b) His projects and future plans for the benefit of the country need financial support to become a motive for him to do more work. And because of the sensitivity of getting money directly from Iraq, it is necessary to grant him oil contracts and special and exception[al] commercial opportunities to provide him with a financial income under commercial cover without being connected to him directly.

To implement this Mr Galloway gave him an authorisation (attached) in which he pointed out that his only representative on all matters related to the Mariam Campaign and any other matters related to him is Mr Fawaz Abdullah Zureikat, and the two partners have agreed that financial and commercial matters

should be done by the last [Zureikat] and his company in co-operation with Mr Galloway's wife, Dr Amina Abu Zaid, with emphasis that the name of Mr Galloway or his wife should not be mentioned later.

2. On 26/12/1999 the friend Fawaz arranged a meeting between one of our officers and Mr Galloway in which he expressed his willingness to ensure confidentiality in his financial and commercial relations with the country and reassure his personal security.

The most important things Mr Galloway explained were:

(a) He stressed that Mr Fawaz Zureikat is his only representative in all matters concerning the Mariam Campaign and to take care of his future projects for the benefit of Iraq and the commercial contracts with Iraqi companies for the benefit of these projects.

But he did not refer to the commercial side of the authorisation he granted to Mr Fawaz for reasons concerning his personal security and political future and not to give an opportunity to enemies of Iraq to obstruct the future projects he intended to carry out.

(b) He is planning to arrange visits for Iraqi sports and arts delegations to Britain and to start broadcasting programmes for the benefit of Iraq and to locate Iraq On Line for the benefit of Iraq on the internet and mobilise British personalities to support the Iraqi position.

That needs great financial support because the financial support given by [a named Arab sheikh] is limited and volatile because it depends on his personal temper and the economic and political changes. Therefore he needs continuous financial support from Iraq.

He obtained through Mr Tariq Aziz three million barrels of oil every six months, according to the oil-for-food programme. His share would be only between 10 and 15 cents per barrel. He also obtained a limited number of food contracts with the Ministry of Trade. The percentage of its profits does not go above one per cent.

He suggested to us the following:

First, increase his share of oil. Second, grant him exceptional commercial and contractual facilities, according to the conditions and suitable qualities for the concerned Iraqi sides, with the Ministry of Trade, the Ministry of Transport and Communications, the Ministry of Industry and the Electricity Commission.

(c) Mr Galloway entered into partnership with [a named Iraqi oil trader] (available information in appendix 2) to sign for his specific oil contracts in accordance with his representative Fawaz, benefiting from the great experience of the first in oil trading and his passion for Iraq and financial contribution to campaigns that were organised in Britain for the benefit of the country, in addition to his recommendation by Mr Mudhafar al-Amin, the head of the Iraqi Interests Section in London.

3. We showed him we are ready to give help and support to him to finish all his future projects for the benefit of the country and we will work with our resources to achieve this. But we should not be isolated from Mr Tariq Aziz supervising the project in its different aspects.

We are going to make arrangements with him to unite the positions and co-operate to make the work succeed.

4. In accordance with what we have said, we suggest the following:

(a) Agreement on his suggestion explained in article 2 b.

(b) Arranging with Tariq Aziz about implementing these suggestions and taking care of the projects and Mr Galloway's other activities.

Please tell me what actions should be taken.

With regards,

(signature illegible)

Chief of the Iraqi Intelligence Service

2/1/2000

Confidential and personal"

(2) "In the name of Allah the Compassionate and Merciful

Ministry of Foreign Affairs

Minister's Office

Letter no. 1/9/97

5/Feb/2000

Confidential and urgent

> To: Mr Health Minister, Mr Information and Culture Minister, Mr Transport and Communications Minister, Mr the Head of Friendship, Peace and Solidarity Organisation
>
> Subject: Work programme
>
> We send you attached a translation of the work programme for the year 2000 which was submitted by Member of Parliament George Galloway and cleared by the President's office in its letter C/16/1/3562 on 31/January/2000.
>
> Please read it and adopt suitable procedures to implement its phases under discussion according to your specialisations.
>
> With high regards,
>
> Tariq Aziz
>
> Deputy Prime Minister
>
> Acting Foreign Minister
>
> February/2000
>
> Copies should be sent to: Mr Chief of Intelligence Service/with a copy of the programme/to be read please. With high regards.
>
> Mr Deputy Prime Minister's office/ with a copy of the programme
>
> The First Political Unit/to take care of please".

17. There is a dispute on meaning and a plea of qualified privilege, based upon the law as expounded by their Lordships in *Reynolds v Times Newspapers Limited* [2001] 2 AC 127. There is also a more limited defence of fair comment in relation primarily to the leader columns in the two issues of the newspaper. If the Claimant succeeds on liability, there will then be the question of damages.

18. I shall address each of those issues in the course of my judgment, but it was only very recently that the mode of trial changed to "judge alone" as a result of a consent order. In view of the procedural history, I should explain at this stage some of the problems and uncertainties which contributed to this change.

Mode of trial: The roles of judge and jury in *Reynolds* privilege

19. The issue had been raised by the Defendants as long ago as July of this year as to what questions, at least in general terms, could usefully be put to a jury. This was with a view to establishing the necessary factual substratum upon which the defence of "*Reynolds* privilege" could be properly assessed. This proved something of a stumbling block. Appointments were made in October for a pre-trial review which had, on two occasions, to be adjourned in order for the matter to be reconsidered. Its main purpose had been to decide what questions could or should be left to a jury and

also, more generally, to narrow the issues in accordance with modern case management practice.

20. I am always reluctant to launch into any form of jury trial without the jurors having signposts to enable them to know why they are listening to the evidence, and to be able to relate it to the issues they will have to resolve. This is particularly a problem in police cases, such as wrongful arrest and false imprisonment, but it can happen in the more complicated defamation cases. At least in broad terms, therefore, it is helpful to sort out in advance what they will be asked to decide. The judge and the parties owe it to those who serve as jurors not to launch them in a state of confusion upon uncharted waters. Also, it is undesirable to leave the resolution of such issues over to trial, with the almost inevitable consequence that jurors, either on the first day or on later occasions, will find themselves kicking their heels in their room. That is the sort of task that can conveniently be disposed of at a pre-trial review. It is, I suppose, conceivable that if submissions had not been addressed to these problems on the first hearing of the pre-trial review the case would have progressed to the first morning of the trial without the parties realising that a change in mode of trial was appropriate.

21. It was left on the first occasion that the Claimant's advisers would come up with the questions they suggested the jury would need to be asked, bearing in mind that the central issue on liability here is *Reynolds* privilege. Mr Price QC, for the Defendants, took the line at all three pre-trial hearings that there was little, if anything, for the jury to decide. In other words, there were as far as he could tell no issues of primary fact (or, for that matter, of secondary fact) that required to be resolved in order for the judge to make the value judgments which play such a central role in deciding this form of privilege.

22. It is obvious that most of Lord Nicholls' ten non-exhaustive criteria, as summarised in *Reynolds*, involve the judge forming a view, objectively, in the light of either uncontroversial primary facts or those found by the jury. Sometimes, as Mr Rampton QC points out on the Claimant's behalf, it will be appropriate for the jury to come to conclusions of fact on the basis of inference, but that is commonplace in all jury trials both criminal and civil. Such conclusions are sometimes described as being decisions of secondary fact: see e.g. *per* Lord Steyn in *Reynolds* at p. 216C.

23. What is important is to keep firmly in mind the distinction between drawing inferences of fact, however they are described, and making value judgments in the light of such facts. The latter exercise is clearly for the judge. There is nothing new about this, although undoubtedly Lord Nicholls' speech in *Reynolds* highlighted just how extensive the judge's role is in media cases of publication to the world at large. He spelt out and enumerated the considerations to be borne in mind in determining public interest, as well as "social or moral duty", in the light of earlier common law authorities and also European human rights jurisprudence.

24. There is evidence in this case as to how certain documents were found in Baghdad, on the basis of which the Defendants published the articles complained of. These circumstances form part of the Defendants' case on duty. (As I have already observed, the reproduction of the content of those documents in *The Daily Telegraph* is also potentially important as being part of the context in which the words complained of were published.) To put it another way, the Defendants say that the public had a right to know the content of the documents in April 2003, even if it was defamatory of the Claimant *and* irrespective of whether the factual content was true or not.

25. There was no formal admission on the Claimant's part as to the circumstances in which the documents were alleged to have been found, and no doubt several witnesses could have gone through at length, in front of a jury, how they were found, how they were collated and preserved, and given evidence as to the journalists' belief in their genuineness as documents. Mr Price, however, invited the Claimant to spell out any positive case there might be on those allegations. To what extent, he wanted to know, was it going to be suggested that any witness was lying or mistaken about the finding or assembling of the documentary material? That was a stance he was entitled to take in view of the overriding objective of the CPR. The days are gone when parties were able to play their cards close to their chests, rather than placing them face up on the table. In the absence of any challenge to the Defendants' case in this respect, Mr Price suggested that the appropriate course was for the judge to rule on privilege on the assumption that the documents were indeed found as the Defendants claimed.

26. I shall come to each of the jury questions proposed on the Claimant's behalf shortly, but for purposes of further illustration at this stage I can take one example. Question (vi), as it would have been, would require the jury to decide:

> "Did the Defendant take any steps to verify the contents of the Baghdad documents, in so far as they related to the Claimant, by reference to independent sources of information, such as the governments of the United Arab Emirates or Saudi Arabia, Mr Fawaz Zureikat, the Foreign & Commonwealth Office, the Home Office or intelligence sources, before publishing the articles complained of?"

That may well be a relevant factor for the trial judge to take into account when deciding what is now broadly called "responsible journalism", in the *Reynolds* context. Mr Price submitted again that there was no issue of primary fact. No one on the Defendants' behalf suggests that they did make such enquiries. Mr Rampton would be in a position to make whatever he wished of that on the privilege issue and also on damages. Indeed, it is a matter that has now loomed large in the course of his submissions. Yet the primary facts were in the end going to be relatively uncontroversial.

27. The Claimant's advisers formulated twelve jury questions altogether, in the light of which Mr Price maintained the same stance. Why, he asked, would a jury need to decide those matters? It seemed to me that the test we would need to apply, had this remained a jury trial, was what primary facts were in dispute such that it was necessary and proportionate to have twelve lay persons resolve them? I would certainly have avoided saying to myself, "This is a jury case; therefore I must look around for things for the jury to do". It would have been critical to decide what were the "real issues between the parties". That is a different question, of course, from asking how much has not been formally admitted in the statements of the case.

28. I now turn to the draft jury questions proposed on the Claimant's behalf on 11th October. I am doing this because both Counsel invited me, in the light of their submissions at the pre-trial hearings, to set out my reaction because, they thought, it might prove to be of some practical assistance and thus save costs in future cases. As I observed in *Jameel v The Wall Street Journal Europe SPRL (No. 2)* [2004] EMLR 11 at [4], it is almost inevitable that in a *Reynolds* privilege case to be tried by jury there

will be presented to them a list of questions, sometimes no doubt formidably long. The object is to enable the judge to have the factual matrix upon which to make his value judgments and the ultimate decision on the defence of privilege. So far, however, little guidance has emerged as to how this is to work in practice. That is perhaps surprising, in view of the fact that five years have now elapsed since their Lordships' decision and one sees privilege pleaded on that basis routinely in many media libel cases. The reality is, however, that (for various reasons) so few libel actions now come to trial that there has been no opportunity to develop a regular practice. It is, therefore, perhaps timely to address the problems in the light of the helpful submissions I received.

29. The questions proposed were as follows:

(i) Do the articles complained of [in the issue of 22nd April 2003] bear the meanings alleged by the Claimant in paragraph 4 of the particulars of claim?

(ii) Did those articles reflect what was said about the Claimant in the Baghdad documents which were in the Defendant's possession at the time of publication?

(iii) In Andrew Sparrow's telephone conversation with the Claimant on the afternoon of 21st April 2003:

(a) Did Andrew Sparrow give the Claimant a full and detailed account of the circumstances in which the documents had been found?

(b) Did Andrew Sparrow inform the Claimant of, and seek his response to, the statements about him which the Defendant made in the articles complained of?

(iv) In the issue of *The Daily Telegraph* on 22nd April 2003, did the Defendant fairly and accurately report the Claimant's responses to Andrew Sparrow during their telephone conversation on the afternoon of 21st April 2003?

(v) Did the answers given by the Claimant to Mr Sparrow during that conversation provide corroboration for the statements made about him by the Defendant in the articles complained of?

(vi) [Set out above]

(vii) Do the articles complained of [in the issue of 23rd April 2003] bear the meanings alleged by the Claimant in paragraph 6 of the particulars of claim?

(viii) Did those articles fairly and accurately reflect what was said about the Claimant in the Baghdad documents which were in the Defendant's possession at the time of publication?

(ix) In the issue of *The Daily Telegraph* for 23rd April 2003, did the Defendant fairly and accurately report the Claimant's responses to Andrew Sparrow during their telephone conversation on the afternoon of 21st April 2003?

(x) Do the *Daily Telegraph* editorials of 22nd and 23rd April 2003 contain any defamatory statements of fact about the Claimant?

(xi) Do those editorials contain any defamatory comment about the Claimant?

(xii) If the answer to question (xi) is "yes", are the contents of the Baghdad documents and the Claimant's response to those documents (as described to him by Mr Sparrow on the telephone) fully and fairly represented in those editorials?

30. Those numbered (i) and (vii) appear to be traditional jury questions, since they relate to the meanings of different sets of words complained of. Of course, if there were a plea of justification, the jury would need to decide on the meaning or meanings of the words. Likewise no doubt, when they are asked to award compensation to a claimant, they will do so in the light of their interpretation of the words, their tone and gravity and so on. Traditionally, they are not asked to draft in committee *the* meaning or meanings which they, as a body, unanimously think the words convey. That is an exercise fraught with difficulty, especially in the case of lengthy, complicated or multi-layered newspaper articles. I explained my misgivings about such an exercise in *Jameel v The Wall Street Journal SPRL (No. 2)*, cited above. What if the jurors cannot agree precisely on the drafting of *the* natural and ordinary meaning(s)? Suppose they agree with one party or the other on some meanings but not on others: how is one to explore different strands of meaning or, if the jury were left with a choice between two alternative sets of meanings, find out how close the words came to the meaning they have *ex hypothesi* rejected?

31. I am concerned with ruling on *Reynolds* privilege. For that purpose I need to make the value judgments upon the circumstances that confronted the Defendants shortly prior to publication in April 2003. I need to ask, broadly speaking, whether they were under a duty to convey to the world the content of the documents that they discovered *and* the words they actually published about the Claimant. Did they have such an obligation irrespective of their truth or falsity? That is an important element in both Lord Nicholls' exposition and that of Lord Phillips MR in *Loutchansky v Times Newspapers Limited* [2002] QB 783.

32. How is a judge to be helped in assessing the duty of the defendants on one hand, and the right of the public to know, on the other hand, by reading the composite natural and ordinary meanings, whether negotiated amongst themselves or agreed upon unanimously, by twelve lay persons *ex hypothesi* 19 months later? For all I know, the meanings finally arrived at on such an exercise may represent a compromise between various different interpretations of the articles which emerged in discussion in the jury room. Moreover, it is the judge who is charged with the responsibility of assessing the gravity and tone of the words for privilege purposes (although, as I have said, it would be the jury's assessment that counts for quantification of damages).

33. There are two well established doctrines that apply in the law of defamation - at least for certain purposes. I have in mind the "single meaning" doctrine and the so-called "repetition rule". In a multi-layered and complex newspaper article or series of articles, common sense tells us that there may be several shades of meaning and that some readers will simply understand the words in different senses from others. That is obviously as true of readers who happen to be members of a jury as of any other reasonable and fair-minded persons. For justification, however, it is thought in English law necessary to decide upon the basis not of *shades* of meaning but of a defined single meaning, or sometimes several such meanings. The jury have to select what is called the "single meaning" out of the available and possible shades of

meaning. It is well settled that, in doing so, they are not to be confined to the pleaded meanings of the parties, which often owe more to the ingenuity of counsel than to first impression. Jurors are free to decide meaning quite independently: see e.g. *Slim v Daily Telegraph* [1968] 2 QB 157.

34. The "single meaning" fiction has no place, it seems to me, when one is assessing the important matter of whether a journalist has behaved "responsibly" or in accordance with a duty. More importantly, it has now been confirmed by the Privy Council in *Bonnick v Morris* [2003] 1 AC 300 that the doctrine would not be suitable for application in this context, having been designed for a quite different purpose (see [22]):

> "It is one matter to apply this principle when deciding whether an article should be regarded as defamatory. Then the question being considered is one of meaning. It will be an altogether different matter to apply the principle when deciding whether a journalist or newspaper acted responsibly. Then the question being considered is one of conduct".

Their Lordships indicated (at [24]) that the standard of conduct by which journalists must be judged has to be applied in a practical and flexible manner:

> "The court must have regard to practical realities. Their Lordships consider it would be to introduce unnecessary and undesirable legalism and rigidity if this objective standard, of responsible journalism, had to be applied in all cases exclusively by reference to the 'single meaning' of the words. Rather, a journalist should not be penalised for making a wrong decision on a question of meaning on which different people might reasonably take different views. Their Lordships note that in the present case the selfsame question has resulted in a division of view between members of the Court of Appeal. If the words are ambiguous to such an extent that they may readily convey a different meaning to an ordinary reasonable reader, a court may properly take this other meaning into account when considering whether *Reynolds* privilege is available as a defence. In doing so the court will attribute to this feature of the case whatever weight it considers appropriate in all the circumstances".

35. The repetition rule is also important in the context of justification. It is trite law that if a defendant asserts "X says that Y has committed murder", he can only justify by proving that Y has committed murder. It does not avail him to prove merely that X had made the claim. He may call X, and X may be believed as a witness to the killing, but that is a different point. Here, the Defendants do not seek to prove the truth of the contents of the Baghdad documents, as they would have to do if pleading justification. They repeated the content of the documents found in Baghdad because they perceived it right, or so they have pleaded, to let the public know of the *allegations* themselves – irrespective of truth or falsity. If a judge has to rule in the context of *Reynolds* privilege whether there was a *duty* to repeat the allegations and, correspondingly, whether the public had a *right* to be informed of them, it seems to me that he or she is not going to be assisted by the jury's conclusions on meaning. They will inevitably

reflect the directions they have been given in the summing up both on the "single meaning" doctrine and on the repetition rule.

36. My attention has been drawn by Mr Price also to *Mark v Associated Newspapers* [2002] EMLR 839 at [33]–[35] and *Al-Fagih v H H Saudi Research Marketing* [2002] EMLR 215 at [36]. These authorities support his submissions that the repetition rule does not enter into the evaluation exercise for ruling upon *Reynolds* privilege. Those cases, and the opinions of their Lordships in *Bonnick*, demonstrate that it has been gradually recognised and articulated over a period of years that special considerations apply to this new, or rather refurbished, form of privilege defence. In that sense, it is perhaps appropriate to adopt Lord Phillips' description of the defence as being, in some respects at least, *sui generis.* It clearly requires special treatment as to the application of long-standing principles and a degree of improvisation when it comes to case management. Above all, there has to be flexibility (see e.g. the passage cited above from *Bonnick*) because cases will vary infinitely in their facts. The present circumstances, for example, are hardly likely to be replicated.

37. Mr Rampton submits that no court has authoritatively laid down so far, save in the most general terms, the division of responsibility between judge and jury for the implementation of the *Reynolds* guidelines. It seems to me that the keynote must be flexibility. It would be a mistake for me, as well as presumptuous, to attempt to lay down hard and fast rules intended to apply to cases of *Reynolds* privilege in all their infinite variety. Even an appellate court would no doubt baulk at any attempt to put trial judges into a straitjacket in such cases as to how they apply the overriding objective, of doing justice between the parties, in circumstances as yet unforeseen and unpredictable.

38. What is clear is that there is a duty on judges who try defamation cases to do their best in attempting to make the House of Lords' principles and guidelines in *Reynolds* and in *McCartan Turkington Breen v Times Newspapers Limited* [2001] 2 AC 277 work in practice, however difficult that may be in a jury context. In many cases, it would be likely to defeat that objective, rather than advance it, if jurors are burdened with a long list of subtle questions and detailed sub-questions, or pressed to answer supplementaries which run the risk of intruding upon the confidential deliberations of the jury room.

39. Here, Mr Price warned of a number of possible scenarios which could arise in the light of the broad scope of the articles complained of and the mass of factual allegations they contained. Not only are there pitfalls over the multiplicity of possible meanings attributable to the many paragraphs of prose complained of. There is scope for confusion inherent in Mr Rampton's attempts to test the Defendants' coverage of the Iraq documents, and indeed the pre-publication telephone conversation with Mr Galloway, by reference to the concepts of "fairness and accuracy". "Fair and accurate" is a term of art that is used in relation to the common law and statutory privilege which attaches to the reporting of (say) judicial proceedings. There is a certain amount of authority in that context. One has only to consider it briefly, however, to realise how inapt it is to cover this situation.

40. It is a relatively straightforward exercise for a jury to compare a court transcript with a newspaper report or summary and to decide, overall, whether it was "fair and accurate". It is a more complex and subtle process to try and determine whether the Defendants' articles here could be said to record the content of (a) Iraq documents or

(b) Mr Galloway's telephone responses "fairly and accurately". It would involve an assessment to some extent of the circumstances in which the Defendants came to publish. That would be the context of their determination. Once this is appreciated, it becomes apparent how the exercise might lead to the jury encroaching upon and inhibiting the judge's role in assessing "responsible journalism". It is to be noted that, whereas "fair and accurate" is for the jury to decide in the traditional reporting privilege cases, it is for the judge in a *Reynolds* context to consider *inter alia* tone and gravity, whether the subject of the defamatory article has been given a fair opportunity to comment on the proposed publication and, where appropriate, whether his side of the story has been adequately summarised.

41. This gives rise to an undesirable tension. No doubt for sound policy reasons, in the context of statutory privilege "public concern" and "benefit" are issues for the jury: *Kingshott v Associated Newspapers* [1991] 1 QB 88. By contrast, in the *Reynolds* context, "public interest" is for the judge: see e.g. *McCartan Turkington Breen* at p.302. One cannot readily transfer established practice from one context to the other. Mr Price summed up the position in one of his skeleton arguments as follows:

> "In the context of the *statutory* privilege, the decision will turn simply on the answer to the question, was it a fair and accurate report? (There may also be a question about public concern and benefit – but both have to be answered in the defendant's favour for the privilege to be established.) In the *Reynolds* context, by contrast, fairness/accuracy is only one factor, and moreover mistakes by the newspaper in reporting are allowed for, as they are not if the protection of the statute is claimed. The question may well become one of the *degree* of unfairness or inaccuracy, and the *reason* why unfairness and inaccuracy has crept in. For example, urgency, strength of public interest, and appropriateness of tone, may excuse lack of full verification of the fairness and accuracy of the report. These questions can only be answered by the judge as part of the overall value judgment. A bald jury answer to the question: "Was it a fair and accurate report?" is likely to be of no assistance, or, worse, so inscrutable as actually to exacerbate the judge's task".

42. There is here plenty of scope for pressing the jury with questions in order, for example, to understand the degree or nature of unfairness or inaccuracy; in other words, how far did the journalists get it wrong, and in what particular respects? Apart from the difficulties of asking supplementaries, and causing embarrassment or confusion to the jurors, there is a real danger of tying the judge's hands in carrying out his *Reynolds* evaluation tasks, which are difficult enough at the best of times. The judge has to assess, in broad terms, the "responsibility" of the journalism having regard to the ethics and professional standards of journalists, but in the light of specific answers from the jury - which may not meld with his own assessment of the journalists' role, or may be difficult to interpret, or even internally inconsistent. I cannot believe that their Lordships contemplated this degree of micro-management either by judges or indeed by jurors.

43. Mr Price prayed in aid two recent cases to illustrate what sort of findings their Lordships would have had in mind as appropriate for a jury in a *Reynolds* context. It

was pointed out that in *Loutchansky v Times Newspapers Limited* Gray J left twelve questions of primary fact and in *Jameel v The Wall Street Journal SPRL (No.2)* I left seven. They were all clear and readily comprehensible questions of fact, free of ambiguity and not confused with the exercise of making value judgments. Did a particular conversation take place? Or was there a particular source for the information, as the journalist claims? They can by categorised readily as questions of primary fact, and they depended on resolving conflicts of oral evidence, rather than the interpretation of events or the evaluation of documents.

44. Another question which was addressed briefly in the course of the pre-trial hearings was that of the role of fair comment in this particular case. I shall need to return to it towards the end of the judgment, but it was also then necessary to consider the problems to which it would give rise in a jury trial. It is, in one sense, something of a distraction. If the publications turn out to attract qualified privilege, then the Defendants would not need a fair comment defence; alternatively, they would be entitled to make comment on the *ex hypothesi* privileged material. If, however, it turns out not to be privileged, the Defendants would need to demonstrate that whatever qualified as "comment" had been based on "facts truly stated". That is a basic principle in the law of fair comment. There is an analogy here with the repetition rule. It is not possible to defend defamatory comments about a person purely on the basis of what someone else has said about him. Just as with justification, it is necessary to establish the underlying facts. In fair comment, it is a necessary pre-condition for the defence to succeed that there was something solid on which to comment: see e.g. *Hamilton v Clifford* [2004] EWHC 1542 QB at [60]–[62].

45. The defence of fair comment is directed towards defamatory allegations, in the form of comment, about the claimant. It is necessary to establish relevant underlying facts. Here, on the other hand, it is not enough to place reliance upon the emergence of the Baghdad documents. They are not capable of constituting facts for the purpose of comment *about Mr Galloway* any more than they would be capable of supporting a plea of justification (because of the repetition rule). As I put it in *Hamilton v Clifford* at [60]:

> "For reasons of policy… one is not permitted to seek shelter behind the defence of fair comment when the defamatory sting is one of verifiable fact. Depending on the meaning of the words complained of, a defendant has either to justify a primary factual allegation, e.g. of rape, or comply with the necessary disciplines to establish reasonable grounds to suspect. Fair comment does not provide an escape route in such circumstances".

46. There was no significant role for the jury to fulfil on fair comment, since there were no contested issues of fact to be resolved, and this was no doubt another factor which led the parties to agree to a change in the mode of trial.

The meaning of the words

47. Even though the single meaning doctrine has no application in the context of qualified privilege, my first task is nonetheless to rule on the issue of the natural and ordinary meanings which the articles would have conveyed to reasonable and fair-minded readers. The test to be applied is well established. Evidence is not admissible on the

issue of natural and ordinary meaning. It is essentially a matter of impression. The Court should give the articles the natural and ordinary meaning(s) which they would have conveyed to the ordinary reasonable reader, reading them once. Hypothetical reasonable readers should not be treated as either naïve or unduly suspicious. They should be treated as being capable of reading between the lines and engaging in some loose thinking, but not as being avid for scandal. The Court should avoid an over-elaborate analysis of the article, because an ordinary reader would not analyse the article as a lawyer or accountant would analyse documents or accounts. I should have regard to the impression the relevant words have made upon me, in considering what impact it would have made on the hypothetical reasonable reader. The Court should certainly not take too literal an approach to its task.

48. Context is always important. In order to determine the natural meaning of the words of which a claimant complains, it is necessary to take into account the context in which they were used and the mode of publication. Thus a claimant cannot seek to isolate a passage in an article, and complain of that alone, if other parts tends to throw a different light on that passage: see e.g. *per* Lord Bridge in *Charleston v News Group Newspapers* [1995] 2 AC 65, 70.

49. Context is perhaps especially important in this case, where the Claimant is complaining of parts of newspaper articles spread over two days and consisting of a total of thirteen pages. The context would thus include other parts of the coverage of which no complaint is made. In particular, it is necessary to take account of the content of the Baghdad documents (set out above) which were reproduced in the newspaper for readers to consider.

50. Furthermore, when judging the meaning of the 23rd April articles, it is necessary to bear in mind that many readers will have had a general impression of their reading from the day before. It is legitimate to take that into account when assessing the meaning of the second day's coverage. The reverse is not the case, since it is not permitted when attributing a meaning or meanings to a published article to refer to subsequent material.

51. Mr Rampton invited me to consider the overall effect, or "dominant message," of the words complained of:

> "Whether the text of a newspaper article will, in any particular case, be sufficient to neutralise the defamatory implication of a prominent headline will sometimes be a nicely balanced question… and will depend not only on the nature of the libel which the headline conveys and language of the text which is relied on to neutralise it, but also on the manner in which the whole of the relevant material is set out and presented": *Charleston v News Group Newspapers* [1995] 2 AC 65, 72H-73A.

52. He further relied upon the words of Lord Nicholls in the same case at 74D-E:

> "This is not to say that words in the text of an article will always be efficacious to cure a defamatory headline. It all depends on the context, one element in which is the layout of the article. Those who print defamatory headlines are playing

> with fire. The ordinary reader might not be expected to notice curative words tucked away further down in the article. This more so, if the words are on a continuation page to which a reader is directed. The standard of the ordinary reader gives [the Court] adequate scope to return a verdict meeting the justice of the case".

53. Given the "saturation" coverage of this topic in *The Daily Telegraph*, Mr Rampton submits, some parts of the material will make a greater contribution than others. Headlines, in particular, may succeed in conveying a dominant overall message, even though it may be the case that less prominent parts of the coverage would convey a less serious or more equivocal impression if considered in isolation.

54. The Claimant's case is, primarily, that the articles convey the impression that he took large sums of money from Saddam Hussein's regime for his own personal benefit, and indeed requested more. Closely linked with this impression, it is submitted, is the proposition that the Mariam Appeal was used by the Claimant as a front for his own financial advantage.

55. Perhaps unusually, the Defendants in this case have put forward a suggested meaning of their own. They contend that the effect of the words complained of is that the Baghdad documents consisted of strong *prima facie* evidence that Mr Galloway arranged for his Mariam political campaign, and/or other political activities, to be financed by the Iraqi government. That is said to be the meaning which fair-minded readers would draw from the coverage as a whole. It is also said to be a meaning which a reasonable journalist, involved in the publication process, might reasonably have thought the words to bear.

56. The relevance of this latter point has to be explained in the context of the recent decision of the Privy Council in *Bonnick v Morris* [2003] 1 AC 300, to which I have referred above. For this purpose, it is perhaps important to set out the principles which the Defendants must be taken to have had in mind:

> "23 Stated shortly, the *Reynolds* privilege is concerned to provide a proper degree of protection for responsible journalism when reporting matters of public concern. Responsible journalism is the point at which a fair balance is held between freedom of expression on matters of public concern and the reputation of individuals. Maintenance of this standard is in the public interest and in the interest of those whose reputations are involved. It can be regarded as the price journalists pay in return for the privilege. If they are to have the benefit of the privilege journalists must exercise due professional skill and care.
>
> …
>
> 25 … Where questions of defamation may arise ambiguity is best avoided as much as possible. It should not be a screen behind which a journalist is "willing to wound, and yet afraid to strike" In the normal course a responsible journalist can be expected to perceive the meaning an ordinary, reasonable

> reader is likely to give his article. Moreover, even if the words are highly susceptible of another meaning, a responsible journalist will not disregard a defamatory meaning which is obviously one possible meaning of the article in question. Questions of degree arise here. The more obvious the defamatory meaning, and the more serious the defamation, the less weight will a court attach to other possible meanings when considering the conduct to be expected of a responsible journalist in the circumstances."

57. In view of the way the Defendants put their case on meaning, it is appropriate to ask the question whether it can be said, as was the case in *Bonnick*, that the defamatory meaning of the words used here was not so glaringly obvious that any responsible journalist would be bound to realise this was how the words would be understood by ordinary, reasonable readers: see e.g. the discussion at [27]. Mr Rampton would submit that this is a very different situation from that considered by their Lordships, and that the meanings are both serious and obvious, whereas Mr Price considers the analogy to be very much in point.

58. It thus appears that a major distinction between the parties' respective cases is that the Defendants wish to persuade the Court that the "sting" of the coverage was the source of the funds; that it is to say, the allegation that the Claimant was obtaining money from Saddam's regime. They do not attach any particular significance, for the purposes of this argument, to whether the money was going towards Mr Galloway's political campaigning or whether it was going into his pocket. The submissions of Mr Rampton, on the other hand, focus very much upon the proposition that the coverage imputed venality and personal greed.

59. There are various passages which the Claimant relies upon as showing that the overall message of the two-day coverage was that it was Mr Galloway himself who was benefiting from Iraqi funds. It is conveniently reflected in a paragraph from the leading article of 22nd April:

> "There is a word for making money from enemy regimes: treason. What makes this allegation especially worrying, however, is that the documents suggest that the money has been coming out of Iraq's oil-for-food programme. In other words, the alleged payments did not come from some personal bank account of Saddam's but out of the revenue intended to pay for food and medicines for Iraqi civilians; the very people whom Mr Galloway has been so fond of invoking".

60. I shall consider first the issue of the newspaper for 22nd April. The headlines are very important in setting the tone of the articles and are, in any event, generally understood by readers as intended to convey, in summary form, the meaning of what follows. Particularly significant are those on page 1, to which I have earlier referred. Mr Galloway is described as being "in Saddam's pay" and as having "received at least £375,000 a year". The cash is said to have come from the "oil-for-food programme" (i.e. monies intended for food and medicines for the benefit of the Iraqi people).

61. There is room for argument as to whether the articles in context conveyed the impression (to reasonable readers) that Mr Galloway was indeed in Saddam's pay,

and thus receiving personal benefits from the oil-for-food programme, or whether *The Daily Telegraph* was pitching it no higher than that there was strong evidence that he was doing so.

62. Either meaning is seriously defamatory, the impact being no doubt the more serious for the reason that the article was published shortly after the invasion of Iraq, and at a time when British forces were still engaged. The Defendants' argument that the words do not impute personal greed at all, however, seems to me to be quite unsustainable. "In Saddam's pay" means what it says. Also, one should not lose sight of the leading article "Saddam's little helper", which begins with the words "It doesn't get much worse than this". It expresses a conclusion about Mr Galloway. So too does the use of the word "treason" in the context of a full length and solitary leader. The ordinary reader would assume that the strength of the language and the prominence given to the "story" indicated the newspaper's conclusions about its significance.

63. There were particular passages in the leader on which Mr Rampton laid emphasis (in addition to those already cited):

> "Yesterday, *The Daily Telegraph's* correspondent in Baghdad, David Blair, unearthed papers detailing alleged payments from Saddam's intelligence service to Mr Galloway through a Jordanian intermediary.
>
> …
>
> Speaking from abroad yesterday, Mr Galloway was reduced to suggesting that the whole thing was a *Daily Telegraph* forgery, but the files could hardly be more specific. One memo comments: 'His projects and future plans for the benefit of the country need financial support to become a motive for him to do more work, and because of the sensitivity of getting money directly from Iraq it is necessary to grant him oil contracts and special commercial opportunities to provide him with a financial income under commercial cover without being connected to him directly'.
>
> It is hard to think of a graver setback to the British anti-war movement. How would you feel if you were one of the many well-meaning peace protesters which had followed Mr Galloway's lead? What would your emotions be if you had given money to his Mariam Appeal, thinking that you were paying to treat a young Iraqi girl for leukaemia and wondering now how your money had been used? For months, anti-war campaigners have been imputing the basest of motives to their adversaries. The whole campaign, they argued, was really about money and oil.
>
> What if it turned out that they, rather than their opponents, had hidden pecuniary motives? What if it was actually the supporters of the campaign who were acting on behalf of Iraqi civilians, while anti-war activists - or at least their leaders – were acting for profit?

> If it is a bad day for the 'not in my name' brigade it is also a bad day for British Intelligence. If Baghdad was paying one of our MPs, did our security services know about it? If so, what action did they take? If not, what does it say about their competence? Is it possible that they were using Mr Galloway as an unwitting intermediary, probing to see whether Saddam might settle without a war?
>
> Both the Labour Party and the Stop the War Coalition will, no doubt, be following the revelations nervously…
>
> Many, from all wings of the Labour Party, have nursed their doubts about the Glasgow MP, peering suspiciously at his natty suits and winter sun-tan. Yet they have never been able to pin their doubts on anything concrete.
>
> If the allegations in the documents are borne out, however, expulsion from Labour is the least Mr Galloway should expect… In order to comply with the European Convention on Human Rights, Tony Blair has abolished the death penalty in treason cases; but collaborating with a hostile regime remains the most serious of offences…
>
> By the same token, although they would be quick to put the boot into Mr Galloway – as much for the crime of profiting from oil as anything else – hardcore peace campaigners would not be disheartened by the evidence that he was paid by one of the vilest regimes on earth.
>
> …The next time Britain and the US deploy force, they will march as though nothing had changed, for their convictions are beyond argument. But some of those who demonstrated for peace did so open-mindedly, from decent motives, believing that the war was, on balance, the greater evil. Such people may be prepared to extrapolate from today's revelations.
>
> …Certainly it was Saddam's view that the anti-war movement was an ally of the Ba'athist regime – so much so, it seems, that he was prepared to divert money away from hungry children in order to finance it.
>
> It is just possible that, like the British Communists who tore up their membership cards following the Soviet invasions of Hungary and Czechoslovakia, some of these people may recant their support. They may even, as they see how much more the occupying forces are doing for Iraqi civilians than the old regime ever did, feel guilty. Above all, they may be reluctant to march in support of this kingdom's enemies in future".

64. These allegations (as Mr Darbyshire almost conceded in the witness box) refer at least in part to personal gains for Mr Galloway – not to funds going merely to the Mariam Appeal or to anti-sanctions campaigning associated with it. So the charge is personal avarice at the expense of the "very people Mr Galloway has been so fond of

invoking". After all, if the funds went into the Mariam Appeal (whatever their source) they would be spent, according to Mr Galloway's belief, to the advantage of the Iraqi people. Whether one agrees with Mr Galloway or not, he was according to his evidence always open about the dual purpose of the Appeal – medical treatment *and* anti-sanctions campaigning. Of course, he denies that the Mariam Appeal received such monies any way, but the thrust of such an allegation is rather different from saying that he diverted oil-for-food money into his own pocket.

65. Does it make any difference to the overall impact that some of the passages are framed in the form of rhetorical questions (What if …?), or that sometimes the word "allegations" is used rather than "revelations"? Not in this context, because whatever the firmness or otherwise of the assertions, they all go to personal greed on Mr Galloway's part, and hypocrisy over his professed concern for the suffering of Iraqi people. Mr Rampton is correct, in my judgment, in submitting that the words convey at least the proposition that there is very strong evidence of these charges. For my part, I would go further. I construe the coverage in the 22nd April issue, taken as a whole, as conveying the clear message that, despite his protestations, and despite the lack of any inquiry into the authenticity or veracity of the documents, *The Daily Telegraph* has concluded that the evidence is overwhelming.

66. The coverage of Mr Galloway's denials is relevant to qualified privilege, to which I shall turn in due course, but also to meaning. One has always, in such cases, to focus on the bane alongside the antidote. Crucial is the dismissive treatment given to Mr Galloway's responses in his interview with Mr Sparrow on 21st April. Whether or not the content of that interview was fairly and accurately reported is a matter which is relevant to *Reynolds* privilege. It is reflected in Lord Nicholls' non-exhaustive tests. Here, however, I am concerned with the treatment of the denials as *attributed* to Mr Galloway in the articles. Mr Sparrow on page 3 describes how he asked him during his telephone conversation to "*explain away* the documents found in Baghdad" (emphasis added). Mr Sparrow, in the witness box, described the introduction of the word "away" as a "figure of speech" or "colloquialism". Indeed it is. The question is what significance it would convey to the reader. It is most commonly used in the context of those placed in the predicament of having to explain evidence pointing to their guilt. It means, as everyone knows, that damning evidence has been produced, for which there is no plausible explanation consistent with innocence. Mr Rampton put it to Mr Sparrow that it simply meant that his client had been "caught red handed".

67. That approach was followed through in the next day's coverage. The very first words on the front page of the 23rd April issue were "*Telegraph* reveals damning new evidence on Labour MP". The word "damning" means that the "evidence" condemns him; that it is conclusive of guilt. In the context, the publication of denials does not achieve balance or neutralise the charges. What it does is to show that the newspaper has decided that the denials were dishonest or unreliable, and thus to be discounted by the readers. The next bullet point heading, alongside the first, is "Bluster, two homes and the unanswered questions". Again the denials are portrayed as "bluster". What that means is that they are just hot air and lacking substance. The evidence is strong and, what is more, there is nothing but "bluster" to put on the scales on the side of the defence. Therefore, the strong evidence prevails. It cannot be characterised as merely a *prima facie* case. Guilt has been established.

68. The same impression is confirmed by the coverage on pages 2 and 3, across the top of which appears the headline "MP in Saddam's pay defends himself from £250,000 villa in the Algarve". Underneath appears a very large colour photograph of the villa (or "cottage" as Mr Galloway described it in evidence) with its swimming pool and another one of his house in Streatham. The *Telegraph* witnesses recognised that it would have been preferable to put the words "in Saddam's pay" in inverted commas in the headline. But that shows how little significance they really attached to the distinction between direct assertions in this context and those merely reported as allegations. What matters, of course, is not what they intended but how the readers would understand the words and photographs. Yet they too would surely realise that *The Daily Telegraph* was not drawing any such fine distinction. The inference to be drawn from that headline and the photographs is inescapable. The huge colour photograph was not there to show readers the fortuitous and incidental fact of *where* Mr Galloway was expressing his denials, but rather to demonstrate the link between being "in Saddam's pay" and the material rewards of those undeclared "profits". Readers can hardly have failed to get the message. Nor (in the context of *Bonnick v Morris*) can the journalists. To suggest otherwise is disingenuous or, at best, wishful thinking.

69. The references to two homes and expensive cars will only have relevance to the story as confirming the receipt of significant rewards over and above Mr Galloway's Parliamentary salary. The introductory paragraph said that Mr Galloway began his defence "from the *comfort* of his holiday home in Portugal" (emphasis added). These pointed references were not merely background "lifestyle" colour, as was suggested at one stage in argument. It was not a lifestyle piece, such as one might find in (say) *Hello* magazine. It was a gravely serious exposé of wrongdoing by a member of Parliament.

70. Then there are "the questions Galloway must answer" underneath his photograph on page 2, formulated so as to undermine each one of Mr Galloway's telephone answers to Mr Sparrow on 21st April. The object of that exercise would surely be construed by the reader, not as "putting the other side", but as demolishing Mr Galloway's "blustering" answers one by one.

The evidence of the witnesses

71. As I have already made clear when discussing the change in mode of trial, the scope of the evidence was essentially limited to establishing the basis upon which to make the evaluative judgments for the purposes of qualified privilege and, to an extent, of damage to reputation. There was very little, if any, conflict on the primary facts.

72. The first witness was Mr Galloway. He made it clear that the allegations in *The Daily Telegraph* were false. He said that he had never received or solicited a single penny from Saddam Hussein; that he had never knowingly met a representative of Saddam's security service; that he had never received or traded in oil; that he had never diverted monies from the oil-for-food programme; and that he had never used the Mariam Appeal as a front for his own personal gain or secret commercial dealing with the Iraqi regime.

73. The truth of these allegations was not directly an issue in the proceedings, since the Defendants had not chosen to plead justification. For that reason also the conduct of his personal finances, and those of the Mariam Appeal, were not issues in the trial.

Nevertheless, Mr Galloway stated in the witness box that anyone was welcome to inspect his personal financial affairs, and that those of the Mariam Appeal had been investigated by the Charity Commission (whose report he put in evidence) and there was no finding of any wrongdoing.

74. He explained that the Charity Commission had begun its investigation into the Appeal on 24th April 2003, immediately following the publication of the articles complained of in this libel action. There is no doubt that he, rightly or wrongly, believes that he was being attacked on several fronts because of his vociferous opposition to the Iraq war and strong criticisms of the government. The suggestion he faced was that he had used charitable funds to finance political activities in breach of the law governing charities and, in particular, that he had used the funds to pay for trips to Iraq. He cited the conclusion of the Commission's Director of Operations to the effect that "The Commission's thorough Inquiry found no evidence to suggest that the large amounts of money given to the Mariam Appeal were not properly used".

75. He went on to explain that he never intended the Mariam Appeal to be a charity, since it always had a dual purpose:

> "Bringing Mariam to the UK for treatment signalled the founding of the Mariam Appeal, a political campaign that would work all over the world to highlight the situation in Iraq under sanctions and campaign for the lifting of the embargo while at the same time helping to treat Mariam. In this sense the Appeal had a dual purpose. If sanctions were to be lifted all the Mariams left behind could be treated properly and maybe saved. This was my aim and I never made any bones about the dual purpose of the Appeal. I knew instinctively that this child personified the suffering of the Iraqi people under the embargo. In 2002 the organisation ceased to exist. However, during its lifetime, in addition to bringing Mariam to Glasgow for treatment, it took a red London bus on a campaigning tour from Big Ben to Baghdad, where three million Iraqis turned out to receive us. It also took medicines to Iraq, and broke the air embargo by flying from London to the besieged Iraqi capital. It also funded various visits to Iraq and elsewhere to continue the campaign against the use of sanctions in Iraq".

76. As the Charity Commission report confirmed, the major funders of the appeal were the United Arab Emirates, Abdullah Bin Abdul Assiz al-Saudi, the Crown Prince of Saudi Arabia, and Mr Fawaz Zureikat (who was, of course, referred to in *The Daily Telegrap*h articles).

77. It was not part of Mr Galloway's case that the proceedings against him which led to his ultimate expulsion from the Labour Party were directly connected to *The Daily Telegraph* articles, but he did point out that on 24th October 2003 Mr Andrew Sparrow had commented, "… it was not until 6th May 2003, after *The Telegraph* story, that Labour decided to suspend Mr Galloway". Nevertheless, he does not seek compensation from the Defendants in connection with that expulsion.

78. It is appropriate to give a little further detail as to Mr Galloway's evidence on the Mariam Appeal. He had visited Iraq on a number of occasions from 1993 onwards

and, on 14th and 15th March 1998, he visited Iraq to see the effect of sanctions and, in particular, on the health of children and others who he understood to be suffering a cancer epidemic caused by uranium tipped weapons used in the first Gulf war. He described how he found the health service "on the verge of collapse" and spoke to doctors who had the knowledge and expertise to treat dying children, but they were unable to do so because of the sanctions regime. It was on this visit that he met Mariam Hamza who came from Southern Iraq and was suffering from cancer. He understood, although he had no way of confirming it, that there had been a six-fold increase in childhood cancers in Iraq since the Gulf war and Mariam came from an area which had been bombarded with shells and bullets tipped with depleted uranium.

79. The following month he brought Mariam to Britain for medical treatment for leukaemia so as to save her life, if possible, and to highlight the plight of many similar children in Iraq. Shortly afterwards the Mariam Appeal was launched as a political campaign to draw attention to the situation in Iraq and press for the lifting of the embargo. It was partly to help Mariam's plight and partly to campaign for the lifting of sanctions and, as he saw it, the relief of the suffering population. The organisation ceased to exist in 2002.

80. The London bus trip took 60 days and covered 15,000 kilometres. Throughout he attacked the effect of sanctions as equivalent to "mass murder". He believes that hundreds of thousands of Iraqis, mostly children, died as a result of the sanctions imposed. He pointed out that it was advertised on the front of the bus that the visit was financed by the ruler of the United Arab Emirates, Sheikh Zayed.

81. In his observations on the Defendants' pleading in this case, he sought to rebut the suggestion that he had refused to disclose any accounts or the source of funding of the Mariam Appeal. Indeed, during his conversation with Mr Sparrow on 21st April 2003 he referred to the wealthy benefactors, such as the royal families of the United Arab Emirates and Saudi Arabia, as well as to the support of Fawaz Zureikat. This was by no means the first time that he had disclosed the funding, since on 29th June 1999 in the House of Commons he had identified the governments of Saudi Arabia and the United Arab Emirates as financial supporters.

82. He also referred to the Defendants' suggestion that he had changed the objects of the Mariam Appeal once the child had received her treatment. He claims that he had always been open about its dual purpose. He had referred in the Register of Members' Interests to the fact that he had received expenses from the Appeal towards overseas visits he had made in his campaign against sanctions. The Charity Commission report followed an inquiry under section 8 of the Charities Act 1993 and was published on 28th June 2003. It stated that it had been unable to obtain all the books and records of the Appeal, Mr Galloway having stated that the documentation had been sent to Amman and Baghdad in 2001, when Mr Zureikat became chairman of the Appeal. He confirmed in evidence, however, that all bank accounts had been produced, so that the Commission was able to see what monies had come into the Appeal and how they had been spent. The relevant financial records *were* available. It was other categories of document that had gone, and he cited the example of minutes of meetings.

83. It is right to say that the Commission established that two of the original trustees, Dr Amineh Abu-Zayyad and Stuart Halford, received unauthorised benefits in the form of salary payments from the Appeal's funds. The Commission added:

> "The information provided to the Commission suggests that the Executive Committee considered these payments were necessary and were unaware that they were unauthorised. The Commission accepts that none of the Executive Committee acted in bad faith and that the services provided were of value to the Appeal".

Although some of the activities of the Appeal were political in nature, the information provided to the Commission suggested that the activities were ancillary in terms of expenditure to the purposes of the Mariam Appeal. "The trustees could reasonably have formed the view that this would have the impact of enabling treatment for sick children". This highlights the significance of the distinction between the Claimant's and the Defendants' meanings: see para 58 above.

84. The Commission concluded that the Appeal should have been registered with the Commission, because its objects were charitable, but nevertheless there was no evidence of bad faith on the part of any member of the executive committee. None of them was aware that the payments were unauthorised and, since they believed them to be necessary, the Commission would not be pursuing recovery of those sums. It was accepted that the founders of the Appeal were unaware that they had created a charity. Indeed, they had received legal advice to the effect that it did not constitute a charity (which the Commission considered was wrong in law).

85. Another important area of evidence for me to consider is that relating to the telephone conversation with Andrew Sparrow on 21st April when, as the Defendants contend, they had been scrupulous to ensure that "the discovery of the Iraqi documents and their contents were put, in detail" to Mr Galloway. There is little room for dispute over what passed between them during the telephone conversation because Mr Sparrow had taped it. There is disagreement between the parties, however, as to the significance to be attached to the conversation and whether or not the allegations were "adequately put" to Mr Galloway for the purposes of *Reynolds* privilege.

86. Mr Galloway takes the view that the newspaper unequivocally suggested that he personally had "received at least £375,000" and that he was "in Saddam's pay". That allegation, he says, was certainly *not* put to him. He had no opportunity to see the documents from Baghdad; nor were they read to him. Mr Sparrow gave him a summary of the contents and obtained his comment in the light of that summary. What was suggested to him was that the Mariam Appeal had received sums of money from the Iraqi regime. It was in that context that Mr Galloway assured him that its backers did not include Saddam Hussein or the Iraqi government.

87. Mr Galloway was not told that the newspaper intended to publish its story the next day or given any inkling of the tone or extent of coverage. Critical to Mr Galloway's case is the fact that he had no warning of the suggestion that he was "in Saddam's pay," which he regarded as qualitatively different from the suggestion that Iraqi funds had been sought or received for the Mariam Appeal (although that too, so far as he knows, was untrue).

88. He was given no details in the conversation with Mr Sparrow of the circumstances in which the documents had been discovered in the foreign ministry in Baghdad by Mr Blair or of the Defendants' grounds for believing, in the light of those circumstances, that the documents were probably genuine. He was taken by surprise when the

allegations were put to him and, since he knew that they were false, he suggested that they might be forgeries. Off the cuff, that was the only explanation he could think of. There is no doubt that the newspaper subsequently poured scorn on that suggestion, in the light of the detailed account the readers were given by Mr Blair as to how they had been discovered, but it is important to recognise that Mr Galloway was not given that information at any time prior to publication. Specifically, he denied that he was told of the following facts relied upon by *The Daily Telegraph,* and which Mr Blair's documents were said to show:

(a) that the Mariam Appeal needed "continuous financial support from Iraq" because "the backing of an Arab Sheikh was limited and volatile";

(b) that the name of Mr Galloway and his wife were not supposed to be referred to in relation to "oil contracts and special commercial opportunities";

(c) that he was intending to arrange visits for Iraqi sports and arts delegations to Britain and "mobilise British personalities to support the Iraqi position";

(d) that he had entered into partnership with Burhan Mahmoud Chalabi in relation to oil contracts.

89. It would clearly be inappropriate, in what is already a very long judgment, to set out the full contents of the transcript of the telephone conversation, which lasted 35 minutes. There are, nevertheless, some aspects of it to which I need to refer.

90. It was introduced by Mr Sparrow by saying that documents had come to light in Baghdad "about the Mariam Appeal and yourself" which showed that there had been a meeting with Iraqi intelligence and that "You asked them for money for the Mariam Appeal which they subsequently approved". It then went on to refer to a meeting between the head of Iraqi intelligence services and Mr Zureikat, at which he was supposed to be saying that the campaigning activities on behalf of Iraq needed money and that Mr Zureikat (on Mr Galloway's behalf) was "asking for an increase in the oil contracts that the campaign had". He then referred to other documents which came to light, including a memo from Tariq Aziz which "raises all sorts of questions about the Mariam campaign, its relationship worth the Iraqi regime and… Fawaz Zureikat". Those were described by Mr Sparrow as "the gist of the allegations".

91. Obviously, therefore, so far there was nothing to give Mr Galloway any indication that *he* was supposed personally to be dealing in oil or receiving Iraqi funds for his own benefit (i.e. "in Saddam's pay").

92. Mr Galloway responded by saying in no uncertain terms "This story that you are putting to me is preposterous. I have never met, to the best of my knowledge, any member of the Iraqi intelligence, let alone the head of Iraqi intelligence". He went on to say that " the only thing that's true in that entire concoction that you've just put to me" was that Fawaz Zureikat represented the Mariam Appeal in Iraq and had at some stage been chairman of the Appeal. He then added:

> "The truth is I never met, to the best of my knowledge, any member of Iraqi intelligence. I have never in my life seen a barrel of oil, let alone bought or sold one. I have never asked Iraq for money to help our campaign. Our campaign was funded throughout by private donations and governmental

> donations from Arab countries, friendly to Britain and the United States".

Mr Sparrow persisted and asked whether it was ever funded by Iraq, to which Mr Galloway replied "Never. Never funded by Iraq. And I would never have asked Iraq to fund the campaign".

93. Mr Sparrow asked, "Did you sort of know that at any point he [Mr Zureikat] was soliciting funds from the regime on your behalf?" Mr Galloway replied:

> "I don't believe he was soliciting funds from the regime on my behalf. I don't believe he was soliciting funds from the regime at all. He was an extremely generous benefactor of the Mariam Appeal. He's a very successful businessman. I have no reason to believe whatsoever that he solicited funds from the regime".

When asked whether the Mariam Appeal ever got involved in oil trading, he said he was absolutely sure that it had not.

94. As to the documents which Mr Sparrow had attempted to summarise for him, Mr Galloway observed:

> "Because obviously I don't have this in front of me, so I can't even begin to work out what you're talking about. But the key parts of what you are saying, which have miraculously turned up in Baghdad, are false".

95. In view of the references in the newspaper to Mr Galloway's supposedly receiving £375,000 a year from the Iraqi regime, it is perhaps important to note what exactly was said in the conversation. Mr Sparrow told him:

> "This memo that's come to light talks about concessions for trading, I think, it's three million barrels of oil for six months which must be worth quite a lot of money and someone in my head office is doing the maths but I think they came up with a figure of something in the region of £200,000. I mean, did the Mariam Appeal have income on that basis?"

Thus, although the "maths" apparently yielded a much higher figure shortly afterwards (i.e. £375,000), the matter was clearly put to Mr Galloway on the basis that it might have been an income of the Mariam Appeal. This led him to respond by saying that the total funding of the Appeal over its whole life might have been of the order of one million pounds, of which more than half came from the government of the United Arab Emirates. From this context, it is clear that both he and Mr Sparrow regarded the queries as directed towards the funding of the campaign.

96. Later Mr Sparrow said:

> "Just to recap. You've sort of made this clear before, but I just want to be sort of crystal clear on this, because I mean it's quite serious. You say the Mariam Campaign sort of never to your knowledge sort of received money or solicited money from the Iraqi regime?"

Mr Galloway said "No" and Mr Sparrow persisted:

> "Did they ever – did they ever sort of try to give you money? It must have been very tempting for them".

Mr Galloway (clearly from the context understanding "you" as referring to the campaign) replied:

> "No. We had no need for support from Iraq as I told you. We had important and wealthy benefactors, like the royal family of the UAE, the royal family of Saudi Arabia and we had the very generous support of Fawaz Zureikat".

97. Mr Sparrow pressed Mr Galloway, having regard to what he called "the sensitivity of the funding of the campaign" as to why he had not published something in detail. This is one of the points in the tape where the recording goes awry, but one assumes that he was asking why accounts of the Mariam campaign had not been published. To this Mr Galloway responded:

> "Well why would I? Look, first of all, there's no sensitivity as far as I'm concerned. There is no sensitivity. I was involved for many years in fighting the full might of the British and American state and their big media friends, like yourselves. That was a very difficult battle. We had to find support where we could get it and we operated as a political organisation, as political organisations do. They don't open themselves up to the attentions of their enemies and I include you and the people like you as being my enemies. So from my point of view it's not sensitive at all. And I myself was not any kind of signatory or trustee or beneficiary of any of the money raised in the campaign. I've never been a signatory on any of the chequebooks. I've never been responsible for the expenditure of any money. I've never myself received any money, any benefits from these campaigns. On the contrary. I have given my political life's blood to them. So, from my point of view, it isn't sensitive".

There was never any hint to Mr Galloway that his sweeping denials of personal involvement were to be challenged the following day. He concluded the conversation by confirming that he would be available on his mobile number to deal with any further queries that Mr Sparrow or *The Daily Telegraph* lawyers might wish to put to him.

98. Finally, before I leave Mr Galloway's evidence, I should make it clear that he left me in no doubt as to how seriously he takes this matter. He regarded the allegations of taking money from Saddam's regime, and especially from the oil-for-food programme, as fundamentally undermining his integrity and credibility as a politician.

99. I turn now to the evidence called on behalf of the Defendants. They relied upon a number of written statements, in respect of which Mr Rampton had no wish to cross-examine, but the evidence of those witnesses is nevertheless part of the Defendants' case. Perhaps the most important witness, in the context of setting out the circumstances of publication for the purposes of *Reynolds* privilege, was Mr David

Blair. He is a staff foreign correspondent who returned to Iraq on 11th April 2003, some two days after the statue of Saddam Hussein was toppled. He went into a good deal of detail as to his movements, but the crux of his evidence relates to the circumstances in which he found the documents and arranged for their translation. On Saturday 19th April, he went to the foreign ministry building in Baghdad and on the first floor found a room which was full of orange filing-boxes. He found three that were of particular interest to him, since two were labelled "Britain" and the other "Britain and France". Most of the documents were in Arabic but he spotted two in English, one from Sir Edward Heath and one from Mr Galloway (nominating Mr Zureikat as his representative in Baghdad for the purposes of the Mariam Appeal). He was in the company of a translator and, because they feared interference from looters in the building, they took these files away for later investigation in his hotel room.

100. Mr Blair was at pains to describe how the documents were found and where they were placed within the files. Although the possibility of hoax or forgery crossed his mind, he was quite satisfied in his own mind that this could be ruled out. He could not envisage why anyone should take such elaborate steps merely on the off chance that a journalist would come to that particular room and investigate those particular files. Like the other witnesses in the case, Mr Blair seemed to me to be impressive and straightforward in his evidence. I have no doubt that he believed the documents he found were genuine and that they gave rise to legitimate questions – at least requiring the attention of serious investigative journalists.

101. On Sunday 20th April Mr Blair working with his translator came across a letter from Tariq Aziz, apparently to four government ministers, circulating something called Mr Galloway's "work programme" for the year 2000. He did not find anything corresponding to the "work programme" itself. Mr Galloway was asked about this the next day in his telephone conversation with Mr Sparrow, but did not know what it meant. He thought it was possible, although he would not have used the phrase "work programme" as such, that it might refer to plans he had for arranging campsites for the rehabilitation of young people in Iraq. That was a plan which never came to fruition and, without checking the dates, he told Mr Sparrow that he could not be sure if this was so or not.

102. At all events, at about 4 p.m. (London time) on the Sunday afternoon Mr Blair informed Mr Francis Harris (the Deputy Foreign Editor of *The Daily Telegraph*, based in London) that he had found the Tariq Aziz letter and the letter of introduction from Mr Galloway, and said that he hoped to do a story based on those documents. Mr Harris encouraged him to make translating the documents his priority and, if necessary, to obtain the services of a second translator for that purpose.

103. Later that evening, he came across the memorandum dated 3rd January 2000, which was apparently from the head of Iraqi intelligence. Its subject was expressed to be the "Mariam Campaign". As soon as it had been read out to him in English, he realised that it had " the makings of a major story about Mr Galloway's links with Saddam Hussein's regime". He wanted to have absolutely accurate written translations in order to assess its importance and reliability.

104. At about 9.30 a.m. (London time) on Monday 21st April, Mr Blair called Mr Harris in London. He then gave him an account of the contents of the memorandum. Mr Harris enquired whether it might be a forgery, and Mr Blair said that it seemed inconceivable given the circumstances in which he came across it. During the course of the morning

Mr Blair transmitted to the foreign desk his own "summary of central facts" for the benefit of those in London, who wished to make an assessment of the importance of the story and decide what to do next.

105. During the afternoon the photographer, Mr O'Malley, arrived at the hotel in order to take photographs of the three documents. The translations of the 3rd January 2000 memorandum and of Tariq Aziz's "work programme" letter were sent by Mr Blair to the foreign desk in London electronically. Thereafter he filed four stories, all of which were published on 22nd April having been sub-edited in London. There was the principal news story appearing on the front page of that issue under the heading "Galloway was in Saddam's pay say secret Iraqi documents". Secondly, there was his account of how he found the documents, which was published under the heading "How I found the papers in looted ministry". Thirdly, there was the piece about Mr Zureikat ("The go-between"). Fourthly, there was an article about letters from other prominent Britons. This too appeared under headline "The letters they might wish to forget".

106. Mr Blair was asked why there was any urgency about the publication of these stories and he expressed concern at the possibility that looters might obtain the documents from his hotel room. Mr Rampton pressed him, on the basis that all Mr O'Malley's pictures of the documents had been sent electronically to London, and that the editorial people in London had received translations of the main documents. There was, in that sense, no risk that *The Daily Telegraph* would lose the opportunity of publishing. It was Mr Rampton's case that the true reason for the haste in publication was merely a desire to obtain a scoop over rival publications. That was not, however, a question for Mr Blair, but rather for those who took the editorial decisions in London.

107. Mr Harris gave evidence and began by referring to his background knowledge of Mr Galloway, who he regarded as a fierce opponent of the war and indeed as a friend of the regime. That is, of course, something which Mr Galloway has forcefully denied, but there is no doubt that some people, rightly or wrongly, did perceive him as a supporter of the regime to some extent – not least because of his unfortunate address to Saddam in 1994, which achieved a great deal of publicity, and which Mr Galloway has been confronted with on a regular basis ever since. He was filmed addressing Saddam Hussein and various other members of his government. He appeared to say, "I salute your courage", as though this were directed to Saddam Hussein, but he insists that he was referring to the Iraqi people as a whole. There is no doubt, on the other hand, that for the purposes of *Reynolds* privilege the Defendants' witnesses are fully entitled to speak as to their own perceptions of Mr Galloway, since these play a part in the pleaded case supporting a duty to publish in the public interest.

108. Mr Harris described how he read the translation of the intelligence memorandum on screen shortly after 2.30 p.m. on 21st April. He added:

> "About half way through the translation I saw that a paragraph (numbered 2) recorded a meeting between an Iraqi intelligence officer and Mr Galloway in person. During this meeting Mr Galloway himself had apparently requested further financial support from Iraq. From my reading of the short summary filed earlier by Mr Blair, I had supposed that Mr Zureikat had been the central figure in dealings with the Iraqi regime. Now for the

> first time Mr Galloway was implicated directly and in detail. The revelation changed the potential story, by removing the suggestion that Mr Galloway had operated solely through an intermediary".

It is perhaps worth noting that when Mr Sparrow rang Mr Galloway, shortly after this, he was being guided by the "short summary" or "central facts" filed earlier by Mr Blair. I therefore set out the three first paragraphs:

(a) On 3rd January 2000, the head of the Iraqi intelligence service sent a memorandum to Saddam Hussein's office concerning George Galloway's "Mariam Campaign". This campaign, which brought an Iraqi child called Mariam to Britain for cancer treatment, was the focus of Galloway's efforts at the time.

(b) The memorandum reported on a meeting between Iraqi intelligence and Fawaz Zureikat, Galloway's representative in Iraq.

(c) In this meeting, Zureikat "conveyed a message from Galloway." Zureikat said that Galloway needed "financial support" from the Iraqi government so that he could continue "helping Iraq". Direct payments were too "sensitive", so the support should be given under "commercial cover".

This may account for why he did not put to Mr Galloway the "revelation" perceived by Mr Harris. In other words, he did not put to Mr Galloway that he had directly approached an Iraqi intelligence officer for money. Nevertheless, Mr Sparrow had read through the memorandum on screen.

109. Mr Harris went on to explain his reasons for believing that the documents were genuine:

(i) He trusted Mr Blair from his experience of him as "a highly professional and savvy correspondent who cared about getting his stories right".

(ii) It seemed to him wholly unrealistic to suppose that someone had forged the documents and left them to be found as Mr Blair described.

(iii) He had clear evidence that Mr Galloway was used to mixing with the most influential figures in Saddam Hussein's government, including Tariq Aziz.

(iv) He had corroborated Mr Galloway's whereabouts in December 1999, when the intelligence memorandum appeared to suggest that he had met an intelligence officer in Iraq.

110. He went on to explain that there was a real risk that Mr Blair might have the documents taken from him if he were caught trying to take them out of Iraq, or "if he were found in possession of them by any of a number of agencies operating there". In these circumstances, Mr Harris decided that "It would have been indefensible to delay further work on the story". He then instructed Andrew Sparrow to speak to Mr Galloway.

111. He was cross-examined by Mr Rampton on the matter of urgency, and said that the possibility that the documents in Iraq might have gone missing was "a factor". He

said it was important to publish while *The Daily Telegraph* still had the documents under their control. As Mr Rampton pointed out, the "key document" was itself a photocopy in any event. He suggested that the true reason was that *The Daily Telegraph* could not bear the risk of being beaten to a "scoop". That certainly seems to me the most likely explanation. There is no convincing alternative.

112. The self-imposed haste was probably also the reason why no one in London took the opportunity to listen to Mr Sparrow's thirty-five minute tape of the conversation with Mr Galloway. Mr Rampton suggested that anyone who has listened to the tape would recognise how inappropriate it was to describe Mr Galloway as either "blustering" or being "on the defensive". I would agree with that assessment, although the tape recording is not of very good quality. Whatever the reason, however, no one did listen.

113. There can be no doubt that *The Daily Telegraph* recognised the gravity of the allegations that they were about to make, because the "morning foreign list" of 21st April contained a number of provisional or potential headings for the articles in contemplation. These included "George Galloway was Iraqi spy", "The proof of one man's treachery", "The life and times of galloping George" and "The charges he could face in Court and in Parliament".

114. There was also the "afternoon foreign list" for the same day, which included "George Galloway solicited Iraqi bribe", "How oil-for-food funded George" and "the Labour Party's options now".

115. So far as Mr Harris was concerned, there was no need for anyone to attempt to contact Mr Zureikat before publication, since Mr Sparrow had spoken to Mr Galloway. I shall have to return to this topic when I come to consider the defence of *Reynolds* privilege, but it is clear from the transcript of Mr Galloway's conversation with Mr Sparrow that (a) it was not put to him that he was directly involved in soliciting or receiving money from the oil-for-food programme and (b) that a number of questions were put to him about Mr Zureikat which he was not in a position to answer.

116. The next witness was Mr Paul Eccleston who was at the material time the Home News Editor of the newspaper. He too began by speaking of his personal knowledge of Mr Galloway at the time. He knew of his anti-war stance and had also seen the film from 1994 in which he appeared to be paying tribute to Saddam Hussein. It was he who suggested to Mr Sparrow that he should speak to George Galloway and, as it were, de-briefed him after the conversation had taken place. There was not much he could add to the evidence of the other witnesses, although he too was cross-examined on the question of the need, or otherwise, to publish the articles on 22nd April. He did not discuss with anyone the possibility of pursuing Mr Zureikat for a comment or checking the plausibility of the story with any intelligence contacts *The Daily Telegraph* might have.

117. Then Mr Sparrow himself gave evidence. Mr Rampton made it clear that he was not criticising Mr Sparrow, in any significant way, for his conduct of his interview with Mr Galloway. Mr Rampton acknowledged that Mr Sparrow only had limited information at the time.

118. It was clear, however, that around 3 p.m. on 21st April he took a call from somebody who told him that the full translation of the "key document" was now available on the

computer system. He accessed the memo and read it on screen carefully. He said that it was quite long and he read it twice to make sure he understood it thoroughly. He noted that it was dated January 2000, within a matter of days of the supposed meeting between Mr Galloway and the intelligence officer. He concentrated on this document because it contained what he described as "the incriminating evidence against Mr Galloway". It is interesting that he put it that way, because there was nothing in the interview with Mr Galloway half an hour later which suggested that the documents contained anything "incriminating" so far as he was concerned. Mr Sparrow commented that during his conversation he formed the impression that Mr Galloway was very confident and sure of himself, which he found surprising, because he would have expected him to have been "gob smacked". He was not taken aback or thrown off guard, and "he did not appear to hesitate or wobble in the least during the interview".

119. Mr Rampton drew to his attention the passage in the interview where Mr Sparrow appeared to be emphasising to Mr Galloway that he was *not* talking about any personal gain on his part:

> "Mr Galloway: I have never seen a barrel of oil, never owned one, never bought one, never sold one
>
> Mr Sparrow: But I'm asking about the Mariam Appeal, the Mariam Campaign".

Mr Rampton also suggested to Mr Sparrow fairly and squarely that he at no time put to Mr Galloway, so that he could have an opportunity to deal with it, the allegation that *he* took money from the Iraqi regime or from the oil-for-food programme. He clearly did not put it. Despite the apparent intention to convey to readers that Mr Galloway had benefited personally or "solicited Iraqi bribes", they at no time rang him back from London on his mobile number to give him an opportunity to deal with that. There was thus, for whatever reason, a mismatch between the allegations put to him and those published within a matter of hours thereafter.

120. Mr Darbyshire was the deputy editor at the time in Mr Charles Moore's absence. He said that in the past *The Daily Telegraph* had published stories about Mr Galloway that were "benign". He said "We do not have people we hate" and he did not regard Mr Galloway as a *bête noir* (although in his evidence Mr Sparrow appeared to acknowledge that this was a fair description). He said that it was for the readers to decide for themselves what the documents meant. He seemed to think that *The Daily Telegraph* was covering the story neutrally. Although it may seem strange, I decided that he genuinely believes that now. He is not the only *Daily Telegraph* witness to be deluding himself in this respect.

121. He rejected Mr Rampton's proposition that he thought the documents provided the newspaper "with a heaven sent opportunity to terminate Mr Galloway as a public figure once and for all". He said it was "claptrap". He did, however, appear to accept that the leading article "Saddam's little helper" of 22nd April was all about Mr Galloway "having got the money for himself". He responded, "It does raise that, yes". There is no doubt that Mr Darbyshire was an engaging and frank witness, and he was clearly right to acknowledge the significance of the leading article, but "having got the money for himself" is certainly not something that Mr Sparrow raised in his telephone conversation.

Qualified Privilege

122. An important element of the Defendants' argument in relation to their *Reynolds* defence is that their coverage amounted to *reportage*. It thus becomes necessary to consider the general background context of domestic authorities and the European human rights jurisprudence. One cannot address the relevant cases in isolation, because there is a possible tension between that relatively recent strand of authority on *reportage* and another well established principle, namely the "repetition rule", to which I have already referred.

123. I need to identify the characteristics of a *reportage* situation which are thought to justify, as a matter of public policy, the apparent departure from the repetition rule. The latter doctrine essentially provides that one cannot resort, by way of justification, to the fact that some third party has made defamatory accusations about the claimant; one can only justify by proving that the underlying defamatory allegation was itself true. That may, of course, depending upon the meaning of the particular words, include proving that there were "reasonable grounds to suspect" the claimant of the particular disreputable conduct. Here, the Defendants do not seek to rely upon the defence of justification in respect of *any* defamatory meaning. They contend that they had a duty to report the fact of the allegations contained in the Baghdad documents because the public had a right to know their contents – irrespective of their truth or falsity. It was re-emphasised in closing that "it is not and never has been any part of the *Telegraph's* intention to suggest guilt, or to suggest that guilt could be established other than by a most detailed investigation using powers which a newspaper lacks".

124. The repetition rule is based upon considerations of public policy (which are concerned with the protection of reputation and with the need to prevent the public being misinformed). It is thus always important to ensure, on the facts of any particular case, that the arguments underlying the *reportage* line of authorities are truly engaged and, correspondingly, that the defendant is not simply seeking to flout the disciplines underlying the repetition rule.

125. I turn to consider the Court of Appeal decision in *Al-Fagih v H H Saudi Research and Marketing (UK) Limited* [2002] EMLR 13, where the majority upheld an appeal against a trial judge's ruling that the publication in question was *not* within the protection of *Reynolds* privilege. At [6] Simon Brown LJ described "*reportage*" as "a convenient word to describe the neutral reporting of attributed allegations rather than their adoption by the newspaper". He went on to give guidance more generally as to how political *reportage* ought to be approached in the light of *Reynolds*:

> "51 I am not, of course, saying that verification (or at least an attempt at verification) of a third party's allegations will not ordinarily be appropriate and perhaps even essential. In rejecting the general claim for qualified privilege for political discussion Lord Nicholls said in *Reynolds* at 203B:
>
> 'One difficulty with this suggestion is that it would seem to leave a newspaper open to publish a serious allegation which it had been wholly unable to verify. Depending on the circumstances, that might be most unsatisfactory.'

> 52 I am saying, however, that there will be circumstances where, as here, that may not be 'most unsatisfactory' – where, in short, both sides to a political dispute are being fully, fairly and disinterestedly reported in their respective allegations and responses. In this situation it seems to me that the public is entitled to be informed of such a dispute without having to wait for the publisher, following an attempt at verification, to commit himself to one side or the other".

126. It is always important when applying the *Reynolds* principles to concentrate on the particular facts in hand and, specifically in the context of *Al-Fagih*, it is necessary to bear in mind what Simon Brown LJ was referring to when he used the phrase "a political dispute". The Claimant and "AM" were both prominent members of a Saudi Arabian dissident organisation called the "Committee", which was opposed to the Saudi Arabian government. The Defendant published a newspaper which supported the government and was in part owned by the Saudi Arabian royal family. Over two weeks, the newspaper reported an unfolding dispute between the Claimant and AM. The particular report complained of had stated that AM told a journalist that the claimant had spread malicious rumours about him, saying that AM's mother had procured women to have sexual intercourse with him at his home. It was accepted that AM had made the allegation to the journalist and that it was untrue.

127. The majority in the Court of Appeal held that the news of the split within the Committee was a matter, in itself, of real interest and concern to the newspaper's readership. Furthermore, the newspaper had not adopted the allegation or implied that it was true. In those circumstances, even without an attempt to verify the allegation, the publication could be regarded as being in the public interest. This was one of those cases where the mere fact that such allegations were being made was of public interest and importance, even though the reader was not in a position to determine whether the allegations were true or false. It was at least clear from the mutual allegations that one or other, if not both, of those leading Committee members was being shown to be disreputable. That basic fact was something that the newspaper's readership was entitled to be informed about.

128. It thus seems that, where both sides to this political dispute were being "fully, fairly and disinterestedly" reported in their respective allegations and responses, the public was entitled to be informed of the dispute – without having to wait for the publisher to commit himself to one side or the other.

129. Here, just as in *Al-Fagih*, there is undoubtedly a political dimension to the subject matter of the Defendants' articles. I remind myself, however, that the House of Lords in *Reynolds* rejected the proposition that there should be a new category of qualified privilege to cover the publication of *all* political information.

130. It is now clear that there are significant potential distinctions between the present circumstances and those before the Court of Appeal in *Al-Fagih*. First, it is necessary for me to consider whether *The Daily Telegraph* did, or did not, adopt any defamatory imputation or imply that it was true. Secondly, this was not a case of politicians or other public figures making allegations and cross-allegations about one another, so as to give rise to a dispute which would itself be of inherent public interest. Thirdly, this is not a case where one or other, or both, of two persons could be shown to be disreputable by the very nature of the allegations being made (whether true or false).

Fourthly, I shall need to consider whether *The Daily Telegraph* was "fully, fairly and disinterestedly" reporting the content of the Baghdad documents and Mr Galloway's response to those allegations. Fifthly, it would clearly be significant if they went beyond reporting them and made independent allegations or inferences.

131. At this stage, I should refer to some of the European jurisprudence which throws light on the circumstances, at least in general terms, when it would be regarded as unreasonable or impossible for journalists to be required by law to verify what they publish. As it happens, the only European case referred to in the judgments in *Al-Fagih* was the well known *Lingens v Austria* (1986) 8 EHRR 407, which was concerned with the right of politicians to protect their reputations and with the countervailing need to weigh the public interest in open discussion of political issues. All Simon Brown LJ had to say on the subject, however, was to be found at [31]: "Most of the ECHR's jurisprudence, however, save for one or two recent cases, was discussed in *Reynolds* and to my mind it adds little of value to the English case law, at any rate in the context of the present appeal".

132. As Mr Rampton pointed out, the reasoning and guidance given in the appellate courts in England over recent years, including that in *Reynolds* itself, is supposed to be Convention compliant. This may be obvious, but it is fundamentally important. It is not, therefore, for individual judges in every case that comes along to apply and interpret the Convention afresh. If one applies the English law of defamation properly, there should be no reason to think that the principles underlying the Convention are infringed: *Branson v Bower* [2001] EMLR 800 at [8]. This is more particularly so with regard to appellate decisions which expressly advert to the Convention and its compatibility with English law.

133. I should address, however, some of the other cases to which Mr Price has drawn my attention in the present context. In *Thorgeirson v Iceland* (1992) 14 EHRR 843, the Court noted that the factual elements in the relevant articles consisted essentially of references to "stories" or "rumours", emanating from persons other than the applicant, or "public opinion" involving allegations of police brutality. In the light of these particular circumstances, the opinion was expressed by the Court that the applicant would have been faced with an unreasonable, if not impossible, task if required to establish the truth of the statements reported. The principal purpose of the journalist in that case was apparently to call for an investigation by an independent and impartial body of the allegations of police brutality. Obviously, that is quite a different matter from the case of a journalist who endorses or adopts the allegations he chooses to repeat. Mr Price submits that the instant case falls within the former category, whereas Mr Rampton submits it is the latter.

134. In *Thoma v Luxembourg* (2003) 36 EHRR 21 the Court was concerned with a radio report on corruption, in the context of a re-afforestation, and reference was made to an "authoritative source" which said that there was only one person who was incorruptible. Actions for libel were brought by persons claiming to be identifiable as the subject of corruption accusations. The Court, on those facts, took the view that the journalist had in fact adopted, at any rate partly, the content of the quotation in question. Despite this, it was held that the award of nominal damages against the journalist had constituted a breach of Article 10. It was not appropriate for the law to insist that he should formally distance himself from the content of the quotation, at least in circumstances where it was clear to the reader that the offending passage was a quotation from someone else.

135. Thus, in assessing the relevance of these cases to the present facts, one of the first questions to be decided would be whether the Defendants here were adopting allegations contained in the Baghdad documents, or merely repeating them in circumstances which made it plain to readers that there was no adoption by *The Daily Telegraph* of the contents. A closely related issue is whether they went beyond the content of the documents and embellished them, by adding allegations of their own, or drawing inferences from them which they could not sustain.

136. On the second day of the trial the European Court of Human Rights delivered its judgment in *Selistö v Finland* and counsel thus had the opportunity of making submissions upon it in closing. It is, as a matter of first impression, a striking decision. The applicant had written articles in January and February 1996 for a regional daily newspaper which described allegedly unprofessional behaviour on the part of a surgeon, whose identity was not revealed. It was supposed to have led to the death of a patient in hospital just over three years earlier. In 1994 the county prosecutor had concluded that there was no evidence of negligence or involuntary manslaughter. Although the pre-trial record contained a number of statements about X's possible alcohol consumption, the information was contradictory and there was thus insufficient evidence that he operated while under the influence of alcohol. Nor was it possible to determine whether shaking hands impacted on the conduct of his surgery. The deceased patient's widower commented in the first of the articles "How is it possible that a surgeon is allowed to conduct surgery with alcohol in his blood?" The introductory text on the front page attributed the patient's loss of life to the surgeon's "wet Independence Day" (although not idiomatic English, this phrase presumably conveys the information that the surgeon had been drinking on the relevant day).

137. There was a second article a few days later containing interviews on the general desirability of surgeons (and pilots) remaining sober when performing their professional tasks. No mention was made of the individuals concerned. Several weeks later a third article, referring back to the first, asked how the "relatively young woman in good shape died from routine surgery" and quoted four extracts from statements given by hospital staff for the purposes of the pre-trial investigation. These referred to X's regular hangovers and shaking hands. The journalist was charged with intentional defamation and the editor-in-chief with negligent abuse of the freedom of the press. Although the fines were modest, there was held (by the majority) to have been a violation of Article 10. Sir Nicolas Bratza, the President, dissented on the basis that neither the conviction of the journalist, nor the fine imposed on her, was disproportionate to the legitimate aim of protecting the rights of others.

138. The factors which led me to describing the majority decision as "striking" are that:

(i) the allegations were recognised to be factual in character rather than value judgments;

(ii) there had been no defence put forward of truth;

(iii) the surgeon was not named but would have been identifiable to some readers;

(iv) he had not been given an opportunity to comment prior to publication, but was only given a chance to respond afterwards;

(v) what seems to have been crucial to the majority decision was the public interest in the subject matter under discussion in the newspaper articles. The impugned articles recounted matters of patient safety and concerned an important aspect of health care.

139. It was also said at [54]:

> "By reason of the 'duties and responsibilities' inherent in the exercise of freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism.".

140. Because the case concerned factual allegations and, unlike value judgments, they were susceptible of proof, the Court attached importance to the point that these duties and responsibilities had been respected. It was against that background that an assessment had to be made whether the journalist's conviction under Finnish law struck a fair balance between the public interests involved and those of X.

141. Another factor to which the court attached significance was that the national courts had not actually found that the facts presented were erroneous as such, but had rather based the conviction on her omissions of balancing information (such as reference to statements of witnesses who had *not* perceived signs of drunkenness, the prosecutor's decision not to charge the surgeon and the finding of the National Medico-Legal Board that no causal link could be established between the patient's injury and the conduct of either of the two surgeons involved). It was stated at [60] that:

> "It is also of importance that the depicted events and quotations in the [third] article… were derived from the police's pre-trial record, which was a public document. In the court's opinion no general duty to verify… statements contained in such documents can be imposed on reporters and other members of the media, who must be free to report on events based on information gathered from official sources. If this were not the case the efficacy of Article 10 of the Convention would to a large degree be lost".

142. It is also necessary to remember that Article 10 requires that journalists be permitted a good deal of latitude in how they present their material and that a degree of exaggeration must also be accepted: see e.g. *Prager and Oberschlick v Austria* (1996) 21 EHRR 1 and *Bladet Tromsø and Stensaas v Norway* (1997) 23 EHRR CD40.

143. Mr Price submitted that if I were to uphold this claim such a decision would simply prove unsustainable in the European Court in the light of the jurisprudence. He suggested that *Selistö* had probably gone further than any other case before it in protecting journalistic freedom and, while also emphasising the need for "responsibility" in doing so, the right to impart ideas and information.

144. It is thus of some importance to see what *Selistö* does say and what it does not.

145. It does not, for example, require that English law be changed so that direct allegations be treated in the same way as genuine *reportage*. English law makes due allowance

for *reportage* in the way that Simon Brown LJ explained in *Al-Fagih*. Although at first Mr Price acknowledged that his definition of *reportage* in that case ("the neutral reporting of attributed allegations rather than their adoption by the newspaper") was appropriate, he came to accept in the course of argument that perhaps it was (in the light of *Selistö*) not sufficiently generous to journalists. I am quite satisfied, however, that I should follow the approach of Simon Brown LJ and treat it as Convention compliant. Just as the European Court in that case was focussing upon the specific facts, as it always does, so too I must address the particular facts of this case when I attempt to apply the law of privilege generally, and that governing *reportage* in particular.

146. An important constituent of the present case is its political context. Although their Lordships in *Reynolds* rejected the argument that there should be a blanket protection for "political speech", the recognition of the right of the public to receive information and ideas has a particular resonance in the context of political activity and the behaviour of politicians. As was said in *Branson v Bower (No.2)* [2002] QB 737 at [25]:

> "In a modern democracy all those who venture into public life, in whatever capacity, must expect to have their motives subjected to scrutiny and discussed. Nor is it realistic today to demand that such debate should be hobbled by the constraints of conventional good manners – still less of deference."

147. Any consideration of Article 10 jurisprudence needs to take account of the importance of reputation, to which specific reference is made in Article 10(2), and that has been reaffirmed in the recent decision of *Radio France v France* (Application No. 53984/00) on 30th March 2004. That is one reason why the right to free speech is counterbalanced by the requirements of "responsibility" in accordance with the recognised ethical standards of journalism. Another reason, of course, is that it is desirable generally that the public should not be misinformed on matters of public interest, whether about politicians or anything else. None of these important principles is undermined by the *Selistö* decision. Indeed, the court twice, at [54] and [67], referred to the need for journalists "to provide accurate and reliable information in accordance with the ethics of journalism".

148. The decision was on its own facts. Mr Rampton pointed to distinctions between those facts and those in the instant case. The articles in *Selistö* were discussing general matters of patient safety; the operation on the particular unfortunate patient was "selected as an example illustrating the problems involved". It is often the case that discussion of individual cases is used to highlight a more general problem. In that context, the court did not find that the factual statements contained in the articles were excessive or misleading, and the interference with the journalist's Article 10 rights could not be justified as "necessary in a democratic society".

149. Here Mr Galloway, of course, was central to these many pages of *Daily Telegraph* coverage. He was not introduced incidentally to illustrate some more general theme. The allegations, if they were allegations of being secretly in the pay of Saddam Hussein, and thus of "treason", were so serious as to finish him politically. No one would want to vote for him or employ him, or, as Mr Rampton put it, "give him the time of day".

150. That is a significant distinction on the facts. It seems to me that it is so significant that it is hard to see how the generous approach of the court in *Selistö* can throw very much light on the approach I should adopt in this case. It certainly would not be right for me, when assessing the standards of journalistic "ethics" as recognised in this jurisdiction, to conclude from *Selistö* that pre-publication opportunities to comment on gravely defamatory allegations can now be dispensed with. Indeed, Mr Price did not suggest that I should. It is a question of balancing the competing interests having regard to the particular facts. On those in the *Selistö* case, the court was not persuaded that the lack of opportunity to comment beforehand, as opposed to afterwards, amounted to an infringement of ethical standards (especially since the surgeon was not going to be identified except as "X").

151. Here there was an approach to Mr Galloway first and the question is whether it accorded with "responsible journalism", having regard to what was actually published.

152. A further distinction relied upon by Mr Rampton related to the nature of the documents which were apparently the source of the factual allegations. The court in *Selistö* referred to the police pre-trial record as a public document, which it was unreasonable to require the journalists independently to verify. One finds an echo of this approach in the fifth of Lord Nicholls' non-exhaustive criteria ("The status of the information. The allegation may have already been the subject of an investigation which commands respect").

153. Mr Rampton would not be willing to acknowledge the "status" of these Iraqi documents emanating, as they apparently did, from within the tyrannical and corrupt government machine of Saddam Hussein. They certainly could not be said to evidence an investigation of any kind – let alone one "which commands respect". He pointed out that the "key document" (as it was referred to during the trial) consisted of hearsay statements from an unidentified Iraqi intelligence officer. One could hardly claim that the status of this document was such that it would be unreasonable to call upon a journalist to attempt any independent verification. Indeed, it is perhaps ironic that *The Daily Telegraph* should pray in aid the documents' status at the same time as decrying Saddam's intelligence service as being one of the most sinister and feared organisations in the world.

154. I naturally bear in mind the European cases; nonetheless it seems to me that I can do no better than apply the principles in *Reynolds* to the (very special) facts of the present case. Was it in the public interest that the readers should know what the Defendants chose to publish in the articles complained of? Also, applying an objective test, could *The Daily Telegraph* properly consider that it was under a duty to tell the public? In answering those questions, as always, one should have regard to Lord Nicholls' ten non-exhaustive tests as set out at p. 205:

(i) The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.

(ii) The nature of the information, "and the extent to which the subject matter is a matter of public concern".

(iii) The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.

(iv) The steps taken to verify the information.

(v) The status of the information. The allegation may have already been the subject of an investigation which commands respect.

(vi) The urgency of the matter. News is often a perishable commodity.

(vii) Whether comment was sought from the [claimant]. He may have information others do not possess or have not disclosed. An approach to [the claimant] will not always be necessary.

(viii) Whether the article contained the gist of the [claimant's] side of the story.

(ix) The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.

(x) The circumstances of the publication, including the timing.

I also need to bear in mind the general exhortation on the same page:

> "Above all, the court should have particular regard to the importance of freedom of expression. The press discharges vital functions as a bloodhound as well as a watchdog. The court should be slow to conclude that a publication was not in the public interest and, therefore, the public had no right to know, especially when the information is in the field of political discussion. Any lingering doubts should be resolved in favour of publication".

155. Central to Mr Rampton's submissions on the Claimant's behalf, in the context of privilege, is the proposition that the Baghdad documents do not allege that the Claimant took money *for himself* whereas, by contrast, the articles complained of (taken in their proper context, and read as a whole) *do* make that allegation unequivocally. Moreover, whether the thrust of the articles is that he took money for his own benefit, or merely that the Baghdad documents provide powerful *prima facie* evidence that he did, the allegation is so serious that it makes little difference.

156. In the light of those submissions, he invites the Court to conclude that:

(a) No reasonable journalist could reasonably have believed that the proposed articles would *not* convey that imputation against Mr Galloway; the relevant journalists must have known that they would.

(b) The Defendants were under a duty to put the allegations to Mr Galloway before publication, so as to obtain his response and to publish the gist of that response fairly.

(c) The Defendants were under a duty to supply the Claimant with copies and translations of the Baghdad documents and then to afford him time to consider

them in the light of the allegations they were proposing to make (assuming that an accurate summary had been given to him of what it was intended to publish).

(d) The Defendants fundamentally misrepresented the true meaning and effect of the documents in their news articles and editorials.

(e) This must have been a deliberate decision, given that the documents do not allege (and could not reasonably have been understood by any of the journalists involved to allege) that the Claimant took money for himself.

157. It is thus the Claimant's case that the recently developing jurisprudence about *reportage* has little to do with this case. Not only, he argues, were these articles not "fairly and disinterestedly" reporting the context of the Baghdad documents neutrally. They actually went beyond assuming them to be true and drew their own inferences as to the personal receipt of funds diverted from Iraq's oil for food programme – something not alleged in the documents themselves.

158. Mr Price does not accept that the articles conveyed any imputations (as opposed to comments) going beyond the thrust of the documents. On the other hand, if they did, and are thus not wholly protected by privilege in their coverage, he suggests it is important to bear in mind that Mr Galloway's claim should be confined to the unprotected margin. That is to say, he submits that it was the publication of the documents that did Mr Galloway's reputation harm and he should only recover compensation (if at all) to the extent that *The Daily Telegraph* embellished the documents. Mr Galloway rejected that approach on several occasions in cross-examination. He referred to *The Daily Telegraph* as having obscured the documents' limited significance by a "blitz" or "blizzard" of their own material which went right to the heart of his personal and political reputation.

159. I have already ruled that the words do convey the serious meanings for which Mr Rampton contends. The Defendants, if they were "fairly and disinterestedly" reporting the allegations, and the reader could understand that they were *not* adopting or endorsing them, would not necessarily need formally to distance themselves from them: see e.g. *Thoma v Luxembourg.* But here the Defendants were not neutral. They did not merely adopt the allegations. They embraced them with relish and fervour. They then went on to embellish them in the ways I have described.

160. I will consider Lord Nicholls' criteria one by one, but without regarding them as confined within separate compartments. First, as to seriousness, there can be no doubt. Secondly, the subject matter would undoubtedly be of "public concern"; a different question from whether it was in the public interest to publish the specific allegations complained of about the Claimant at the particular time in question.

161. Thirdly, the sources of the information were, if the Defendants are correct, operatives within Saddam Hussein's regime. Whether they had "axes to grind", in Lord Nicholls' phrase, is an open question but they can hardly be classified as inherently reliable. Fourthly, I need to consider what steps were taken to verify the information. None were taken because the Defendants did not think they needed to do so, or that they were capable of carrying out any meaningful verification. They say that guilt could be established only by " a more detailed investigation using powers which a newspaper lacks".

162. Fifthly, there is the "status" of the information. That is, on the facts of this case, obviously very closely linked to the third point. The documents clearly cannot be regarded as having the same status as some official report published, after full enquiry, in this jurisdiction. It could hardly be suggested that the allegations that the Claimant had received money from Saddam Hussein, or from the oil-for-food programme, had been "the subject of an investigation that commands respect". Nor were they "public documents" such as (say) the pre-trial records in *Selistö.*

163. The next three of Lord Nicholls' criteria are intimately connected. Sixthly, there is the "urgency" of the matter. It is necessary to distinguish between an urgent need for the public to be told of untested allegations and the need of the Defendants to maintain security for what they later called the "scoop that led the news". Of course, in one sense, "scoops" are "the lifeblood of the newspaper industry": see e.g. *Greene v Associated Newspapers Ltd* [2004] EWCA Civ 1462 at [75]. But I need to bear in mind Lord Nicholls' observations in *Reynolds* at p. 201 G-H:

> "… in the absence of any additional safeguard for reputation, a newspaper, anxious to be first with a 'scoop', would in practice be free to publish seriously defamatory misstatements of fact based on the slenderest of materials. Unless the paper chose later to withdraw the allegations, the politician thus defamed would have no means of clearing his name, and the public could have no means of knowing where the truth lay. Some further protection for reputation is needed if this can be achieved without a disproportionate incursion into freedom of expression."

I naturally also appreciate that news can be a "perishable commodity" but this story, if it could be stood up, would be of interest at any time. It would not become stale.

164. Here, the urgency *from the public point of view* cannot be said to be so great as to justify either not giving the Claimant a proper opportunity to comment on the Baghdad documents or omitting to carry out any attempt at all at verification. Somebody at least needed to take the opportunity to speak to Mr Zureikat (either Mr Galloway or *The Daily Telegraph*). Channel 4 were able to interview him at mid-day on 22nd April. It was therefore by no means an unreasonable step to take.

165. Seventh, it was hotly debated as to whether the approach to Mr Galloway was adequate for the purpose. It all depends on whether the telephone conversation of 21st April gave him a reasonable opportunity, in all the circumstances, to comment on what *The Daily Telegraph* had in mind to publish *and* a sufficient time to give a meaningful response.

166. Eighth, there is the intimately related question of whether the article contained "the gist of his side of the story". The interview between Mr Sparrow and Mr Galloway was recorded and, subject to minor glitches, is available for scrutiny. I have described it in some detail already, when summarising the evidence before me. I am quite satisfied that (a) the articles published on 22nd April conveyed the impression that Mr Galloway was in receipt of hundreds of thousands of pounds from Saddam Hussein, (b) it is clear from the morning and afternoon "foreign lists" of 21st April that this was fully intended by the editorial team, and (c) that no such allegation was put to him in advance of publication by Mr Sparrow or any one else. It should have been.

167. It also emerges from the "foreign lists" that they had it in mind, as a real possibility, to allege that he solicited an "Iraqi bribe" and/or that he was an "Iraqi spy". Following through that theme, the leader next day accused him of "treason" to all intents and purposes and, even though it is not customary to put leaders to people in advance, the underlying factual basis for such a charge clearly should have been put to him with complete frankness. Since it was not, the gist of what Mr Galloway had said to Mr Sparrow related to a different "story" from that published.

168. Ninth, the tone of the coverage was dramatic and condemnatory. In Lord Nicholls' terminology, this newspaper did not "raise queries or call for an investigation"; it chose to "adopt allegations as statements of fact". Even more significantly, however, it went beyond the documents and drew its own conclusions.

169. Tenth, there is Lord Nicholls' sweeping up category of "the circumstances". There is nothing additional that requires to be addressed under that heading.

170. In the last analysis, after all these factors have been individually addressed, the question to be answered is "whether in all the circumstances the 'duty-interest test or the right to know test' has been satisfied so that qualified privilege attaches": *per* Lord Phillips MR in *Loutchansky* at [23]. It is to be answered according to an objective test: *ibid*. at [40]. It is the classic test long established at common law. The decision in *Reynolds* served as a reminder of the width of those common law principles and of how adaptable they are to a great variety of circumstances. It was also more encouraging of their invocation than previous English decisions, according to Lord Cooke, who was one of the majority of three. He made this clear in the later case of *McCartan Turkington Breen* cited above, at pp. 300-301.

171. The question is not simply whether the allegations in the Iraqi documents were of public interest, but whether *The Daily Telegraph* was under a social or moral duty to communicate the totality of what it chose to publish to the world at large on 22nd and 23rd April 2003 and, specifically, the words complained of in these proceedings.

172. As is obvious, those communications went well beyond reporting the content of the documents and calling for an inquiry. Did the public have a right to be given *The Daily Telegraph* "blizzard" of interpretation (in Mr Galloway's phrase) as well as the basic facts? To put it another way, did *The Daily Telegraph* have a *duty* to publish the material to the effect that Mr Galloway was an "MP in Saddam's pay" at all? Did they have a duty to do so without putting that allegation to him? To my mind the answer must clearly be in the negative. Unfortunately, as emerged from a consideration of the transcript, the discussion between Mr Sparrow and Mr Galloway was confined to the Mariam Campaign and whether Iraqi money had been solicited or received for that. That was denied in unequivocal terms, but nothing was said about using it as a front, or siphoning off monies from the oil-for-food programme, for personal enrichment.

173. Thus, I am afraid that making all due allowance for the encouragement towards the wider and more flexible use of common law principles, in *Reynolds*, I am quite unable to uphold the privilege defence.

Fair comment

174. There is a plea of fair comment which is limited to the two leader articles and, curiously, also two of the headlines published on 23rd April; namely, "Telegraph reveals damning new evidence on Labour MP" and "Bluster, two homes and the

unanswered questions". These various words are said to contain honest comment "on the articles detailing the discovery of the Iraqi documents, their contents and the Claimant's response to them". It is pleaded that the Defendants were able to comment on their own articles, irrespective of their truth or otherwise, because the articles themselves were protected by privilege. Alternatively, even if the articles were not privileged, they would be entitled to comment on the contents at least of the Iraqi documents themselves – whether or not *they* were true.

175. There is a line of authority which does indeed support the proposition that one may comment upon reports which are themselves the subject of privilege: see e.g. *Cook v Alexander* [1974] QB 279 and *Brent Walker Group plc v Time Out Limited* [1991] 2 QB 33. It emerges that a defendant in such circumstances does not need to prove that the underlying facts were true but must prove (i) that the statements in question were made on a privileged occasion and (ii) that the report of those statements was fair and accurate. These rules were not geared to the form of privilege defence relied upon in this case, and the learned editors of Gatley on Libel & Slander (10th edn.) at para. 12.20 point out certain difficulties of application in that context. In principle, however, the same rule must apply.

176. If A was commenting on a publication by B, which was said to be protected by *Reynolds* privilege, no doubt there could be problems for A in establishing B's privilege. But that does not arise here. The Defendants rely on their own publication of the Iraqi documents and say that they are entitled to comment on the allegations contained therein. Moreover, there is no question of inaccuracy or unfairness, at least in the direct sense that the Iraqi documents were reported in a misleading way, since they published the documents in their entirety. Thus, this limb of the fair comment argument depends upon the outcome of the defence of privilege.

177. I turn to consider the alternative plea of fair comment, which is based upon the right to comment on the Iraqi documents themselves. Mr Rampton's primary point on fair comment was that the relevant words sought to be so protected were allegations of fact rather than comment. In view of the structure of the pleading, however, there is another fundamental problem with the Defendants' case on the leader articles. It is expressed on a hypothetical or conditional basis. They pray in aid the conditional formula adopted in parts of "Saddam's little helper".

178. The conceptual problem is this. If one says, "If Mr Justice X took a bribe, he is not fit to hold office", that is not of itself defamatory of Mr Justice X. It would be true as a moral proposition whichever name appeared. It would equally be true of Mr Justice Y and Mr Justice Z. The function of a plea of fair comment is to defend a defamatory comment about the relevant claimant. I have never encountered a plea of fair comment in this conditional form previously and the reason is not far to seek. A statement in that form is not defamatory. Of course it may be, depending upon a particular context, that the words do give the impression that the claimant actually did the reprehensible act in question. If so, the appropriate defence would be one of justification, either on the basis of "guilt" or perhaps "reasonable grounds to suspect". That is a strategy which has been spurned by these defendants.

179. As to "Saddam's little helper", what is said is that *if* what the Baghdad documents purport to show turns out to be the truth, Mr Galloway's conduct *would* amount to treason. That is an observation of a moral nature about hypothetical conduct. Outside the scope of comments made upon privileged material, as Mr Price accepted, it is

necessary for a defendant who relies on fair comment to prove the facts *about the claimant* upon which the comment was based. Here the Defendants positively eschewed that task: they seek to prove nothing by way of reprehensible conduct on Mr Galloway's part.

180. As I noted earlier, when discussing the possible roles for a jury in this case, one cannot comment upon *allegations* about the Claimant and then avail oneself of the fair comment defence (any more than one can justify by reference to the fact that allegations have been made). One has to comment upon the claimant's conduct and, if it is not admitted, prove that conduct. The defence in relation to the 22nd April leader would fail for that reason alone.

181. In any event, there is Mr Rampton's submission that, taken as a whole and read in context, the leader in question is factual in character. It alleges or assumes conduct on the part of Mr Galloway that is deserving of such prominent and strongly worded condemnation. It is not headed, "If Mr Galloway were Saddam's little helper, this would be a very serious matter and should therefore be fully investigated". Of course, headlines cannot be lengthy and they should be eye-catching. In accordance with those imperatives, Mr Galloway is *asserted* to be "Saddam's little helper". Moreover, the first sentence accords with this approach. I accept that it expresses a value judgment – "It doesn't get much worse than this". But it is a value judgment about Mr Galloway's unproven conduct. The leader writer has come to his own conclusion about that and taken the risk of commenting upon it. It was thus a classic case of publishing and being damned.

182. The article is directed as much towards the poor benighted anti-war campaigners as against Mr Galloway. It is acknowledged that "If it is unfair to blame Labour for Mr Galloway, the anti-war movement is far more culpable". In the light of "today's revelations", it is they who are encouraged to mend their ways and to recant their support:

> "They may feel misled. They may even, as they see how much more the occupying forces are doing for Iraqi civilians than the old regime ever did, feel guilty. Above all, they may be reluctant to march in support of this kingdom's enemies in future".

The effect of the leader is to point out that Saddam regarded the anti-war movement as an ally of his regime – "so much so, it seems, that he was prepared to divert money away from hungry children in order to finance it". The message is clear. That is why "it doesn't get much worse". He was diverting it to Mr Galloway, who had misled the anti-war protesters.

183. Mr Rampton selected other passages to illustrate the same point. There was the suggestion in the leader that Mr Galloway was "*reduced* to suggesting that the whole thing was a *Daily Telegraph* forgery" (emphasis added). There is also the passage where Mr Galloway is likened to Jeffrey Archer and it is said that "his energy, combined with the readiness to litigate, saw him through many incidents that might have done for other politicians". The leader writer then adds "Many, from all wings of the Labour Party, have nursed their doubts about the Glasgow MP…Yet they have

never been able to pin their doubts on anything concrete". The implication is clear; now they can.

184. The 23rd April leader was entitled "Galloway's gall", which hardly suggests that judgment is being suspended. The Iraqi documents are described as "damning". It was said that "nobody led [Mr Blair] to the secret files that contained the correspondence between the head of Iraqi intelligence and Saddam's secretariat, in which the remuneration of Mr Galloway was discussed. It was superlative detective work by Mr Blair to rescue these documents… The methods by which Mr Galloway's activities came to light were those of a classic scoop". Mr Rampton points out that these passages take as read the propositions that Mr Galloway was indeed receiving remuneration and that he had been participating in activities which had hitherto not come to light.

185. The third paragraph contains the sentence that "David Blair uncovered strong *prima facie* evidence that a British MP had been in the pay of a foreign dictator with whom this country had just been at war". That is not comment. It is a classic example of a defamatory assertion that is susceptible to a defence of justification (along the lines of "strong grounds to suspect").

186. Lower down the question is asked, "Where did the money go?" As Mr Rampton submits, that necessarily asserts that there was money paid to Mr Galloway and that it has "gone" somewhere. Suggestions are then made by the leader writer that the money might in fact have been channelled through "such shadowy entities as the Great Britain Iraq Society, of which he is chairman; but these phantoms have no address and nothing is known about them". The possibility is addressed that these are "front organisations, financed by the Saddam regime partly for the benefit of Mr Galloway and his causes".

187. Later, it is stated that "Mr Galloway's own motives are obscure". That clearly suggests that he has done something reprehensible, even though his motives remain obscure. The leader then goes on to suggest that he would not be the first public figure to have been suborned by a foreign intelligence agency (and an analogy is drawn with the KGB).

188. The leader concluded:

> "Once Mr Galloway had been drawn into the web, he could not have escaped without risking the destruction of his career. His exposure suggests that others may follow. Though he is a colourful and eloquent figure, Mr Galloway does not wield much power or influence. He would not be the only Western European politician to have yielded to the temptations of Saddam. Others who acted as his apologists over many years must now be wondering what further documents will emerge from the ruins of the regime".

The notion of "exposure" plainly connotes, as Mr Rampton has submitted, that wrongdoing has taken place. I accept that the leaders are defamatory of Mr Galloway and that their "sting" is factual rather than comment. It is the difference between tentative comment and a rush to judgment.

189. The headlines to which I have referred are defended on a different basis; that "damning" and "bluster" are expressions of opinion (presumably on "facts truly stated"). I have already expressed the view that "damning" has a plain meaning; that is to say, that the evidence goes beyond a *prima facie* case and points to guilt. "Bluster" is hot air and therefore weighs nothing in the opposing scales.

190. In the result, I have come to the conclusion that there is no basis upon which the defence of fair comment can succeed.

Damages

191. Mr Price made a number of submissions on the issue of damages. First, he argues that the newspaper would have been entitled to publish the content of the Iraqi documents (in accordance with *Reynolds* privilege) and that if other parts of the coverage should be held unprotected, either by privilege or fair comment, then compensation should be awarded in those respects (if at all) on a very limited basis. It should only take account of any marginal damage to his reputation over and above that occasioned by the Iraqi documents themselves of which he does not complain. He submits that it is those which have caused the damage and, in so far as Mr Galloway takes issue with the newspaper's own coverage, he is merely "nit picking" over something relatively unimportant.

192. Secondly, he submits that it would be wrong to compensate Mr Galloway for any damage, and more specifically any damage flowing from the publication from the Iraqi documents, at a time when the Parliamentary Commissioner for Standards has yet to investigate *inter alia* the truth of the underlying allegations.

193. I wish to make it clear that I have carefully avoided saying anything about the suspended inquiry of the Commissioner for Standards and, for reasons of relevance as well as Parliamentary privilege, I propose to say nothing about the conduct or motives of the members of the relevant select committee, as to which Mr Galloway expressed his own views in his evidence. It is not for me to encroach in any way upon those matters. Nevertheless, since Mr Price has raised the matter in this particular context, I cannot remain wholly silent.

194. My duty is clear. I must reach conclusions upon the issues before me and, if I hold that Mr Galloway has been defamed, I must award appropriate damages in respect of the relevant allegations. I cannot withhold a remedy because an inquiry before a different body will or may take place in the future. There has been no plea of justification in this case, and accordingly it has not been part of my function to rule directly upon the truth or otherwise of the underlying allegations. It is well established that a court in such circumstances must proceed on the basis that any defamatory allegations of fact are presumed false in the claimant's favour.

195. Moreover, even where a defendant is pleading justification on the basis of "reasonable grounds to suspect", it has recently been re-affirmed by the Court of Appeal in *Chase v News Group Newspapers* [2003] EMLR 218 at [65] that such a plea should not be framed in such a way as to have the effect of shifting the burden of proof on to the claimant: see also *McPhilemy v Times Newspapers Ltd* [1999] EMLR 751, 774. *A fortiori* where there is no plea of justification at all.

196. Nevertheless, as in virtually all libel actions which come to trial, this Claimant has gone into the witness box and denied in the clearest possible terms the truth of the

allegations made against him. He also said that he would have relished a fight on a plea of justification, and that he has nothing to fear from a full investigation of his finances. I found Mr Galloway a convincing witness in general terms, and I have no reason to doubt his evidence in these respects either.

197. Mr Price had the option of applying to the Court at some stage in the past, if he wished to do so, for these proceedings to be postponed until such time as either the Parliamentary Commissioner or the members of the Select Committee themselves had come to their own conclusions. No such application was made. Accordingly, I must come to a determination on the evidence before me and I cannot resolve these proceedings on the basis of a half-way house solution. I need to address Mr Price's submission, however, in a little more detail:

> "In these circumstances what is the Court to do, if the Claimant succeeds on liability? The situation engineered by the Claimant threatens to bring the judicial proceeding into disrepute: if the Claimant is vindicated by the judicial proceeding, and Parliament ignores it, the judicial proceeding is set at naught and brought into disrepute or even (if the Parliamentary investigation finds the Claimant guilty) contempt. On the other hand, if Parliament accepts that the Claimant has been vindicated by the judicial proceeding, and closes down its investigation of the truth of the matter, the situation will be right for a public outcry, and both Parliament and the judicial proceeding will have been brought into disrepute".

As I have already emphasised, I intend to be very cautious in my approach, and to honour the conventions of Parliamentary privilege and the provisions of Article 9 of the Bill of Rights. I certainly do not intend to take any step which will bring these judicial proceedings into contempt, and I see no reason to suppose that they will in any way infringe Parliamentary privilege or give any appearance of inhibiting Parliament's wide-ranging powers of investigation into the conduct of one of its members.

198. These arguments are raised by Mr Price because he submits that "… the damages should be nominal, and it should be made crystal clear that vindication, in the sense asked for in the letter before action must be achieved, if at all, in the Parliamentary inquiry. In the present case, strict application of the presumption of falsity (which, of course, is dependent on the defamatory meaning which the Court attaches to the publication) should yield to the overriding objective, and to recognition that the Claimant has brought this situation on himself. If the Court is critical of the way in which the Claimant has brought about the situation, or particularly if the Court considers that it arose because the Parliamentary Commissioner for Standards was misled, we submit that any compensation should be contemptuous".

199. I have no reason to believe that Mr Galloway or his solicitors in any way misled the Parliamentary Commissioner. Because it is so important, however, I emphasise yet again that such a question would be for Parliament to determine rather than this Court. I do not propose to allow such considerations to impinge upon the outcome of this case – save in one respect. One of Mr Rampton's brief submissions on the issue of damages was that certain conduct of the Defendants had the effect of aggravating the damages; in other words, of "adding insult to injury". One aspect of the Defendants'

conduct upon which he relies is this very assertion that Mr Galloway has "engineered" matters to his own advantage and may have "misled" the Parliamentary Commissioner. I do not, of course, need to infringe Parliamentary privilege in order to recognise that such allegations are in themselves insulting. I believe it is unfortunate that these matters have been raised but, for what it is worth, it should be recognised that the allegations form a part of the conduct of the Defendants' case with which Mr Galloway has had to contend in court.

200. I do not see how the "overriding objective" of doing justice between the parties requires me to ignore the well established presumption of falsity operating in a claimant's favour. Needless to say, as with any other claimant, if it emerged that Mr Galloway had perjured himself in the witness box and had, after all, been "in Saddam's pay", then no doubt the Defendants would have remedies open to them. They might wish to pursue a similar course of action to that adopted quite recently by the defendants in the 1987 libel action brought by Jeffrey Archer. I hasten to add that I have no reason whatever to believe that such an eventuality will come about. As I have made clear, I found Mr Galloway a truthful and compelling witness. I need to explain why, nonetheless, any fears that these proceedings will bring the administration of justice into disrepute, or fail to serve the overriding objective, are misplaced. I intend, therefore, to approach the question of damages as I would in any other case in the light of the evidence before me and the findings I have made.

201. It is well known that the objectives of general damages in defamation proceedings are threefold. First, there is a need to compensate the relevant claimant in respect of any distress or hurt feelings. Secondly, it is appropriate to compensate for any injury to reputation. Thirdly, as Lord Hailsham explained in *Broome v Cassell* [1972] AC 1027, there is a need to vindicate the claimant. Compensatory damages serve as an outward and visible sign of vindication with a view to the restoration of the claimant's reputation. If interested observers were aware of the original allegations, as plainly they have become aware of these, the claimant should be able to point to a sum of damages awarded by a judge or jury so as to be able to convince them, in Lord Hailsham's words, of the "baselessness" of the original charges. These are all elements in the exercise of awarding damages, and I do not intend to exclude any of them from consideration in the present case. There is no need to do so and it would not be right in principle.

202. Unlike many libel claimants, Mr Galloway is not a shy or retiring character to whom the attentions of the media are in themselves shocking. He is a tough political operator who is used to hard-hitting criticism. That is not to say, on the other hand, that he would be any the more unlikely to suffer distress or hurt feelings when the allegations go to the heart of his integrity and political reputation. Allegations of "treason" are not part and parcel of the knocks one expects to take in the course of everyday political debate. Mr Rampton did not make a meal of the issue of damages. He submitted simply that the gravity of these allegations was such as to bring them near the top of the bracket. That is hardly capable of dispute.

203. It is always necessary to bear in mind the extent to which there has been aggravation or mitigation of the effect of the original allegations. At least it can be said that this is not one of those cases where there has been a plea of justification, which the claimant has had to answer in court before it was ultimately rejected. The Defendants have made it clear throughout that it was no part of their case to suggest that the allegations of being on Saddam's pocket were true, or even that there were "reasonable grounds

to suspect" Mr Galloway of that charge. Having said that, the Defendants have sought to tread a somewhat ambiguous line. It *was* part of their case that there were very serious questions to answer and to which the Claimant had, even now, given no satisfactory answers. Apart from failing to recognise where the burden of proof lies, that somewhat undermines the deflationary effect upon damages which the absence of a plea of justification would ordinarily entail. It inevitably clouds the issues and has the effect of smearing him.

204. Mr Rampton relied upon the fact that Mr Galloway had been treated to high-handed and insulting behaviour in court. There is no doubt, as he recognises himself, that he is to some extent the author of his own misfortune. Although he has made clear in court that he has always regarded Saddam as a brutal dictator, even in the past when he was receiving support from western governments, he has been perceived by some as giving him succour either wittingly or unwittingly. A contributing factor to this general impression was the speech in 1994, to which I have already referred, and which was replayed in the course of the trial. That accounts partly for the scorn which was poured upon his case, but not entirely.

205. One aspect of aggravation was the unfortunate attribution in cross-examination of anti-semitism. I am quite prepared to accept that it was a slip, in the heat of the moment, and that it was not intended to be put forward as part of the Defendants' case. It is necessary for me to consider exactly how it came about. Mr Price wished to refer to a fund-raising letter written by Mr Galloway for the purposes of obtaining support in these proceedings. In it he suggested that he had been attacked by *The Daily Telegraph* because of his views on the Middle East in general and the Palestinian cause in particular. Wisely or unwisely, he referred to Lord Black (formerly proprietor of *The Daily Telegraph*) and his wife Barbara Amiel as being among Mr Sharon's most vociferous supporters. Mr Price wished to put this document to him in the course of cross-examination. Before he did so, and I believe when it was not actually in front of him, he somewhat unguardedly said that Mr Galloway had referred to Barbara Amiel's hostility towards him being due to the fact that she was Jewish. The document, of course, said no such thing.

206. There is no doubt that Mr Galloway was insulted and stung by this remark. He said that he was not anti-semitic and had never made an anti-semitic remark in his life. He thought it part of a *Daily Telegraph* strategy to smear him in these proceedings. I think he was probably wrong about that, but nonetheless he found it insulting. It was an unfortunate episode and one which, to some extent at least, must have an aggravating effect.

207. For the sake of accuracy I should set out the exchange in full:

> "Mr Galloway: …I freely concede to you that throughout, especially throughout the period of ownership of Lord Conrad Black and Barbara Amiel, The Daily Telegraph hated everything that I believed about the Middle East.
>
> Mr Price: And you are on record as saying that [is] because Barbara Amiel is Jewish.
>
> Mr Galloway: I beg your pardon. That is an – if you can libel someone in a courtroom, that is a very serious libel.

Mr Price: I had better show you the letter then.

Mr Galloway: Yes, you'd better.

Mr Price: It will be found in a minute.

Mr Galloway: Yes, I hope so. That's a clear accusation of anti-semitism against me and I demand that you withdraw it.

Mr Price: I am not accusing-

Mr Galloway: I demand that you withdraw it.

Mr Price: I am not accusing you of anti-semitism.

Mr Galloway: I have never made an anti-semitic comment in my entire life and I demand that you withdraw it.

Mr Price: This is the letter, I can hand you a copy of it so you can see it, and I will hand one to my Lord and to my learned friend…look at the fifth paragraph there: 'The Telegraph group is controlled by Lord and Lady Black, Barbara Amiel, two of Israel's most vociferous supporters'

Mr Galloway: And in what sense is that a reference to somebody's religion?

Mr Price: It is a reference to Black's nationality. I will tell you what it is.

Mr Galloway: My Lord, this is an outrage. This letter which has been produced does not mention the word 'Jewish', does not mention that anyone involved in the letter is Jewish. It says 'Sharon's Israel most vocal supporters'.

Mr Price: …In this letter you are saying that The Telegraph reports that you are suing on were in some way inspired by the fact that Lord and Lady Black are supporters of Israel.

Mr Galloway: I don't know if I'm in order here but I demand that you withdraw.

Mr Price: Just answer the question.

Mr Galloway: I demand that you withdraw the allegation of anti-semitism against me.

Mr Price: I have not accused you of anti-semitism.

Mr Galloway: The court record shows very clearly that you said that in this letter I referred to Lady Black as being Jewish. It was a lie, a lie, a lie.

> Mr Price: All right, I withdraw the suggestion that you referred to her as being Jewish. You referred to her as being one of Israel's most vociferous supporters.
>
> Mr Galloway: I don't think that even she would dispute that".

208. Another unfortunate aspect of cross-examination was that at one point Mr Galloway was asked whether he was seeking to defend Saddam Hussein over the atrocity at Halabjah, when chemical weapons were used in March 1988, resulting in a large number of deaths. Mr Galloway had just given evidence to the effect that he condemned Halabjah at the time "unlike the British and American governments, who went on supplying Saddam Hussein with weapons". He then suggested that the death toll had in fact been exaggerated for propaganda reasons, and he would not necessarily accept that the total number of deaths was as high as twelve thousand. It was this which led Mr Price to ask "Are you defending Saddam Hussein now over Halabjah Mr Galloway?" Again, this clearly stung Mr Galloway, who responded simply "How dare you?" The remarks to which I have referred were gratuitous and would appear to have served no legitimate purpose in the litigation. This is why Mr Rampton was led to make reference to them in this context.

209. Since the decisions of the Court of Appeal in *John v MGN Ltd* [1997] QB 586 and *Heil v Rankin* [2001] QB 272 the courts have been working to a rough and ready guide, to the effect that the maximum for general compensatory libel damages is of the order of £200,000. Whether this practice will continue remains to be seen in the light of the observations of Lord Hoffmann in *The Gleaner v Abrahams* [2004] 1 AC 628, PC. He expressed no view on the current practice in England but observed that the matter "is clearly one on which different opinions may be held". He emphasised that different considerations of policy apply to awards in defamation cases from those in personal injury cases. In defamation, the damages often serve not only as compensation but also as an effective and necessary deterrent. As was made clear by Lord Reid in *Broome v Cassell*, cited above, aggravated damages may sometimes be awarded on the basis of the court's disapproval of the defendant's conduct. On this basis, it may indeed be thought that deterrence is a function not confined to punitive damages.

210. Moreover, Lord Hoffmann drew attention to the fact that damages in defamation proceedings must be sufficient to demonstrate to the public that the claimant's reputation has been vindicated. "Particularly if the defendant has not apologised and withdrawn the defamatory allegations, the award must show that they have been publicly proclaimed to have inflicted a serious injury": see [55].

211. A further difference is that in an action for personal injury it is not usually difficult for the claimant to prove that his injury caused inability to work and consequent financial loss. Loss of earnings is thus recoverable as special damage and ordinarily, in cases of grievous injury, constitutes by far the greater part of the award. In defamation cases, on the other hand, it is usually difficult to prove a direct causal link between the libel and loss of any particular earnings or any particular expenses. Nevertheless, it is clear law that a jury is entitled to take those factors into account in the award of general damages. The strict requirements of proving causation are relaxed in return for moderation in the overall figure awarded: see [56].

212. I note these matters in passing and I do not consider that the somewhat uncertain state of the law in this area is going to have any direct impact on the compensation exercise in the present case. By contrast with the claimants in *Lillie & Reed v Newcastle City Council* [2002] EWHC 1600 (QB), where it was important for me to identify the maximum permitted, since I intended to award compensation on that scale, here I feel that I can compensate Mr Galloway without needing to isolate that cut-off point (if indeed there still is one) with any degree of precision.

213. Mr Price invited me, if I were come to the stage of awarding damages, to have well in mind that, once discovered, the contents of the Baghdad documents were almost certainly going to come into the public domain sooner or later. As a matter of causation, therefore, I should not compensate Mr Galloway in respect of either hurt feelings or injured reputation to the extent that such damage would have been brought about in any event. The suggestion appears to be that it was not the fault of *The Daily Telegraph* that Mr Galloway suffered damage; this was attributable to the publication of the documents (which are not, as such, complained of).

214. There is something faulty about this logic. The documents did not publish themselves and the mode of their presentation was wholly under the control of *The Daily Telegraph*. The argument may have some superficial attraction. On the other hand, it is a little ironic that while the newspaper was, understandably, praising Mr Blair's "superlative" detective work, and claiming that its scoop had led the news, it should also be seeking to distance itself from the consequences of the publication to the world at large.

215. It is difficult to see how I could decide (a) what would have happened if the documents had found their way into the public domain by another route, or (b) how they would have been treated if another newspaper had published them after Mr Galloway had seen them, and had an opportunity to speak to Mr Zureikat, or (c) whether *The Daily Telegraph* allegations would have had so much impact if the information was already before the public as to how Mr Galloway funded his villa in the Algarve and his house in Streatham, or (d) how they would have been received if (say) the documents had been revealed in the House of Commons. There are so many hypotheses that the exercise becomes too speculative. I must focus on the defamatory allegations, as they were published, in their context.

216. It has sometimes been said in the past, where someone has been criticised on the floor of the House of Commons, that a particular politician would not have dared to make such a defamatory charge outside the protection of Parliamentary privilege. It is an all or nothing distinction. Either he says it outside the House of Commons and is subject to the full rigours of the law of defamation (including the disciplines attaching to the various defences available), or he says it within the scope of absolute privilege. If he chooses to take the bold step of publishing outside and it turns out to have been wrong, he cannot subsequently say "Well, I could have published it in the House of Commons anyway. So the Claimant should only be compensated on the (fictitious) basis that I was only reporting something after the harm was done".

217. It seems to me that Mr Galloway is entitled to be compensated for the manner in which the newspaper chose to put the Iraqi documents into the public domain and the spin which the Defendants chose to put upon them. As he said, *The Daily Telegraph* chose not to confine itself to reporting the documents. He complains of the effect upon his reputation and hurt feelings brought about by the "blizzard" of comment and

inference with which the publication of the documents was surrounded. Moreover, the "blizzard" came out of the blue without any opportunity to refute their inferences. This again illustrates how unrealistic it would be for me to try to compensate Mr Galloway for the "blizzard" but not for the content of the underlying documents.

218. The allegations are plainly very serious. There has been no apology. Nor has there been any plea of justification. Yet there were undoubtedly aggravating features about the conduct of the trial to which I have referred above. The figure I must award by way of general damages for compensation must be no greater than is necessary to achieve the legitimate objectives which I have identified, and must be proportionate to those objectives and the harm done. In all the circumstances, it seems to me that the right figure is £150,000.

A short summary of my conclusions

(Not part of the judgment)

1. The allegations published in *The Daily Telegraph* articles on 22nd and 23rd April 2003 were seriously defamatory of Mr Galloway.

2. They conveyed, among others, the following meanings to reasonable and fair-minded readers, namely that:

   (a) Mr Galloway had been in the pay of Saddam Hussein, secretly receiving sums of the order of £375,000 a year;

   (b) He diverted monies from the oil-for-food programme, thus depriving the Iraqi people, whose interests he had claimed to represent, of food and medicines;

   (c) He probably used the Mariam Appeal as a front for personal enrichment;

   (d) What he had done was tantamount to treason.

3. It was no part of the Defendants' case to suggest that any of these allegations were true, or even that there were reasonable grounds to suspect that they were true.

4. It was the Defendants' primary case that their coverage was no more than "neutral *reportage*" of documents discovered by a reporter in the badly damaged Foreign Ministry in Baghdad, but the nature, content and tone of their coverage cannot be so described.

5. Although Mr Galloway was interviewed by telephone on the afternoon of 21st April, he was not given an opportunity of reading the Iraqi documents beforehand; nor were they read to him. He did not therefore have a fair or reasonable opportunity to make inquiries or meaningful comment upon them before they were published. All he had was Mr Sparrow's attempt to summarise their effect, albeit rather garbled, which concerned the funding of the Mariam Appeal.

6. It was not put to Mr Galloway during the interview that *The Daily Telegraph* was proposing to publish any of the allegations to the effect of personal enrichment listed at 2 above. Again, he did not have a proper opportunity to respond in advance to allegations of such gravity.

7. In all the circumstances, it cannot be said that the Defendants were under a social or moral duty to make the allegations about Mr Galloway at that time, and without any attempt at verification. Accordingly they were not protected by privilege at common law (whether under *Reynolds v Times Newspapers*, or otherwise).

8. None of the allegations was protected by the defence of fair comment.

9. I am, therefore, obliged to compensate Mr Galloway in respect of the publications and the aggravating features of the Defendants' subsequent conduct, and to make an award for the purposes of restoring his reputation. I do not think those purposes would be achieved by any award less than £150,000.

10. That sum is almost certainly less than he would have been awarded before the downturn in the level of libel damages over the last few years, which takes account of the decision of the European Court of Human Rights in *Tolstoy v United Kingdom* (1995) 20 EHRR 442 and the guidance given by the Court of Appeal in *Elton John v MGN* [1997] QB 586.