



Neutral Citation Number: [2005] EWHC 893 (QB)

Case No: HQ05X00329

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 12/05/2005

**Before:**

**THE HON. MR JUSTICE EADY**

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**Between:**

**Jonathan Campbell-James**  
**- and -**  
**Guardian Media Group plc**

**Claimant**

**Defendant**

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**Jacob Dean** (instructed by **Carter-Ruck**) for the Claimant  
**Heather Rogers** (instructed by **Guardian Legal Department**) for the Defendant

Hearing date: 28th April 2005  
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**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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**THE HON. MR JUSTICE EADY**

**Mr Justice Eady:**

1. This is an application made under s.3(5) of the Defamation Act 1996 for a judge to assess compensation in respect of a libel published in *The Guardian* on 16<sup>th</sup> September 2004 under the eye-catching heading “UK officers linked to torture jail”. This was a reference to the notorious activities at Abu Ghraib prison in Baghdad where, by this time, it was widely known that Iraqi prisoners had been systematically abused, tortured and humiliated by American soldiers. It was written by Richard Norton-Taylor.
2. The Claimant is Col. Jonathan Campbell-James, a distinguished soldier who has served for nearly thirty years in the Intelligence Corps. His former commanding officer speaks of him as “embodying the best traditions of the British army”. He is an Arabic speaker who, at the age of 16, joined the Council for the Advancement of Arab/British Understanding. Since that time he has maintained a close interest in Arab and Middle Eastern affairs. He was a frequent visitor to the Middle East in his university days at Durham, where he read Middle-Eastern Politics and History.
3. The Claimant has served with two infantry battalions in Northern Ireland and also in the former Yugoslavia. During the first Gulf War in 1991 he was in Riyadh. Between 1997 and 2000 he was in Oman and was awarded the Sultan’s Commendation Medal. He was posted to Iraq in February 2004 and served at the multi-national headquarters in Baghdad for six months. By the time of his arrival, the United States army had already uncovered and put a stop to the prisoner abuse which had taken place at Abu Ghraib in late 2003. It is important in the context of this case to note that the Claimant was at no stage based at Abu Ghraib or in any way responsible for the interrogation of prisoners there. When the abuse took place, he was not even in Iraq.
4. When the article was published Col. Campbell-James was in Italy studying International Relations and Strategic Studies. He first heard of the article when he was telephoned by Brigadier Evertson, the Director of the Intelligence Corps. He advised him to read the article, of which he had no warning at all. There is no doubt that he was one of two British officers identified in the headline as being “linked to torture jail”. Precisely what the article was supposed to convey to reasonable readers is unclear. It is obscurely written, but what would undoubtedly stay in the mind is that he was identified as being linked to those notorious abuses. So as to avoid any misunderstanding, I should set out the full terms of the article as they appeared underneath the headline:

“The Ministry of Defence has admitted for the first time that senior British officers were working closely with American commanders at Abu Ghraib, the Baghdad prison where Iraqi prisoners were systematically abused and humiliated.

Two intelligence officers, Colonel Chris Terrington and Colonel Campbell James, were ‘embedded within’ the US unit responsible for extracting information from Iraqi prisoners, the armed forces minister, Adam Ingram, disclosed.

Col Terrington is said to have joined the intelligence chain of command at Abu Ghraib in November 2003, when many of the most serious abuses occurred.

The admission came in a parliamentary answer to Adam Price, the Plaid Cymru MP who has been pursuing the government over what Britain knew about the serious abuse of Iraqi detainees at the jail.

Mr Ingram's answer raises fresh questions about the degree of British involvement at Abu Ghraib prison, and previous explanations made by ministers.

In a second parliamentary answer, Mr Ingram insisted that 'at no time have United Kingdom officers had direct responsibility for supervising any of the US personnel posted at Abu Ghraib'.

Geoff Hoon, the defence secretary, had suggested that Britain was involved in Abu Ghraib only when the abuses were exposed this year and three officers went to investigate them.

Mr Price said yesterday that MPs should have been told immediately that British officers were integrated in the US chain of command running Abu Ghraib.

'Ministers have clearly given us a false impression about British responsibility and involvement in relation to Abu Ghraib' he said.

Mr Price, who called for an urgent statement on the issue, said it was unacceptable for ministers to 'put the best possible gloss' on what he described as a 'very disturbing' matter.

The MP said Mr Ingram's insistence that no British officers had responsibility for supervising any of the Americans there was 'completely contradicted' by evidence that was presented to an official US investigation into the abuses.

According to a barely noticed transcript of the ...

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... inquiry which emerged this month, British officers were directly involved in the intelligence command chain at Abu Ghraib.

The claims were made during the interrogation of one of the officers accused in the scandal, Lieutenant Colonel Steve Jordan, the US director of the joint interrogation and debriefing centre at Abu Ghraib.

Col Terrington was described as being second in command of intelligence at the prison and was told about abuses there.

Asked about his ‘supervisory chain’, Col Jordan replied: ‘Initially, sir, it was to Colonel Steve Bolts ... and then to General Fast and eventually it changed over to a new deputy, a British Colonel, Chris Tarrington [sic]’.

Colonel Jordan was questioned in February by Major General Antonio Taguba, the US officer in charge of the investigation. Asked who was then his supervisor, he replied: ‘Colonel Campbell James, British colonel, just came on board’.

Asked whether he worked directly for him, Col Jordan responded: ‘I work directly, sir, I’m gonna tell you, on paper I work directly for him. But between you, me and the fencepost, I work directly for Gen Fast and keep Col James informed because [of the] British versus American pecking order.’

A Ministry of Defence spokesman confirmed yesterday that Col Terrington was in the ‘US intelligence chain of command’. He added: ‘He was never in a post of command over Abu Ghraib or any aspect of it’.

British personnel had ‘no knowledge of any specific allegations’ of abuse the MoD said.

- The US military yesterday freed 275 prisoners from Abu Ghraib, the authorities said.”

There is also in the middle of the article a “pull quote” in these words “Minister have clearly given us a false impression about British involvement”. It is fair to say that Richard Norton-Taylor may not have been personally responsible for the headline to his article or for the choice of “pull quote”. Yet it is clearly intended to be associated in the reader’s mind with the headline and to suggest, in combination with it, that ministers have given a false impression in so far as they have denied any responsibility on the part of British troops for involvement in the Abu Ghraib abuses.

5. What is more, although the spokesman is quoted as specifically denying involvement on Col. Terrington’s part, he appears to have been for some reason silent on the subject of the Claimant. If Col. Terrington was *not* in a post of command at Abu Ghraib, readers will wonder which British officer was “linked to torture jail” and what it was that was “disturbing”. The only candidate named in the article is the Claimant. If, as is the case, he truly had nothing to do with the abuses, even indirectly by way of command responsibility, most readers would be puzzled as to how his name came to be associated with the headline and the “pull quote”.
6. As Col. Campbell-James commented in his witness statement:

“ ... I was horrified by the nature of the crime of which I was being accused. I was aware of and share the widespread

revulsion over the Abu Ghraib torture. The shocking pictures of abuse have undermined the rationale for intervention in Iraq generally, and indeed undermined the rationale for me personally having been in Iraq, performing the most hazardous duties. To be accused of command responsibility for such abuses is personally abhorrent and one of the worst things which could be said about a serving military officer with my professional background. Had I borne such responsibility I would rightly have been subject to the most severe military discipline. I was of course totally innocent of the allegation, not least because I was not even in Iraq until 2 months after the abuses had been exposed.”

A particular source of distress was that of having to explain matters to his 12-year-old son, in order to prepare him to deal with the situation if anyone should raise it with him (e.g. at school).

7. By 23<sup>rd</sup> September a letter was sent by the London solicitors the Claimant had by then instructed, pointing out the nature of the complaint and the serious implications. It referred expressly to the fact that the allegation had been picked up and republished in *Le Matin*, which has a significant circulation in Morocco. One of the unique features of this case, apart from the obvious implications for the Claimant’s reputation, is the security risk created by the article. It is common knowledge that there was widespread outrage in the Arab world when these abuses were revealed in the media. It requires little imagination to envisage the risk posed to the Claimant and his family once he became publicly “linked” with the behaviour of those American troops. It need not be a matter for imagination, however, since there is solid evidence to that effect before the court. Despite this, the offer of amends was not forthcoming until 2<sup>nd</sup> December 2004. The apology was only published on 12<sup>th</sup> December – more or less three months after the article. Meanwhile, *The Guardian* had taken the stance that it had a complete defence to any claim. Mention was made of qualified privilege, implying that there had actually been a “social or moral duty” to link Col. Campbell-James to the “torture jail” and that the article could be categorised as “responsible journalism” as contemplated in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127. There was also the insulting suggestion that it had been “fair comment” so to link him. That was in my view a grave error of judgment.
8. Whatever might have been the true extent of the physical risks, which in the nature of things cannot be definitively established, the anxious apprehensions of the Claimant were real enough. This was plainly a case for an immediate and generous acknowledgment of error and for putting matters right, as far as was then in their power, as soon as possible. It could not have hurt *The Guardian* to acknowledge promptly, on the basis of uncontroversial facts, that the Claimant had nothing to do with the Abu Ghraib abuses and was not even in Iraq when they took place. For some reason, *The Guardian* felt unable to take those basic steps. It was not simply a matter of good journalistic practice; it was a matter of elementary human decency.
9. One can surely assume that the editor and Mr Richard Norton-Taylor would have known perfectly well how serious it was to link *anyone*, British officer or not, to the Abu Ghraib abuses. For many people, including no doubt many *Guardian* readers, what took place at Abu Ghraib in 2003 was thoroughly shaming, and it has done

major damage to the international reputation of the Coalition and, therefore, inevitably to the international standing of this country. Anyone who truly bore a degree of responsibility for such atrocious abuse of power, even indirectly, would rightly be reviled and made the subject of criminal charges or, at least, military discipline. That is, of course, what has happened so far as some of the American soldiers are concerned.

10. It is worth recalling some of the considerations to which the Court of Appeal drew attention in *John v MGN Ltd* [1997] QB 586, 607:

“In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff’s personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be.”

It is not in every case that the libel bears upon such aspects of the claimant’s character and personality. Here, however, it is clear that most, if not all, are engaged. The Claimant’s loyalty is not challenged in the narrow sense, of allegiance to his country, but his loyalty to the values which are supposed to be espoused by a British officer is fundamentally undermined in so far as readers linked his name to prisoner abuse in a “torture jail”.

11. This was a case for a speedy, unequivocal and prominent apology. The security risks created by the article are the subject of uncontested evidence. The Claimant himself told me:

“I am certain the article has created a long term threat to my security and I am convinced I will now have to pursue enhanced personal security measures. I have been advised by the Directorate of Defence Security about the increased threat posed to me. The threat to my security was acknowledged by the British Armed Forces Minister in Parliament on 21 October 2004 when he made clear that no British personnel were involved in or had knowledge of the abuses at Abu Ghraib and stated his wish that Harry Cohen MP, who had named me as being responsible for interrogation at Abu Ghraib ‘would take more care before peddling such an allegation’. He continued ‘from my experience as Northern Ireland Minister, I know that when the names of serving officers, soldiers and other personnel and bandied around so carelessly – even when the allegations are refuted – their lives can be put at risk’.

From my experience as an intelligence officer, I have gained a detailed understanding of how Iraqi insurgent groups and other Islamist extremist groups operate. They have worldwide connections, and are particularly adept at exploiting the internet. I have no doubt that, despite the apology, my name will have been registered by various Islamic terror groups, who would without compunction use even an inaccurate story as an excuse for doing me and my family harm.

On 16 December 2004 I had a conversation with a German security officer who told me the article meant that I could no longer work in the Middle East again. I am of the same view. I can either ignore the security risk which I believe this poses to me, or decide that I cannot pursue a career in the Middle East for which the whole of my career to date has prepared me.”

There is nothing before me to suggest that this is other than an accurate and honest assessment.

12. There was also evidence from Major-General Michael Laurie (now retired), who had himself a long and distinguished military career which included, between 1994 and 1998, a spell as Director of the Intelligence Corps. His evidence was as follows:

“Campbell-James has always been known in the Intelligence Corps as an “Arabist”. He thinks extremely highly of the peoples and culture of the Middle East and has spent much time learning Arabic. He also thinks extremely highly of the Arabs, both as individuals and people. In the past he has been very keen on serving in the Middle East, and volunteered to be posted to Oman. I know that he enjoyed this post and formed good relationships with Omanis in particular, as well as other Arabs in general.

Later I found out that the date in question made it impossible for Campbell-James to have been in Iraq when the abuse at Abu Ghraib occurred.

I have spoken to Campbell-James about these allegations, and know the effect upon him to be severe. He has been hurt a great deal. I knew he was concerned about the effect of these allegations upon his reputation in the army, socially and within the Arab world. Being far removed from the sort of person who would carry out such activity, allegations that he had been involved in the abuse of detainees at Abu Ghraib would hurt his confidence and damage his feelings. It is simply not something an officer of his standing and talents would do, or would ever consider doing.

Secondly, whatever corrections and retractions are made, Campbell-James will always be connected with these allegations in the minds of colleagues. The intelligence community is very small, with numerous international links, and obviously deals with highly confidential information. In this atmosphere, mutual trust is important. Furthermore, due to the international nature of the intelligence world there will always be figures who have no idea that a retraction of these allegations has been made. Campbell-James’ work as a senior intelligence officer must therefore become far more difficult and, perhaps, even impossible. Consequently, I can say that such allegations would do serious damage to his career.

Furthermore, Campbell-James' personal and professional interests centre upon the Arab world. Indeed, at the end of his army career Campbell-James is likely to seek employment there due to his knowledge of the area, love of the culture and expertise in the language. I do not believe that in this region any retraction made by the newspapers will count for anything. Indeed, a retraction may be seen as evidence of a cover-up or government pressure – in any event I cannot see it restoring his reputation. Given the nature of, and publicity given to these allegations, I consider that any employment for him in the Middle East or in any associated organisation linked to the Middle East would be impossible. This is unfortunate due to how suited he would be to such a position. It may be that he could not even visit the Middle East again, due to the danger and social ostracism he will face as a result of these allegations.”

I am unable to dismiss this as just “the opinion of a retired Major-General”, as Ms Rogers described it. It makes him sound like a Col. Blimp figure. It is plainly authoritative and, what is more to the point, it is unchallenged.

13. The attitude *The Guardian* adopted to Col. Campbell-James seemed to me to be remarkably casual. It was described as the sort of mistake that can occur in any busy newspaper office. If so, it would surely call for a prompt correction. The present stance of *mea culpa* is hardly compatible with the response at the time. That was quite inappropriate.
14. Eventually the apology was published, in *The Guardian's* regular “Corrections and Clarifications” column (alongside a piece pointing out that Swan Lake at Sadler's Wells had wrongly been referred to as having an “all-male cast”, since some of the principal roles had been danced by ballerinas). Its approach to this Claimant hardly seems consistent with *The Guardian's* proclaimed policy of correcting significant errors as soon as possible. He thinks he was treated less favourably because of his profession. Whether it is true or not, that is his perception – thanks to its dismissive attitude. The apology was in these terms:

“In an article, UK officers linked to torture jail, page 2 September 16, 2004, we refer to Colonel Campbell-James. In case it is not clear from the article, Colonel Campbell-James only supervised Lt Col Jordan, a US officer questioned about incidents at Abu Ghraib, from February 2004 when Jordan was based at the international HQ at Baghdad. Colonel Campbell-James was never based at Abu Ghraib prison, nor was he in Iraq at the time the abuses took place at Abu Ghraib. He had no responsibility for the interrogation or extraction of evidence from prisoners there. We did not intend to suggest that he is suspected to have knowledge of, or responsibility for, any abuse at Abu Ghraib, or of any other misconduct. Apologies to Colonel Campbell-James.”



If Col. Campbell-James found that off-hand, he can surely be forgiven. What matters for my purposes is that it came three months after the defamatory publication and that it is less likely to have undone the damage, especially in the context of the security risk, than some other newspaper apologies – for the reasons given by Major-General Laurie.

15. This was a serious libel to which the response of the newspaper was, to say the least, ungenerous. It took apparently no account of the security risks to which it gave rise. The somewhat unrealistic attitude was taken that the apology in the Corrections and Clarifications column would, by and large, have done the trick. That is hardly realistic in the context of the outrage felt in the Middle East at anyone responsible for the Abu Ghraib abuses. Once such a rumour is put into circulation, it is to a large extent impossible to scotch it and to put the clock back. That is beyond the Defendant's capability.
16. At least as important, however, is the three-month gap in which nothing was done to reduce the risk or to put matters right. Of course the Defendant is entitled to credit for using the "offer of amends" procedure under the 1996 Act eventually, but the long delay inevitably has to some extent a diminishing effect on the extent of that credit.
17. There are two stages. First, I must identify in the light of the modern approach to libel damages (notably more moderate since the Court of Appeal decision in *John v MGN Ltd* [1997] QB 586) what is the starting point for this libel. That is to say, I must try to identify what the appropriate award would have been following a trial, but one in which there had been no significant mitigation or aggravation. Then I must move to the second stage, to consider the question of what reduction or "discount" is appropriate, having regard to the use of the "offer of amends" procedure, which is in itself conciliatory in character, and to any published apology.
18. As to the starting point figure, Mr Dean for the Claimant drew a comparison with the award in *Galloway v Telegraph Group* [2005] EMLR 7, where the award was £150,000. There are, however, at least four significant points of distinction:
  - i) Mr Galloway had to press on to trial before achieving his vindication.
  - ii) The publication in that case was on an incomparably greater scale.
  - iii) The matter was aggravated by the conduct of the trial.
  - iv) There had been no apology.

These are significant factors to be taken into account either when assessing the starting point or the extent of mitigation.

19. It should be remembered that there is no arbitrary upper limit on the starting point figure. As was pointed out in *Abu v MGN Ltd* [2003] 1 WLR 2201, the offer of amends regime is to be contrasted in this respect with the summary procedure under ss.8-10 of the 1996 Act. Even very serious allegations may require to be dealt with, as here, under the procedure laid down in ss.2-4. I must therefore select a figure in accordance with the current, more moderate, conventional scale of libel damages, as applied following *John v MGN Ltd* [1997] QB 586 and *Heil v Rankin* [2001] QB 272.

It seems to be accepted that there is a ceiling for general libel damages, reserved for the most serious cases following a trial, of about £200,000: see e.g. *Lillie & Reed v Newcastle City Council* [2002] EWHC 1600.

20. Here I consider the right starting point to be £90,000. This is not a case where it will be easy “to draw a line”: the publication is clearly going to have a lasting and profound effect on the future of the Claimant (and his family). More so than in most defamation cases.
21. The unaccountable delay in acknowledging the mistake and the dismissive references to qualified privilege and fair comment seem to me to reduce the level of discount to some extent. It is important, however, that there should nonetheless be a significant reduction in almost every “offer of amends” case for the reasons I suggested in *Nail v News Group Newspapers Ltd.* [2004] EMLR 20 at [35]-[36]. The Claimant knows that he has, in effect, “won” and that he will receive compensation and vindication in due course. The Defendant has from that moment laid down its arms. That shows reasonable behaviour on the Defendant’s part albeit sometimes later than would be ideal, and it helps to assuage the Claimant’s hurt feelings and distress. Also, once an apology has been published, the element of vindication becomes less significant in quantifying the financial award.
22. There is no “standard” percentage discount to be applied in these cases. That was confirmed by the Court of Appeal in *Nail v News Group Newspapers Ltd* [2005] 1 All ER 1040 at [47]. Each case needs to be assessed by the judge on its own individual facts. In the circumstances I have summarised above, I believe that the right discount for the belated offer of amends and apology is 35%. Accordingly, I have concluded that the right overall award of compensation should be £58,500. It is intended to take account of hard copies of *The Guardian* as well as publication on the website. That is no doubt significantly less than the Claimant could have expected to receive from a jury some years ago in respect of such a serious libel. Nonetheless, I believe it compensates him proportionately while, at the same time, taking full account of the recently established convention that any defendant who uses the “offer of amends” regime must be assured of an appropriate overall reduction because of its mitigating effects.