

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

1997 I No.139

Royal Courts of Justice
Friday, 10th March 2000

Before:

MR. JUSTICE MORLAND

B E T W E E N :

- (1) INDEPENDENT TELEVISION NEWS LTD.
- (2) PENNY MARSHALL
- (3) IAN WILLIAMS

Claimants

- and -

- (1) INFORMINC (LM) LTD.
- (2) MICHAEL HUME
- (3) HELENE GULDBERG

Defendants

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MR. T. SHIELDS Q.C. and MR. M. BARCA (instructed by Messrs. Biddle) appeared on behalf of the Claimants.

MR. G. MILLAR and MR. A. HUDSON (instructed by Messrs. Christian Fisher Solicitors) appeared on behalf of the Defendants.

PROCEEDINGS - DAY 9

I N D E X

Page No.

DEICHMANN, Mr. THOMAS JERGEN, Recalled

Cross-examined by Mr. SHIELDS, Continued

1

DISCUSSION re issues in case (in the absence of the jury)

Mr. SHIELDS

13

Mr. MILLAR

17

Mr. SHIELDS

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Mr. MILLAR

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1 Mr. THOMAS JERGEN DEICHMANN, Recalled
2 Cross-examined by Mr. SHIELDS, Continued
3

4 Q Mr. Deichmann, at the conclusion of your evidence yesterday
5 I had been asking you some questions about the rushes. Do you
6 remember that? A. Not really but I am sure I will.
7

8 Q I will remind you. I asked you how you obtained the rushes.
9 Do you remember that? A. Yes.

10
11 Q And I asked you whether you knew that they had been provided
12 by ITN to the War Crimes Tribunal? A. I knew from
13 Professor Wladimiroff that he got them from the prosecution
14 and I assumed that it was the ITN rushes.
15

16 Q You did? A. Yes.
17

18 Q And you knew full well that they had been provided by him for
19 the purposes of that tribunal, did you not? A. No, he did
20 not explain to me anything about these rushes. He did not
21 tell me not to copy them, he just gave me a bundle of tapes,
22 as I have said yesterday.
23

24 Q Why? A. Because I was an expert witness on the question
25 of media coverage during that case, the media coverage of that
26 case in Germany, and he handed out to me a bundle of tapes
27 which primarily had reports about that case broadcast on
28 German television. Amongst these tapes, which I found out
29 when I watched these tapes, were the ITN rushes.
30

31 Q You knew those tapes had nothing to do whatsoever with your
32 duties as an expert witness in relation to media coverage of
33 Alic, did you not? A. I knew and I did not use them for
34 that purpose.
35

36 Q So why did you copy them? A. Because I found it was
37 quite interesting material. I am an investigative journalist
38 and I thought: "Well, have a look into it and take copies."
39

40 Q And you did not ask the permission of the prosecutor?
41 A. I had not contact at all with the prosecutor. I was
42 working for Professor Mischa Wladimiroff, a Dutch advocate,
43 leading company Wladimiroff & Spong in the Hague. That was my
44 post.
45

46 Q And you did not ask permission of Professor Wladimiroff
47 either, did you? A. No, I did not. He did not give me
48 any instructions on their tapes.
49

50 Q And you knew you should not have those tapes, did you not?
51 A. He had given them to me, so I had them.
52

53 Q When you handed over your material to Mr. Hume so he could
54 check this article, did you hand over any copies of the
55

1 broadcast which had been made by Ms. Marshall and
2 Mr. Williams? A. No, I did not.

3
4 Q Was that because you had never bothered to see them?

5 A. I saw them. I saw most of the broadcast. It was
6 broadcast on German television. I saw it the first time in
7 1992. As we have seen with the ITN broadcast itself, their
8 reports were filed all over the world. So I have seen them in
9 1992. I saw them also again, I well remember, I think in 1993
10 or 1994 there was a German film maker called Monika Gras. She
11 did very substantial documentaries on the camps in northern
12 Bosnia and she used most if not all of the Channel 3 rushes
13 from ITN, from Penny Marshall's reports, so I saw the Igor
14 bit, I saw the Dr. Merdzanic bit, of course I saw Penny
15 Marshall entering the compound, shaking hands with Fikret
16 Alic, several other shots from the camp. I think they also
17 used parts of the Channel 4 rushes substantially and they even
18 had a long interview with Penny Marshall in this documentary.
19 So I saw a whole lot of that and I reviewed that documentaries
20 while I was doing my investigations from my article.

21
22 What I did as well, when I was investigating that
23 story, I rang up ITN in London, that was in December, the
24 beginning of December 1996 when I had returned from Bosnia,
25 and I asked them to send me kind of detailed transcripts
26 from their department of archive studies, which would
27 summarise very, very detailed -- the various reports that were
28 broadcast. I think it was -- I asked them to send everything
29 they had on the camps on the 6th, 7th and 8th August. So
30 there was a report faxed over of about 35, 40 pages altogether
31 from ITN. So they gave me again a very clear picture how the
32 reports were structured and what these -- all this material
33 told me as well is that the barbed wire image of Fikret Alic
34 was used again and again in various broadcasts and it also
35 told me the impression that was given by these reports.

36
37 Q Let me get this right. You had bothered to phone up ITN to
38 get copies of the reports, the transcripts, but you did not
39 bother to put to Ms. Marshall or Mr. Williams, or anyone at
40 ITN what you were intending to write about them?

41 A. No, I did not. I did consider that seriously and
42 I discussed it as well with Mick Hume, as I discussed that
43 matter with all the other European editors. I think it has
44 not been mentioned yet in the proceedings that my article,
45 before it was published in LM, in the February issue, it was
46 already published in very prestigious papers all over Europe
47 without any problem because there is only a libel law in
48 Britain. So it was published in the beginning of January in
49 Der Schtandart(?), which is a leading conservative daily in
50 Austria. It was published beginning of January in ... which
51 is the biggest and most
52 influential ---

1 MR. JUSTICE MORLAND: I am not certain that any of this evidence
2 is relevant or admissible in this case. A. Well, if it is
3 I can just deal with the question.
4

5 MR. SHIELDS: Yes, I will ask you the question again. It is a
6 very simple question. Why did you not bother to contact
7 Ms. Marshall or Mr. Williams, or anyone at ITN before
8 publishing this article in England, if that helps you?

9 A. Yes. I think, Mr. Shields, my Lord and members of the
10 jury, I think you have to understand how powerful journalists
11 can operate when they have access to the mass media and I was
12 well aware of that. If journalists who have access to the
13 mass media do not like your story and you contact them in
14 order to stop your story being published -- and I had made
15 that experience previously. I give you an example. A couple
16 of years ago I was working on a very substantial investigative
17 story on a green issue, nothing to do with Bosnia or the
18 media. It had to do with the Green Party in Frankfurt and
19 I criticised -- well, what I found out that there was some
20 kind of corruption involved in that. At that time I contacted
21 the responsible people and in days, you know, in a period of
22 some days I suddenly found that I found it terribly difficult
23 to get my articles further published, and I also found out
24 very soon why, because the people who had access to the
25 media and they knew well the media, they started defaming me,
26 they started telling lies about me. They told Frankfurt
27 journalists whom I had worked with that I am a far right wing
28 extremist, a complete absurd, you know, allegation. I have
29 been organising in Frankfurt an exhibition in 1995 to mark
30 the 50th anniversary of the end of Second World War in
31 coordination with a city council of history department in
32 cooperation with Holocaust survivors, but these lies were
33 spread. You know, that is the real life in media. If you
34 have two huge organisations, and especially if you are doing
35 investigative journalism and you criticise people, you know,
36 you have to understand the power, you know, which media can
37 have. And I was fully aware of that.
38

39 I considered, of course I seriously considered getting
40 in touch with them but I dropped the idea and I discussed it
41 with Mick Hume, as I said, and not Mick Hume and no other
42 publisher in the European papers considered contacting ITN.
43 They fully understood what I was talking about. So, you know,
44 just to add to explain that fully, I think what has been said
45 as well here, I think twice, that it is a first rule or a
46 golden rule to contact people you criticise. To put it like
47 that, when you talk about investigative journalism it is
48 nonsense. It is absolute nonsense. I will tell you that
49 at least half of the best stories we had last century,
50 investigative stories like Watergate, whatever, they would
51 never become published in the first place if journalists would
52 have contacted the people they criticise before. That is
53 reality in media and that is, I think, what you have to
54 understand. I was fully aware of, having made that previous
55 experience, that this was happening. And, you know, I think

1 it was a wise decision. It was a very wise decision not to
2 get in touch with the ITN staff before it was published in
3 Britain.

4
5 Q You knew you were making very serious allegations against
6 them? A. I knew I was criticising them and I expected
7 them, you know, to not like my story, yes. It was a very,
8 very -- a very, you know, important story for ITN. It was
9 a very important story for the ITN reporters and, you know,
10 there was a lot of discussion in recent years, since 1992,
11 about these images from Trnopolje and I was fully aware of and
12 I would have been absolutely stupid to not expect a hostile
13 response from them. They would not have said to me: "Oh,
14 maybe you're right. We were in an enclosure. I'm sorry.
15 Let's discuss it." And, you know, as we have seen, I do not
16 think my article is a personal attack on anybody. That is
17 not why I published that article. It is a media issue.
18 I am dealing with a media issue here and having seen their
19 response, not even having read my article but just responding
20 like that to a press release which was circulated I must say
21 was a very good decision and I do not regret it at all.

22
23 Q Prior to publishing this article you had not spoken to one
24 single person who was an inmate at Trnopolje in August 1992,
25 had you? A. That is not right. I told you yesterday that
26 while I was in the Prijedor area in December 1996 I spoke to
27 several - to some of them - which asked me and urged me not to
28 be interviewed, no photos to be taken and not mentioned in any
29 way because, as I said, it was still a difficulty situation in
30 this area, which was still dominated by the Serbs. Also,
31 there was already peace there after the Dayton Agreement and
32 the people feared to be identified. There were still some
33 really ugly people around and they are probably still now
34 around in this area.

35
36 Q You knew that --- A. And if you want I can explain to you
37 exactly what people I met and where I met them and what these
38 people told me.

39
40 Q You knew that Ms. Marshall and Mr. Williams and the other
41 members of the ITN crews had been at the camp on that day, did
42 you not? A. Well, that is fairly obvious, yes.

43
44 Q Notwithstanding that, you could not be bothered or you did not
45 dare to put to them the allegations you were going to make
46 about their conduct on that day? A. You want me to repeat
47 now what I just explained, Mr. Shields? You know, I think
48 I have outlined why I did not do that. Yes, I did not do it
49 for very obvious reason, and I do not regret it. I think it
50 was a wise decision not to do it. And everybody in the media,
51 you know, who knows how the media operate, you know, would
52 support that point if you ask them. It is nonsense, as
53 I said, to suggest ---

54
55

1 Q Well, let us look back at the article you wrote, tab 6. If we
2 go to the page I was asking you about yesterday, the interview
3 with Pero Curguz. Do you remember that one? It is paragraph
4 24. A. Yes.

5
6 Q I reminded you what Mr. Curguz had said. Do you remember
7 that? A. Yes.

8
9 Q At the end of paragraph 24:

10
11 "Curguz stressed that this was no internment or
12 prisoner camp. it was a collecting camp for exiled
13 Muslims. Everybody I spoke to confirmed that the
14 refugees could leave the camp area at almost any
15 time."

16
17 I asked you, did you still stand by that statement in the
18 light of the evidence you have heard? A. Yes, I do.
19 At almost any time, yes.

20
21 Q So it is your case, is it - I want to get it absolutely clear -
22 that Mr. Fikret Alic and the other people we see on this film
23 could have left that camp at any time if they wanted? A.
24 You mean when they were filmed there?

25
26 Q Yes. A. No, that is not my case. When I described that,
27 that is a general description of the situation in the camp,
28 which has been confirmed to me by various other sources
29 including the International Red Cross in Geneva. Concerning
30 Fikret Alic, what I write in my article, that these people had
31 been transferred - I even use the word "transferred" - from
32 other camps, the same day when Penny Marshall and Ian Williams
33 arrived there, I also could have said "released" as other
34 people have put it, including the International Red Cross --
35 released from other detention centres to this refugee centre,
36 and I say that they are standing in this area which I marked
37 on my side plan and they waited to be registered and to be
38 told where to go. That is the state of the people, how they
39 are filmed in that field.

40
41 I do not say that they at the time were able to leave
42 and there were -- you know, there were fences, there were
43 guards, which we have seen here, armed guards, but to explain
44 that fully, Mr. Shields, the existence of guards in a camp
45 does not mean that a camp is a prison; there is a difference.
46 An armed guard is not necessarily a prison guard. There are
47 several refugee camps have been operating during that war.
48 I have covered that war since 1993. I have been to the war
49 zones and I myself have seen several refugee camps which were
50 fenced in with makeshift fences, which had armed guards, but
51 we would not call these camps prisons. People were not
52 allowed to leave these camps, especially in Croatia, which
53 I think we have seen the same camps during the Kosovo crisis
54 again, and people were not allowed to get in easily. Even
55 I was not allowed to get in without permission. But we would

1 not call these camps a prison. And of course in the middle of
2 a war zone it is even more complicated, it is more difficult;
3 you would have more armed guards at such camps, especially on
4 a day when you expect several hundred former prisoners being
5 released from Omarska and Kereterm. You would have, of
6 course, guards there to make sure that no chaos is there, that
7 you do not know what is going to happen when all these people
8 get there. So you watch them carefully and you try to keep
9 control over the situation. You want to avoid chaos. But at
10 the same time these camps are in the middle of a war zone and
11 the guards at Trnopolje would protect these people from
12 outside attacks, and there is evidence which has been
13 presented that these camps were attacked. They were attacked
14 by Serbian extremists several times and the Serb guards did
15 their best to protect these people. And they were also
16 attacked by Muslim extremists because the Muslim militia, they
17 tried to get into that camp and to bring people out of there,
18 young people, and recruit them into their own files. That was
19 also one of the reasons which I indicate in my plan why
20 especially young people were quite happy to be at that place,
21 because they feared to be recruited into the war. They did
22 not want to have to do anything with the war.

23
24 Q I would just like to get this right. Do you or do you not
25 accept the evidence that Dr. Merdzanic gave in this court?
26 A. I do. I cannot remember -- I do not know what you are now
27 referring to especially, but the situation, how he described
28 the camp, I fully agree and I made no -- you know, I am not
29 saying, I have never said that this camp was, as you put it,
30 I think not fairly, you know, a good summary of my article,
31 "a safe refuge". I have never said that. Trnopolje was an
32 awful place, but surely we can distinguish between an awful
33 place, which I describe when I made reference to rapes and
34 beatings at that camp, between such a place and on the other
35 hand, you know, a place like Auschwitz and Belsen where mass
36 extermination is taking place, you know. And the bottom point
37 of my article is that if journalism loose sight of this
38 distinction it is misleading journalism, it is false
39 journalism.

40
41 Q Just turn back then to the page before, to how you describe
42 the camp in paragraph 21. It is opposite your diagram and
43 I will ask you a question or two about that in a minute.

44
45 "Yet an important element of that 'key image' had been
46 produced by camera angles and editing. The other
47 pictures, which were not broadcast, show clearly that
48 the large area on which the refugees were standing was
49 not fenced-in with barbed wire. You can see that the
50 people are free to move on the road and on the open
51 area, and have already erected a few protective tents.
52 Within the compound next door that is surrounded with
53 barbed wire, you can see about 15 people, including
54 women and children, sitting under the shade of a tree.
55 Penny Marshall's team were able to walk in and out of

1 this compound to get their film, and the refugees
2 could do the same as they searched for some shelter
3 from the August sun."
4

5 A. Uh-huh.
6

7 Q Are you seriously suggesting that the image which you
8 convey in that paragraph stands with the evidence given by
9 Dr. Merdzanic in this court? A. Well, Dr. Merdzanic did
10 not deal with any kind of area of barbed wire issues in the
11 court.
12

13 Q I asked you whether the impression given by that paragraph,
14 which is the impression of a fairly carefree place where
15 people can come and go as they please, is it not?
16 A. Well, that is not the impression that is given. That is
17 not what I say. If we can break down this part, sentence by
18 sentence if you want, and I will explain to you exactly what
19 I mean with every single word and sentence in this paragraph,
20 if you wish to do that.
21

22 MR. JUSTICE MORLAND: Would not the ordinary reader be misled by
23 that paragraph as to what the true conditions in the camp
24 were? A. No, I do not think so and, you know, you cannot
25 take -- I also think, my Lord, that you have to read the full
26 article and you cannot just take, as Mr. Shields, you know,
27 suggests that you take out "apparently imprisoned" and leave
28 away "behind barbed wire", so you cannot take out a paragraph
29 of an article, which is fairly long, in order to get, you
30 know, a full picture. And I do not think that even that
31 paragraph is misleading. It is a fair, very fair, proper
32 description.
33

34 MR. JUSTICE MORLAND: I have had a note from you, members of the
35 jury. In my view, it is really a matter of argument and a
36 matter you may wish to discuss between you when you retire
37 rather than for the witness. Do you want to see the note?
38

39 MR. SHIELDS: Should we see it?
40

41 MR. JUSTICE MORLAND: You can certainly see it, Mr. Shields; and
42 so can you, Mr. Millar. (Same handed) If you wish to ask
43 questions about it, do so. Yes, Mr. Shields?
44

45 MR. SHIELDS: What your scene suggests in this article, does it
46 not, Mr. Deichmann, is that Fikret Alic was not imprisoned at
47 that camp? A. Again, can you repeat the question.
48

49 Q What you are seeking to suggest in this article is that Fikret
50 Alic was not imprisoned at this camp? A. No, I do not.
51 I explain fairly accurate what his position was when he
52 arrived there, and we have seen that in the rushes. Nobody
53 knew what is going to happen to them. They have just been
54 transferred from other camps. They have been released from
55 there. That is how, as I said, the International Red Cross

1 has put it, and they wait -- they wait to be registered.
2 That is also information from the International Red Cross,
3 they waited to be registered, or there was a registration
4 kind of procedure operating at that time, and then told where
5 to go.
6

7 Q Mr. Deichmann, you know full well that the International
8 Red Cross had not been allowed into the camp at that time?

9 A. They had not been -- started their official mission yet,
10 but ---
11

12 Q They had not been allowed into that camp, had they?

13 A. Representatives of the International Red Cross had been
14 there already. I have spoken to them in Geneva. The
15 International Red Cross had stopped their mission in July
16 because one of their senior staff was shot by a sniper in
17 Sarajevo. So they actually withdrew most of their staff from
18 Bosnia. A few people left but they did not operate. But at
19 this stage or at this time it did not mean that people did not
20 seek, you know, contact. So Bia Schweitzer(?), who was in
21 charge of the ICRC mission in that area, he frequently went
22 to Trnopolje and seek contact with Pero Curguz. So when the
23 official mission of the International Red Cross started,
24 I think it was about 12th August, about a week after Penny
25 Marshall and Ian Williams had been there, that does not happen
26 like that. There is a lot of negotiation already happening
27 before. So Bia Schweitzer has been to that camp and I have
28 spoken to the spokesperson in Geneva. He had contact with Bia
29 Schweitzer, who is now somewhere else operating for the ICRC.
30 He had talked to him and asked him about it and he confirmed
31 that. And he also confirmed the kind of description that
32 I gave in my article about Trnopolje camp. The ICRC in Geneva
33 was not at all unhappy about my article. They were not at all
34 critical about it.
35

36 Q Did you try and get a statement from them then after these
37 proceedings --- A. No, I did not, because I know - and
38 I respect, fully respect that the International Red Cross does
39 not want to get involved in any kind of political or legal
40 activities. They want to keep their neutrality in order to do
41 the utmost best that they can for people who suffer in wars.
42

43 Q Would you look at your diagram, which is beside the paragraph
44 I read to you. Just looking at that diagram, where you have
45 the enclosure, tell us why is there no reference to the gap
46 at the southern part of the enclosure? A. Well, I have
47 explained that yesterday already. This is a schematical plan
48 so it does not show any windows in the buildings, it does not
49 show any doors or entrances in the building. It is a
50 schematical plan which, you know, you would do to illustrate,
51 to give an idea of a location. That is why I did not do it,
52 but I explained that fairly accurate in my article, that there
53 was this gap where the journalists entered; and I also
54 mentioned that this barbed wire fencing was -- I do not know
55 where it is now, I could find it if you want -- was torn apart

1 in several places. So this is a schematical plan and the
2 reason, just to make that again, that has probably come from
3 my civil engineering background. If you have got -- you know,
4 if you want to highlight or if you want to show that there was
5 some different material being used like here for the fences,
6 you would use another dot and comma, whatever sign, to make
7 that easier for the reader to follow your argument. So this
8 is, you know, just to help the reader to read through that
9 article, which is, I know, a very, very long piece and not --
10 some people complained about it being too long, but it is
11 just -- I just did that to help people, you know, to get an
12 idea of what the situation was like.

13
14 Q Would it not have helped people to show there was a gap
15 there? A. No, I do not think so. It would not have made
16 sense to show a gap there in such a plan, but you would have
17 to have done a different plan, or a different photo, or
18 whatever, to show that gap. But that is completely
19 irrelevant.

20
21 Q Would it have helped people to show it was a broken down
22 fence, as you tell us? A. Mr. Shields, I have explained
23 that in my article.

24
25 MR. JUSTICE MORLAND: Yes, you explain it in paragraph 18.
26 A. I do not have any numbers here, I am sorry, my Lord.

27
28 Q "When Marshall, Williams and Vulliamy entered the
29 compound next to the camp, the barbed wire was already
30 torn in several places."

31
32 A. That is right, yes.

33
34 Q "They did not use the open gate, but entered from the
35 south through a gap in the fence."

36
37 A. Yes.

38
39 MR. SHIELDS: It is right you have explained it. Is it your case
40 they could not have left that area by going from the barbed
41 wire fence where Fikret Alic was to the west side without
42 going out of the enclosure, as you call it? A. Well, as
43 we have seen here in the proceedings, it looks very unlikely
44 without knowing that you either step over a wire mesh fence
45 or you lean under two strands of barbed wire. They may have
46 somehow, you know, get their way through. There was, you
47 know, high grass as well. But I did not comment on that,
48 where they get out; I just say where they get in. I say the
49 entered through the gap next to the electricity transformer,
50 that is the point I make, and I do not make any comment at all
51 where they get out of it.

52
53 Q Did you come over to England for the launch of the magazine?
54 A. Sorry?

1 Q Did you come over to England for the launch of this particular
2 magazine? A. Not for the launch of the magazine. I did
3 not know that the magazine was re-launched until I had --
4 actually, I did not realise it when I saw the copy, when it
5 was out, but it was told me -- I do not know when, when I was
6 over. I come over fairly quickly when you issued the writ, or
7 ITN issued the writ against LM.

8
9 Q You made yourself available for interview though, did you
10 not? A. It is not that -- I made myself available?
11 Yes, I did make it available but the request came from the
12 other side. The day I think when the ITN writ was issued
13 I was lecturing at Cologne University to media students and in
14 the morning I got a phone call.

15
16 10.45 a.m.

17
18 Q Is this the writ? A. Yes. This live writ for legal
19 action was being taken and media people are contacting us. So
20 I flew from Cologne after I was lecturing, to London and
21 already in Cologne the German editor of the Times arranged to
22 meet me at the airport and he flew with me to London to
23 discuss the case. So the interest was not coming from me.
24 The interest came from their side. The same with the BBC
25 which has been mentioned here.

26
27 Q Would you look at Tab 4, please? That is the press release,
28 is it not? A. Yes.

29
30 Q Did you know about that before it went out? A. I am sure
31 I did because there is a quote from me in it.

32
33 Q There is a quote from you in it. Will you look at the bottom?
34 It says,

35
36 "Thomas Deichmann and Mick Hume are available for
37 interview. Photographs on request".

38
39 So you were available for interview when the press release was
40 issued. A. Yes, of course. As I said, when this was
41 becoming a case I was asked to come over and I said yes,
42 I will take a couple of days and come over.

43
44 Q Because you knew this press release and your article would
45 attract a lot of media attention, did you not? A. I think
46 that is the purpose of a press release, yes.

47
48 Q That is right. And the purpose is to get as much publicity as
49 you can for yourself, Mr. Hume and for the magazine.

50 A. At this time I was not thinking about publicity for
51 myself. I am a German journalist and I must say sometimes
52 I tried but I found it very difficult to get published in
53 Britain. There is a very close media over here and I did not
54 think a second about being, you know, how you described for
55 myself. But of course it was an important issue for LM and it

1 was my article and I felt also, you know, I have to be there.
2 If the journalists ask questions, I want to be there. I want
3 to show my rushes. I want to show my photos. I want to show
4 my evidence. I want to show that the article is correct.
5

6 Q So you want to show all those things. But prior to issuing
7 the press release you had made no attempt to find any evidence
8 which might contradict what you were alleging in that article.

9 A. I did a week's research to investigate that story and not
10 only, you don't investigate stories, as it has been put here,
11 selectively choose what you like. You do proper research and
12 you especially look out for stuff which may contradict your
13 suspicions and I think I did a fairly good investigative job
14 here with that piece which other senior media people have
15 affirmed to me and I came up with a very good article, with a
16 very good product at the end.
17

18 Q A very good product. A week's research in Bosnia where you
19 interviewed Bosnian Serbians and took photographs of the camp
20 in December 1996. A. I did a lot of other research which
21 I indicated yesterday. A lot of reading, a lot of Internet
22 research, a lot of phone calls, interviews with Wladimiroff;
23 watching his tapes; watching his photos. I was working day
24 and night, to put it like that, in that period.
25

26 Q But not a single piece of research which appears to involve
27 interviewing anyone who had first hand experience of being in
28 that camp on 5th August 1992. A. No, I did not. As
29 I explained it just a couple of minutes ago. The ITN
30 reporters they had time, four and a half years, to explain
31 about that, so I think that was also for me a point of
32 consideration, not the main point but a minor point to
33 consider, not to contact them. The main point was that I did
34 not expect any help but a lot of problems and hostility and
35 I think to put it to you now, if I would have contacted them,
36 probably this article would never have been published in
37 Britain. It would never have reached the public here. As
38 I say, I do not regret not having contacted them.
39

40 MR. JUSTICE MORLAND: Mr. Deichmann, in your article, where do you
41 refer to interrogations in the Medical Centre, beatings of
42 people being interrogated, deaths and rapes in Trnopolje?
43 Where do you refer to that in your article? A. There is a
44 chapter. This is a page just after the diagram which we
45 discussed. It starts,
46

47 "Without doubt most of the refugees in Trnopolje were
48 undernourished",
49

50 so I do not doubt that people had a hard time there in terms
51 of food. There is a lot to say about that as well,
52

53 "Civilians were harassed in the camps".
54
55

1 MR. JUSTICE MORLAND: There were reports. A. There were
2 reports of some rapes and murders.
3
4 MR. JUSTICE MORLAND: That is a balanced view, you say?
5 A. Yes.
6
7 MR. SHIELDS: That is,
8
9 "There were reports of some rapes and murders yet the
10 irony is that if this collection centre for refugees
11 had not existed under the supervision of Bosnian Serb
12 soldiers, a far greater number of Muslim civilians
13 might have lost their lives".
14
15 A. Yes.
16
17 Q There are other quotes from this article I have read. The
18 impression that is given is that the Bosnian Muslims were
19 lucky to be in that camp, is it not? A. I do not say that
20 with a single word, that they were lucky. I have just said
21 that it was an awful place and the people in there would have
22 liked to be somewhere else, safe in western Europe as a
23 refugee or whatever. I have made that clear. I also want to
24 comment on that. My article is a media issue, it deals with a
25 media issue. It deals with how it came about that reporters
26 from a western media organisation shot these images and how it
27 came about that these images, and why, from my reading, fooled
28 the world by giving the impression that what they had found
29 was reminiscent to extermination camps of the Nazis, to the
30 death camps. By suggesting that they had found a prison which
31 was surrounded by barbed wire, that is the issue of my
32 article, you know. I think that is also the case in these
33 proceedings.
34
35 MR. MILLAR: I have no re-examination, my Lord.
36
37 (The witness withdrew)
38
39 MR. JUSTICE MORLAND: Is that your case, Mr. Millar?
40
41 MR. MILLAR: It is.
42
43 MR. JUSTICE MORLAND: Members of the jury, so far as you are
44 concerned, you can have the rest of the day off and have a
45 restful weekend because your hard work begins next week. Do
46 not forget any of the evidence but put it to the back of your
47 minds and remember, do not discuss the case with anyone at
48 all. We will see you at quarter past 10 on Monday.
49
50 (The jury retired from the Court)
51
52 MR. JUSTICE MORLAND: Mr. Shields, thinking about the real issues
53 in this case overnight, I really wondered whether "fair
54 comment" and "malice" were really otiose here. If the
55 defendants justify either the defamatory meaning pleaded by

1 you or their pleaded meaning, is that not the end of the case?
2 If they do not justify it, the claimants must win, subject to
3 the question of whether it is defamatory of ITN. Is that not
4 the reality?
5

6 MR. SHIELDS: If your Lordship recalls how I opened this case,
7 I said that comment is free, but facts are sacred and they
8 rely on the very self-same facts as call for comment. If
9 those facts fall apart, there is no comment they could be
10 making.
11

12 MR. JUSTICE MORLAND: Yes. If Mr. Millar's clients do not
13 establish justification in regard to 8A and 8B, that is the
14 end of the defendant's case, is it not? Is that not right,
15 Mr. Millar?
16

17 MR. MILLAR: My Lord, yes.
18

19 MR. JUSTICE MORLAND: I am grateful for that. Cluttering the jury
20 up with long directions in law about fair comment and malice,
21 I would have thought would merely be confusing in this case.
22 It would be far better, and the jury would grasp the nettle,
23 to have the defendants established on the balance of
24 probabilities, the truth in substance and in fact of the
25 defamatory meaning, whatever the defamatory meaning is.
26 Whether it is your defamatory meaning or their defamatory
27 meaning. In a sense -- again this is theoretical -- if they
28 justify their defamatory meaning, your defamatory meaning is a
29 little worse, but in reality if they establish their
30 defamatory meaning the amount of damages would be derisory, or
31 minimal. So would it not be far better for the jury to
32 concentrate on the real issue in this case: whether there was
33 a deliberate misleading report sent out by Mr. Williams and
34 Ms. Marshall? That is the real issue in this case, is it not?
35

36 MR. SHIELDS: At the end of the day that is the real issue, though
37 obviously in relation to damages I would not be seeking to
38 rely upon the motivation of the articles and that which could
39 hurt the feelings of the claimants.
40

41 MR. JUSTICE MORLAND: You will rely on the matters you have
42 pleaded, which I have looked at again this morning.
43

44 MR. SHIELDS: In fact I have done a very short note.
45

46 MR. JUSTICE MORLAND: Is there a copy for me?
47

48 MR. SHIELDS: That was on malice. But I adopt those for the
49 purpose of aggravation which we have done in reply. Paragraph
50 5 of the reply, page 61.
51

52 MR. JUSTICE MORLAND: It is pages 61 and 62, paragraph 5.
53

54 MR. SHIELDS: We amended that reply.
55

1 MR. JUSTICE MORLAND: Have I got a copy of the amendment?
2
3 MR. SHIELDS: If your Lordship does not have one I will find you
4 one. I stand by exactly what I said in my opening.
5
6 MR. JUSTICE MORLAND: Yes. I do not see how paragraph 4.7 could
7 aggravate the injury to the feelings of the claimants.
8
9 MR. SHIELDS: What can aggravate the injury is this. If you sense
10 that somebody is selling your reputation for their own profit
11 because, for example, they are having a press release which
12 attracts maximum publicity and then they have an article on a
13 relaunch, then you can justifiably be upset.
14
15 MR. JUSTICE MORLAND: It might increase your upset, yes.
16
17 MR. SHIELDS: That is how I put it. It increases your upset.
18 There are two elements of the reply which plainly can go to
19 the hurt feelings. First, the fact that no one bothered to
20 contact you.
21
22 MR. JUSTICE MORLAND: Let us go through these various paragraphs.
23 I have got the reply in front of me at the moment.
24
25 MR. SHIELDS: I can probably help your Lordship by summarising it.
26
27 MR. JUSTICE MORLAND: Let me look at the paragraphs first, rather
28 than summarising it.
29
30 MR. SHIELDS: It is about the articles, that is the point. There
31 were a lot of articles published by the defendant which we say
32 throw insight into their motivation for publishing it.
33 I cannot rely upon them unless they were known.
34
35 MR. JUSTICE MORLAND: What was the evidence of Ms. Marshall or
36 Mr. Williams that their feelings were more upset and they were
37 more outraged because this article appeared in a relaunch?
38 I do not think there was any such evidence, was there?
39 I mean, the press conference was clearly a matter that upset
40 them. The fact that it was put on the wire.
41
42 MR. SHIELDS: The press release. The way the press release was
43 handled. Secondly, the fact that they had never been
44 contacted.
45
46 MR. JUSTICE MORLAND: The press conference.
47
48 MR. SHIELDS: Particularly with Ms. Marshall, subsequent conduct
49 which we say, by inference at least, should be attributed to
50 the defendants or at least the publication of the article
51 complained of. That goes to aggravation of course. I do not
52 think I can seriously, if your Lordship is taking malice away,
53 pray in aid malice by way of aggravational damages on the fact
54 that he has adopted a stance against the western media,
55 because unless they knew about that at the time it could not

1 have hurt them. So that would go with the malice. That would
2 leave us only therefore on that ground, the fact that there
3 was a relaunch, whether that caused them any upset.
4

5 MR. JUSTICE MORLAND: I don't think there was any evidence of
6 that.
7

8 MR. SHIELDS: There was no evidence of that, but they are entitled
9 to complain of the fact that on its face it was suggested that
10 they were selling their reputation for their own benefit,
11 because that inference could be drawn from three matters, or
12 at least two. The first is the way the press release was
13 handled, i.e. without notice done to maximise hurt. Secondly,
14 the failure to contact them. They could be legitimately hurt
15 that someone takes no steps, in pursuance of their benefit and
16 profit, at the expense of your reputation.
17

18 MR. JUSTICE MORLAND: What is the evidence of that from either of
19 them?
20

21 MR. SHIELDS: There is a legitimate inference from their evidence.
22 I shall have to comb it again but I would not run it,
23 colloquially, unless I could find answers or any evidence to
24 support it. I was not prepared to deal with this today
25 because obviously your Lordship had said that I could not
26 argue that in relation to aggravation of damages unless I had
27 something particular that I could support it with when I came
28 to make my speech. There would be no point in my doing that.
29 I would not think about doing that.
30

31 MR. JUSTICE MORLAND: No. I mean, I want to know before speeches
32 what are the limits for the claim for aggravated damages.
33

34 MR. SHIELDS: Unless I can persuade your Lordship --
35

36 MR. JUSTICE MORLAND: We are not dealing here with an obscure
37 magazine that wanted to remain obscure, or an obscure article
38 where the author and publisher wanted it to remain obscure.
39

40 MR. SHIELDS: No, the reverse.
41

42 MR. JUSTICE MORLAND: The absolute reverse, and they wanted
43 maximum publicity and the evidence is that -- we had it from
44 Mr. Deichmann -- the BBC were in contact with him; various
45 other journalists. There was the press conference and of
46 course there is evidence from Mr. Purvis that he was rung up
47 by the BBC.
48

49 MR. SHIELDS: CNN and so on. It is quite clear from the press
50 release that photographs and interviews were available; that
51 they were going to exploit this for all it was worth. That
52 goes to something that hurts one's feelings. It reinforces my
53 earlier submission that it shows that they are selling their
54 reputations for their own benefit. You can be hurt at that.
55

1 MR. JUSTICE MORLAND: I think it is the effect and what actually
2 they did rather than the motive of Mr. Hume that matters. It
3 is the fact that it was given maximum publicity by the
4 defendants.
5
6 MR. SHIELDS: I am very happy to focus in my speech on consequence
7 rather than motive. If your Lordship withdraws fair comment
8 and malice it would be wrong for me to start running malice in
9 the same way. I do not intend to. I will focus on what I say
10 are the simple issues in this case.
11
12 MR. JUSTICE MORLAND: Right. Now what else have you handed up to
13 me?
14
15 MR. SHIELDS: That is all relating to malice.
16
17 MR. JUSTICE MORLAND: A bit in John, is it?
18
19 MR. SHIELDS: It all relates to failure to how you can infer
20 recklessness from the failure.
21
22 MR. JUSTICE MORLAND: There is a bit in John you said about
23 compensation.
24
25 MR. SHIELDS: I have not handed that up. Your Lordship will
26 recall there are some telling remarks from the Master of the
27 Rolls about allegations which go to the core of personalities.
28 I have not actually handed that up.
29
30 MR. JUSTICE MORLAND: If you could, before we rise today, give me
31 the reference. I am familiar with it. I have got John here,
32 but where it is in John.
33
34 MR. MILLAR: It is actually in my skeleton page 607 I think.
35
36 MR. SHIELDS: That sets out the principles where a substantial
37 award of damages is in contemplation. That is why that is so
38 important because it distinguishes from what might be called
39 the run of the mill libel by a limited publication allegations
40 which are serious but not damaging by their very nature.
41
42 MR. JUSTICE MORLAND: No. This is an attack, if not justified, on
43 the professional integrity of both Ms. Marshall and
44 Mr. Williams and, if it is defamatory of ITN, that they were
45 in effect permitting the peddling of misleading information
46 and news.
47
48 MR. SHIELDS: Set them up to do it is how I am going to do it
49 because if you look at those paragraphs, I say they are
50 absolutely that.
51
52 MR. JUSTICE MORLAND: Right. If there is nothing you want to say,
53 Mr. Millar, what do you say about fair comment and malice?
54
55

1 MR. MILLAR: The plea of fair comment in respect of the meaning of
2 8(c) is one of those libel pleadings at the end of a long
3 trial like this when you get to the real issues and it does
4 start to look a bit technical.
5
6 MR. JUSTICE MORLAND: From the defendant's point of view, the
7 defendant must justify (a) and (b) before we get to (c). If
8 he justifies (a) and (b) that is the end of the claimant's
9 case.
10
11 MR. MILLAR: I am very content for the case to be put to the jury
12 on that basis.
13
14 MR. JUSTICE MORLAND: Right. Anything else you want to say about
15 damages?
16
17 MR. MILLAR: I do not know if your Lordship has had a chance to
18 glance at the outline submissions?
19
20 MR. JUSTICE MORLAND: I have read them, yes.
21
22 MR. MILLAR: I am sure you will have an opportunity to do so in
23 any more detail that you require.
24
25 MR. JUSTICE MORLAND: Clearly, so far as ITN is concerned, it is
26 compensation for damage for its trading reputation and
27 goodwill, its trading reputation as a news provider, really.
28
29 MR. MILLAR: Yes. Point 10 is non-contentious. The only point
30 I wanted to emphasise is at 11 and that is the activities of
31 others point that Mr. Shields floated yesterday, leafleting,
32 heckling, golden gag. It seems to us that damages may only be
33 awarded in respect of injury to feelings caused by the
34 publication by the defendant of the words complained of. That
35 is the basic principle. That is the tort. We say that if
36 there is some evidence in the case that others, after the
37 event, did things that caused offence and caused injury to
38 feelings, that is not sufficient, if that is where the
39 evidence stands, for a claimant to bring those activities in,
40 in a claim under this head against the defendant who
41 published, without some evidence to turn it into aggravation.
42
43 MR. JUSTICE MORLAND: The press conference.
44
45 MR. MILLAR: I am not including that. Activities by third
46 parties.
47
48 MR. JUSTICE MORLAND: The Golden Gag award, for example. There is
49 no evidence as to, I mean, merely because somebody may be a
50 sympathiser of Mr. Hume, does not make Mr. Hume responsible
51 for the activities of the sympathiser. Unless of course it
52 could be said that he had sort of whipped up a campaign and
53 said, "All and sundry join in". If there was evidence of
54 that, I doubt whether the evidence goes that far.
55

1 MR. MILLAR: No, it does not.
2
3 MR. JUSTICE MORLAND: But certainly the way in which the press
4 release was handled, the nature of the press release saying,
5 "We are available for comment".
6
7 MR. MILLAR: That is all standard stuff on damages. I am sure
8 that would go to damages, and similarly the press conference
9 after the event, returning to issues raised by the article.
10
11 MR. JUSTICE MORLAND: Yes.
12
13 MR. MILLAR: But we are at pains to emphasise that actions by
14 third parties is where the evidence lies on this basis.
15 Mr. Hume says in the box, "I did not have anything to do with
16 that". He is not challenged on that and there is no further
17 evidence on that.
18
19 MR. JUSTICE MORLAND: Other than foreseeable repetition.
20
21 MR. MILLAR: Exactly.
22
23 MR. JUSTICE MORLAND: I mean, foreseeable repetition, for example,
24 putting it on the Press Association wire so that it would be
25 recopied all over the world and picked up by editors and so
26 forth, that must be a matter that goes to aggravation, must it
27 not?
28
29 MR. MILLAR: Yes, and that is also fairly standard.
30
31 MR. JUSTICE MORLAND: And of course, would sound in damages
32 probably on the question of publication too, would it not? We
33 are not dealing with publication to 10,000 people here.
34
35 MR. MILLAR: Yes. I would have to go back to the transcript to
36 see where the evidence lies on that. I mean, it certainly has
37 not been gone into in any great detail. Was it on the web?
38 Was it on the Internet? How many hits were there? All that
39 sort of stuff. We have not gone into that. But that fact
40 would be, again if one is being technical about it --
41
42 MR. JUSTICE MORLAND: Would be later publication.
43
44 MR. MILLAR: Yes, is a further tort. It would be a certain act of
45 publication, although defamation lawyers argue endlessly about
46 this and about the issues that are raised on this point. I do
47 not know to what extent we can focus on it in this case. It
48 may be limited.
49
50 MR. JUSTICE MORLAND: What I would probably say is that the
51 evidence you may think indicates that it was the wish and
52 intention of Mr. Hume that the article should be given maximum
53 publicity as evidenced by the press conference and evidenced
54 by the fact that it was put on the Press Association wire and
55 you have heard evidence that in fact the BBC and other

1 newspapers picket it up. You heard evidence from Ms. Marshall
2 that people in the journalist profession spoke to her about
3 it.
4

5 MR. MILLAR: The only point I would make about that is that that
6 description could obviously be applied to the press release
7 and it may be your Lordship thinks the press conference is not
8 as straight forward as saying it is just an attempt to give
9 maximum publicity to the article. It is sometime later than
10 the press release and after the issues, if I can put it that
11 way, have blown up surrounding Biddle letter and freedom of
12 speech.
13

14 MR. JUSTICE MORLAND: The fact that after the Biddle letter you
15 hold a press conference in effect saying there is no question
16 of an apology, a retraction or qualification to what we have
17 published.
18

19 MR. MILLAR: Yes. The point I was going to make is that it is not
20 so much the article that is being puffed there, it is the
21 issues raised by the article and the truth of the article that
22 is being raised at the press conference.
23

24 MR. JUSTICE MORLAND: Surely that sounds in damages for injury to
25 feeling.
26

27 MR. MILLAR: Yes, I am not denying that. I am just saying it has
28 a slightly different and wider purpose at that stage if one
29 looks at it closely than the pre-publication press release,
30 because things have moved on a bit by then. But it may not be
31 a distinction that commends itself in any detail to the jury.
32

33 MR. JUSTICE MORLAND: Damages for aggravation have to arise after
34 the date of publication or after the time of publication.
35

36 MR. MILLAR: Yes.
37

38 MR. JUSTICE MORLAND: Anything else you want to say, Mr. Millar?
39

40 MR. MILLAR: The only other matter was 12, but I think we have
41 touched on that. The case of malice is limited as opened and
42 to the extent that it is sought to rely on that case.
43

44 MR. JUSTICE MORLAND: Yes, Mr. Shields?
45

46 MR. SHIELDS: Two matters. First dealing with damages, can
47 I refer your Lordship to Jacklin, paragraph 32 of the Court of
48 Appeal, page 822. That is dealing with the extent of
49 publication being very relevant to damages. Then one goes
50 over to 32.45 injury to reputation. Defendants to call
51 evidence to the effect of defamation of reputation. It is
52 unlikely that direct evidence from a witness in whose
53 estimation the plaintiff's reputation had been diminished
54 would be available, but evidence from the plaintiff being
55 called names as a result of libel is being permitted.

1 I would say that one asks oneself to look at the
2 Golden Gag. It can only be a direct consequence of the
3 publication of this article and it reflects the extent of the
4 publication of the article. It may not have been authorised
5 by the defendant, but one of the consequences of shooting that
6 arrow in the air is you do not know who it will hit.
7

8 11.45 a.m.
9

10 MR. JUSTICE MORLAND: What were the facts in Garbett v. Hazel
11 Watson? Is that an unfair question?
12

13 MR. SHIELDS: I thought your Lordship might ask me that one!
14

15 MR. JUSTICE MORLAND: It is a long time ago, anyway. It is nearly
16 60 years ago.
17

18 MR. SHIELDS: Yes. What I submit, my Lord, is that at least it is
19 something that the jury can consider. They may choose to
20 reject it.
21

22 The other point I wanted to make on aggravation, if
23 I could - and I know your Lordship will have it well in mind -
24 is the persistence in the plea of justification obviously.
25

26 MR. JUSTICE MORLAND: Oh, yes. I have a recollection that I do
27 not think Miss Marshall but Mr. Williams was actually accused
28 of lying, was he not, at one stage?
29

30 MR. SHIELDS: Well, in terms, I think so.
31

32 MR. JUSTICE MORLAND: I am sorry?
33

34 MR. SHIELDS: So that your Lordship knows, I submit that they have
35 all, by implication, if not expressly, been accused of lying.
36 It has to be, it is the nature of the case. The case, and the
37 way my learned friend opened to the jury, is that they knew
38 full well that they were in an enclosure when they left it
39 and, if they did not know, they certainly knew it after they
40 had viewed the rushes.
41

42 MR. JUSTICE MORLAND: Yes.
43

44 MR. SHIELDS: You cannot really have it both ways.
45

46 MR. JUSTICE MORLAND: No.
47

48 MR. SHIELDS: It has to be the suggestion that they have not been
49 truthful to this jury, that the lies have gone on and on.
50 They knew at the time, they have kept quiet about it since and
51 they have now lied in this court.
52

53 MR. JUSTICE MORLAND: Yes.
54
55

1 MR. SHIELDS: You cannot escape that. That has to be their case
2 otherwise the defence of justification, we say, would have to
3 be withdrawn. That is the last thing I want to address you
4 on, my Lord, the plea of justification. I am sure your
5 Lordship will make it clear to the jury, Mr. Hume gave no
6 evidence at all as to the plea of justification. The only
7 evidence he had was given in rebuttal of an allegation of
8 malice against him as to his motive in publishing. As regards
9 Mr. Deichmann, the only evidence Mr. Deichmann gives as to the
10 plea of justification, besides the tapes of course, on which
11 they were cross-examined -- Mr. Deichmann gave evidence as to
12 his return visit in December 1996. Because you will recall at
13 the pre-trial review I sought to strike that out. Your
14 Lordship's view was that he could give that evidence because
15 some inference might be drawn from the photographs he took.
16 Secondly, your Lordship will recall that Mr. Deichmann gave
17 evidence in the witness box of certain conversations and
18 certain statements which had been made to him by a number of
19 people who are referred to the article.
20

21 MR. JUSTICE MORLAND: Yes.

22
23 MR. SHIELDS: Very limited statements. Your Lordship will recall
24 those are the statements, the only statements, relied upon
25 under the hearsay rule. The only statements, and not any
26 signed statements. No statements served under the Civil
27 Evidence Act, no witnesses called to give direct evidence.
28

29 MR. JUSTICE MORLAND: Essentially, what the jury have to decide,
30 putting it in the right way, whether they are satisfied that
31 Miss Marshall and Mr. Williams have not told the truth. It is
32 their state of mind.
33

34 MR. SHIELDS: Yes, and the burden is on the defendants to
35 establish that.
36

37 MR. JUSTICE MORLAND: Yes.
38

39 MR. SHIELDS: And they have to be reminded of the basis upon which
40 they establish it. It is not whether Mr. Deichmann has a
41 suspicion about them or Mr. Hume has a suspicion about them.
42 The basis is on the cross-examination, answers in cross-
43 examination and the very limited evidence called, which really
44 boils down to some photographs from Mr. Deichmann, and not the
45 statements in the article. That is the point I am seeking to
46 make. They do not even rely on those statements. They
47 rely upon -- and perhaps my learned friend will give you a
48 copy of that, you may have it already. The hearsay statements
49 he relies upon are very narrow hearsay statements. Your
50 Lordship will recall that the effect of one of them, Curguz,
51 is different from the one which appears in the article.
52

53 MR. JUSTICE MORLAND: It is totally irrelevant that Mr. Hume and
54 Mr. Deichmann may honestly believe that Mr. Williams and Miss
55 Marshall are not telling the truth. That is not admissible.

1 MR. SHIELDS: No.
2
3 MR. JUSTICE MORLAND: It is totally irrelevant.
4
5 MR. SHIELDS: 95% of the evidence they give, in the light of your
6 Lordship's effective ruling today, is irrelevant, and the 5%
7 is, at best, marginal. The reason I am drawing this to your
8 Lordship's attention now, it is probably important your
9 Lordship has it - there were, as I say, some hearsay
10 statements which were introduced through Mr. Deichmann
11 yesterday of a very marginal nature both in number and in
12 substance.
13
14 MR. JUSTICE MORLAND: Yes. Well, they do not go to the state of
15 mind.
16
17 MR. SHIELDS: Well, they go to the Serbian Red Cross man saying,
18 for example, that there was no fence there, or something like
19 that. Your Lordship will remember that yesterday.
20
21 MR. JUSTICE MORLAND: Yes.
22
23 MR. SHIELDS: Which was palpably untrue, what he says in the
24 article.
25
26 MR. JUSTICE MORLAND: Yes. Thank you very much. Anything more
27 from either of you?
28
29 MR. MILLAR: My Lord, only this. I have no comment about or
30 objection to the way my learned friend put it just now when he
31 said I cannot have it both ways and by implication there was a
32 suggestion they were lying.
33
34 MR. JUSTICE MORLAND: Yes.
35
36 MR. MILLAR: Which was to do with the central issue of knowing
37 about the barbed wire fence. If that is as far as it goes,
38 I have no problem with that. There are other issues in the
39 case where he may be tempted to suggest that I have put it to
40 witnesses that they are lying, and I have not done, and I want
41 to go back to the transcript and look at that. What I did put
42 to a number of witnesses was that certain things were normal
43 practice in relation to the use of a monitor and the use of
44 playback facility on a camera. But I did not put to any
45 witness that they were lying about that.
46
47 MR. JUSTICE MORLAND: Well, you may wish to spend a lot of time
48 with the jury on playbacks and monitors.
49
50 MR. MILLAR: I do not.
51
52 MR. JUSTICE MORLAND: I had not intended to mention it to the jury
53 in my final speech.
54
55

1 MR. MILLAR: I know, but I suspect that my learned friend is going
2 to. That is why I raise it now.
3
4 MR. JUSTICE MORLAND: He may think it is a good point. He can
5 raise it, and you can raise it, but I very much doubt whether
6 I will mention it at all.
7
8 MR. SHIELDS: I will make some passing remark to the fact that a
9 lot of ----
10
11 MR. JUSTICE MORLAND: What I may say is that, according to the
12 evidence of Mr. Williams and Miss Marshall, they did not see
13 the rushes until they got to Budapest. I am not going into
14 whether there was a monitor in Belgrade and Mr. Nicholas did
15 not buy one because it would have cost £1,000, and so forth.
16
17 MR. MILLAR: My Lord, I am not going to go into that, but it looks
18 like we will both make some passing reference to it.
19
20 MR. JUSTICE MORLAND: Well, do so.
21
22 MR. MILLAR: I want to make sure that if I am accused of putting
23 it to people that they are lying, if it extends to some of
24 that cross-examination, I would invite my learned friend to
25 look closely at the transcript.
26
27 MR. JUSTICE MORLAND: Well, I am sure he will, because the danger
28 is that he might be interrupted by you.
29
30 MR. MILLAR: Yes.
31
32 MR. JUSTICE MORLAND: But he can say perfectly properly the
33 necessary implication is that they have been dishonest, have
34 lied on oath and have persisted in denying the truth from the
35 moment the Biddle letter was written. That must be the case,
36
37 MR. MILLAR: Oh, yes. But if he is going to put the word "liar"
38 in my mouth as a word that was used ----
39
40 MR. JUSTICE MORLAND: Yes, well, he will not put the word "liar"
41 in your mouth unless it appears on the transcript.
42
43 MR. MILLAR: I am grateful.
44
45 MR. JUSTICE MORLAND: Right. Thank you both very much indeed.
46
47 I think my own view is that two speeches in one day
48 and a summing-up on the same day are not really a very good
49 idea, and I will sum up on Tuesday. So we will just have
50 speeches on Monday. My summing-up, I hope, will be succinct
51 and will be on Tuesday morning. I do not expect either you
52 will be more than a maximum of two hours each, will you?
53
54 MR. SHIELDS: An hour.
55

1 MR. JUSTICE MORLAND: Fair enough.

2

3 MR. SHIELDS: Probably.

4

5 MR. JUSTICE MORLAND: Yes. How long do you expect to be,
6 Mr. Millar?

7

8 MR. MILLAR: Certainly less than two hours. Whether I can get it
9 within an hour, I am not quite sure about that.

10

11 MR. JUSTICE MORLAND: Yes. Thank you very much.

12

13 (Adjourned until 10.15 a.m. on Monday, 13th March 2000)