Case No: HQ10D02334 & HQ10D02228

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 16 March 2011

BEFORE:

MRS JUSTICE SHARP

BETWEEN:

FARID EL DIWANY

Claimant

- and -

(1) ROY HANSEN
(2) TORILL SORTE

Defendants

AND BETWEEN:

FARID EL DIWANY

Claimant

and

THE MINISTRY OF JUSTICE AND THE POLICE, NORWAY

Defendant

MR F EL DIWANY appeared in person.

MR D HIRST (instructed by **Charles Russell**) appeared on behalf of the Defendants SORTE and MOJP Norway.

MR R HANSEN did not appear and was not represented.

Proceedings

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MRS JUSTICE SHARP: Yes.

MR HIRST: Good morning, my Lady. I appear this morning on behalf of Ms Torill Sorte, the defendant in the first action, and The Ministry of Justice and the Police, Norway, a defendant in the second action. I am not instructed by the first defendant in the first action, Mr Roy Hansen.

You should have three hearing bundles in Charles Russell's colours marked A, B and C. There has been an attempt on the part of those instructing me to agree bundles with Mr El Diwany but I understand this morning that you may have additional bundles which he lodged separately with the court.

MRS JUSTICE SHARP: I have four bundles lodged by Mr El Diwany but I think they duplicate the material which is contained in the hearing bundles lodged by Charles Russell.

MR HIRST: They do.

MRS JUSTICE SHARP: Mr El Diwany, thank you for your bundles, but to avoid me looking at the same document in two different places, unless there is some good reason to do so, I propose to look simply at the documents in bundles A, B and C.

MR EL DIWANY: Yes, I have not had an opportunity to look at them, I have been too busy and I only got them on Monday. I think we will manage because my exhibits are clearly marked and I will do what I can to assist you.

MRS JUSTICE SHARP: Thank you. Very well.

MR EL DIWANY: Can I just start, my Lady, by saying that with regard to the case against The Ministry of Justice, I read an email on Sunday evening from James Quartermaine and put two and two together, went to the Law Society the next evening and realised, that the permission that Master Eastman gave to serve The Ministry of Justice in Norway was flawed in that I did not in my application state the grounds that the Ministry should be immune under the State Immunity Act 1978.

The case of MNL v Republic of Argentina is quite clear and my learned friend yesterday put that case into the skeleton argument, and so a stay or struck out, I would like to apply at a later date but for the moment it is going to fail.

MRS JUSTICE SHARP: Your case against The Ministry of Justice?

MR EL DIWANY: Yes, because Master Eastman was wrong to allow it to be served on the Ministry through the Foreign and Commonwealth Office. The point I would like to make in relation to that if I may is that I am a litigant in person; I am a solicitor but not a litigator. I do not know The White Book very well and I would have thought that a simple letter from Charles Russell, who have been counsel all along, pointing out their very case, I would have conceded there and then because it is absolutely certain that there has been a flaw in my application.

MRS JUSTICE SHARP: Mr El Diwany, you will have an opportunity to make your submissions once I have heard from Mr Hirst. That is very helpful; you have indicated that you concede that point and any subsequent arguments you wish to make in relation to it can be dealt with once I have heard from Mr Hirst.

MR EL DIWANY: It is costs mainly, yes. Thank you.

MRS JUSTICE SHARP: Well, we will put that to one side for the moment.

MR HIRST: Thank you, my Lady, in that case I will address the immunity point solely on the basis of any application that Mr El Diwany may make to vary the order or apply to serve outside of the jurisdiction on a future occasion.

There is a further preliminary point concerning evidence. We have sound recordings which were taken from five voicemails left on Ms Sorte's answer phone in 2007 and 2008. They are not in evidence yet, they were only disclosed to us by Ms Sorte on Monday. I seek the permission of the court to introduce the voice recordings at the apposite moment in my submissions. They are relevant, we would say, to the issue of abuse of process and also they go to statements in Mr El Diwany's supplemental witness statement. They contradict statements that he made in that.

These were electronically sent to him yesterday and, as I understand it, the effect of his reply was that he did not take issue with their introduction and so on that basis I would seek to introduce them later on in the course of the hearing subject to any application for their exclusion.

MR EL DIWANY: May I address the court?

MRS JUSTICE SHARP: Briefly.

MR EL DIWANY: Yes. I would like to introduce the reasons I left those messages on Torill Sorte's voice mail and that was because mainly she had lied to a newspaper.

MRS JUSTICE SHARP: Yes, before we get into the detail of it, Mr El Diwany, we are just dealing first of all with the principle, that is whether the court should listen to them. As I understand it you take no objection to that, but you wish to make a point about why they were left.

MR EL DIWANY: Only if I can read out first the sickening, sexualised religious hate mail that I received from members of the public after Torill Sorte spoke to the newspapers saying quite falsely that I had been in a mental hospital for two years. You have my family doctor's letter that says quite categorically I have not, so I was very angry with Torill Sorte and I left some messages on there which I feel are quite justified and I am angry. But that is the main reason.

MRS JUSTICE SHARP: I think this hearing will proceed more quickly if I listen to everything first of all about what is said on behalf of the applicants by Mr Hirst.

MR EL DIWANY: Yes, my Lady.

MRS JUSTICE SHARP: Once I have heard that, I can hear the voicemails without deciding whether or not they are helpful or admissible and then I can hear you in response on everything. Yes.

MR HIRST: My Lady, there is one further insertion to the material for the defendants, which I would ask to hand up if I may. It is simply material evidencing the search engine aspects of the case and I believe it will help the court to understand some of the technical issues which I will come onto in due course. Mr El Diwany, it is an insertion at the rear of bundle A.

MRS JUSTICE SHARP: Would you like me to put it in the back of the bundle?

MR HIRST: Yes, please, at the very back of bundle A.

MRS JUSTICE SHARP: At the back of tab 11?

MR HIRST: Yes, please. It will take a fresh tab and it is paginated sequentially.

MRS JUSTICE SHARP: I do not appear to have an index with page numbers on it.

MR HIRST: I can only apologise for that. It is indexed at the front by tab.

MRS JUSTICE SHARP: I know, but that is not particularly helpful in a bundle of this size.

APPLICATION BY MR HIRST

MR HIRST: I apologise, my Lady, and I will bear that in mind when I make references to the material. (pause)

The court will be aware that there are applications today in two different claims, which could perhaps have been brought together, but were in fact issued quite separately. We requested obviously that the application should be heard together and considered by the same judge because it will have become evident by now that certain issues overlap greatly and of course they are both based on the same allegedly defamatory publication. Therefore, there may be some necessity to cross-reference between the two claims. As I suggested in my skeleton, I am going to call the action against Roy Hansen and Torill Sorte, "The Torill Sorte claim" or "The Torill Sorte action" and the claim against the Ministry, "The Ministry claim" or "The Ministry action".

The applications; in the Torill Sorte claim there are applications by Ms Sorte to set aside the default judgment entered on 18 November. If the court then accedes to this application, there is a further application to strike out on various grounds, which are set out in my skeleton argument and will be expanded upon. The application notice is at bundle A, tab 3, page 11. There were two witness statements served in support of the application, a witness statement of Ms Sorte of 2 February 2011 and a witness statement of James Quartermaine of the same date. Both are at bundle A, tab 3, pages 15 to 28.

In the ministry claim there was an application issued on the 22 December that seeks to set aside the order of Master Eastman of last summer for permission to serve out of the jurisdiction on the basis that Mr El Diwany has not, as he

concedes this morning, satisfied the court that the principle of state immunity does not apply. Alternatively, there was a separate point made on lack of jurisdiction under the relevant international convention. The application notice in this regard is at bundle A, tab 9, pages 165 to 167. Two witness statements are in support of this; the witness statements again of Ms Sorte of 2 February and that is at bundle A, tab 9, pages 176 to 179, and the witness statement of Christian Reusch who is an attorney of the Ministry of Justice and the Police. That witness statement is at bundle A, tab 9, 169 to 171.

Unless asked to do otherwise by your Ladyship, I was going to introduce the claims briefly by referring the court to the Particulars of Claim in both cases and the claim forms and deal then with the setting aside of default judgment. Then if the court indicates that I should do so, I will then proceed to make the application to strike out in the Torill Sorte claim and then deal lastly with the vestigial points on the Ministry application, bearing in mind what Mr El Diwany has just told the court.

As you will have been aware from reading the skeletons and the witness statements, there is a pretty decent hinterland of factual material in this case. The useful background I would submit is presented in paragraphs 1 to 22 of my skeleton argument and the witness statements of Ms Sorte and the supplemental witness statement of Mr El Diwany cover the ground. Needless to say, we do not agree with the spin that he puts on events. I will confine myself to the minimum of chronology and background as I make my submissions.

In terms of the parties, Mr El Diwany is a UK-qualified solicitor who is domiciled in the jurisdiction. He states in his evidence that he is not a litigation specialist and he of course appears in person without representation. All of the defendants are domiciled in Norway. Ms Sorte is a local police officer with the rank of superintendent or sheriff. Mr Hansen is a journalist who runs his own local news website which I will refer to as, "Roy's Press Service" because it is considerably easier than the Norwegian title for it. The Ministry of Justice and the Police (to give its formal title) is a department of state whose Ministry is a member of the government of the Kingdom of Norway. Police officers like Ms Sorte are overseen at the first level by a national police directorate but ultimate accountability for policing matters, as well as for the civil and criminal justice systems, rests with the Ministry. It would be the equivalent of the policing oversight functions of The Home Office in this country being subsumed into the responsibilities of the UK Ministry of Justice as I understand it.

There is further information should your Ladyship require it on the organisation of the police service in Norway and the legislative footing for it in the witness statement of Mr Reusch, the reference paragraphs 3 and 4, bundle A, tab 9, page 169.

If I may refer the court now to the claim form in the Torill Sorte action, which was issued on 21 June 2010. It is found at bundle A, page 2, and the contents of the claim form are worth noting. (pause)

There were claims for damages in relation to what appears to be two separate publications marked with "a" and "b". The first is a claim in relation to an online article published it is said in English by Mr Hansen. The second claim as per the claim form (b) is a claim in relation to allegations spoken by Ms Sorte in an article regarding Mr El Diwany. There is also a claim for an injunction against Mr Hansen but not Ms Sorte and exemplary and aggravated damages are claimed.

Turning to page 4 of the bundle, the Particulars of Claim. In my submission, they are not the model of clarity, nevertheless it is clear at paragraph 3 that the claim is brought against Ms Sorte on the basis that the statements that she made in an interview with Mr Hansen, the journalist, were then published within an article written and published by him on-line. The article complained of is identified in paragraph 3 of the pleading. There is a Google-facilitated translation of the Norwegian article in the fifth line.

Your Ladyship may find that the second page, because of a copying error, is missing.

MRS JUSTICE SHARP: I have page 4A.

MR HIRST: It has been inserted, excellent. The details of publication and defamatory meaning are given at paragraphs 4, 5 and 6. It is pleaded there that Mr Hansen publishes or causes publication of an online article containing defamatory words, some of which were "Spoken by and otherwise sourced from the second defendant". The court should note that the assertion that the publication was in English and the words complained of are set out in English at paragraph 4 also, and the defamatory meaning is pleaded at paragraph 5. Paragraph 6 deals with publication; Mr El Diwany explains that a Google search on his full name, i.e. "Farid El Diwany" produces a hyperlink to "Roy's Press Service" and for the article in English and Norwegian the link contains his name. He invites the court to infer that there has been publication to a sufficient but unquantifiable number of readers likely to include clients and prospective clients of his law practice.

Paragraph 8, which begins at the bottom of page 4A and continues overleaf, deals with damages. The points I would invite the court to note are that the article is said to have been initiated for the first time in English by the first defendant without warning. This is the second sentence of 8.1. A request to remove the article in Norwegian and English was directed to Mr Hansen only in the summer of 2009, which is at paragraph 8.6 on page 6. Mr El Diwany pleads in the summer of 2009 he telephoned Mr Hansen who runs the website informing him that the words were false and to remove the article in Norwegian and English.

That is the claim against Ms Sorte and Mr Hansen. The claim against the Ministry was issued earlier on 14 June 2010; it is found at bundle A, tab 7. The claim form and Particulars of Claim are remarkably similar to those in the Torill Sorte action, it appears to be something of a cut and paste job, save that there were prefatory averments to establish vicarious liability. The Particulars of Claim refer to the very same article and put the claim against Ms Sorte on the basis of her being, "Quoted in Norwegian and English in the article".

MRS JUSTICE SHARP: Where are you reading from now?

MR HIRST: I am getting that from the first line of paragraph 3:

> "The said police officer, Ms Torill Sorte, is quoted in Norwegian and English on a website at the URL and is accessible to the world at large. An article in English appears on the website wherein Ms Sorte has referred to the claimant by the use of defamatory words."

It is not crystal clear because he does not give the precise URL or the article; nevertheless, it is sufficient to say that when one reads the Particulars of Claim it is obvious that the same article is being sued upon.

Paragraph 4 on page 157 is notable because it is nowhere contended that Ms Sorte published the article, but once again it is pleaded that the article contained words spoken by and otherwise sourced from her. Indeed, the pleading at paragraph 4 is interesting in the sense that it does not say who has published it, it just says, "From a date unknown but before 1 July 2009 there was published in English" without actually naming Mr Hansen curiously.

For the purposes of the applications, the Particulars of Claim in the Ministry action are not materially different from those in the Torill Sorte action. The same pleaded meaning is there, the case in publication is identical save that Mr Hansen has been expunged from the scene. The court will notice that the words complained of in both Particulars of Claim are extracts from a publication in English. Each claim refers to an article about Mr El Diwany published by Roy's Press Service. There is only one article and this is the article I will refer to whenever I say, "The article" in my submissions. A copy of it is to be found at bundle A, tab 3 at page 129. (pause) My Lady, you should have an article in Norwegian headed, "Roy's Presset Jeneste".

MRS JUSTICE SHARP: I do.

MR HIRST: The court will see it is in Norwegian, it bears Mr Hansen's by-line and a publication date of 11 January 2006. On the second page of the article in Norwegian the court will see that the same publication date is given for publication in a Norwegian newspaper called *Eiker Bladet*. A professionally translated version of this article obtained by the Ministry of Justice can be found at bundle A, tab 7, pages 160 to 161. It may be worthwhile at this time to pull it out of the leverarch file because inevitably, with the words complained of, it tends to be the most referred to document. (pause)

I now turn to my submissions on setting aside the judgment in default. There are two situations in which the court may set aside default judgment. One is of a right under the rules and the other is discretionary. We say that Ms Sorte comes within both. If I may refer you to CPR 13.2; it provides that the judgment should be set aside where it was wrongly entered.

MRS JUSTICE SHARP: Just wait a minute let me get to it.

MR HIRST: I am sorry. CPR 13.2.

MRS JUSTICE SHARP: Yes. (pause)

MR HIRST: It directs that judgments should be set aside where they were wrongly entered and the conditions in CPR 12.3.1 were not complied with. When one refers back to 12.3.1 on page 382 of the current White Book, one sees that judgment may be entered if the acknowledgment of service and/or defence is not filed in time.

Under CPR 6.35.3, the time for acknowledging service was 21 days from the service of the Particulars of Claim. The court will see that the Particulars of Claim

were served on Ms Sorte on 25 August 2010, this is in bundle C, tab 33, page 435. It is a certificate.

MRS JUSTICE SHARP: I just need the reference but I do not need to look at the document.

MR HIRST: Therefore, time would have expired on 15 September 2010. Ms Sorte's evidence is that she did return the acknowledgment of service to the court on 7 September. This is evidence contained in her witness statement.

MRS JUSTICE SHARP: I have read her witness statement.

MR HIRST: My Lady, you may well also have seen that the evidence that we were able to find was the post room evidence from the Norwegian police station, which shows a document was indeed returned to the Royal Courts of Justice on 7 September. Sadly, perhaps because these are foreign litigants, she was acting on her own and did not retain the photocopy of the acknowledgment of service but in it her evidence is that she contested jurisdiction and wished to defend. We know that those are incompatible choices but it is her evidence that that is what she ticked when she returned it.

Having returned the acknowledgment of service that gave her until 29 September to put in a defence. On 21 September, a Norwegian lawyer instructed by her and Mr Hansen wrote to the court purporting to defend the claim and provided detailed explanation. The reference for that is bundle A, tab 3, pages 22 to 23. You will note that the reference in the letter to having returned signed subpoenas, which I suggest this morning refers to the acknowledgment of service, as that is the only thing Ms Sorte says she had returned.

MRS JUSTICE SHARP: That document has never emerged, the one that was sent?

MR HIRST: It would appear from the order that the Master made in November that nothing landed on the court file.

MRS JUSTICE SHARP: There is still nothing on the court file?

MR HIRST: No. It is deeply regrettable because in my submission if either the letter or the acknowledgment of service had hit the court file, the Master would never have made the order which he did make. When one looks at the letter from the Norwegian attorney, it is very clear that the claim is to be defended and to be contested, either on jurisdiction or on the merits. One sees from the order that the Master was in the belief that Ms Sorte had not acknowledged service, which we dispute, although obviously we accept that the court file contains neither this letter nor the acknowledgment. Unfortunately, when one looks at the letter one can see that the claim number is not mentioned in the letter but obviously the parties are and it is just very regrettable that nobody was able to match the letter to the correct case file.

MRS JUSTICE SHARPE: "In any event" you said.

MR HIRST: In any event, either the steps that were taken provide an of-right set aside under 13.2 or under 13.3 Ms Sorte will show by arguments advanced in support of this application that she has a real prospect of successfully defending the claim, although the matters that I have just referred to concerning the lawyer's letter and the purported return of the acknowledgement of service constitute some other good reason why the judgment should be set aside and Ms Sorte allowed to defend the claim. That is within 30.3(i)(b).

At this point having made the application to set aside, obviously I can go no further if the court is against me.

MRS JUSTICE SHARPE: I think you should go further.

MR HIRST: The application on the merits, the first ground that I would rely on is there were no reasonable grounds for bringing this claim. Your Ladyship will be well aware of the nature of the strike-out jurisdiction. The court has to consider whether strike out is proportionate and just, reasonable, and in accordance with the overriding objective. Applications should be granted where the court is of the view that the claim is bound to fail. Striking out is not inherently contrary to the rights of access to the court or to justice and does not confound the Article 6 rights of the claimants or defendants.

The claim as it is pleaded by Mr El Diwany as against Ms Sorte is unsustainable for a number of reasons which we say are sufficient to dispose of this, as against her, and in some of the circumstances of the entirety of the claim against both of the defendants. Firstly, it is my submission that the only act in connection with this article taken by Ms Sorte that she is responsible for was to make certain oral statements to Mr Hansen, the journalist who published it, during an interview. This is indeed Mr El Diwany's pleaded claim on this, as we have seen. The use of the words "allegation" and "spoken" in the claim form indicates that this is really a claim for slander. The formulation used at paragraph 4 of the Particulars, which is "spoken by and otherwise sourced from". Effectively, Mr El Diwany is suing on a conversation between Ms Sorte and Mr Hansen, which took place sometime in late 2005/early 2006. We know this because the article was published on 11 January 2006. It is essentially a journalist's conversation with a source, albeit a police source, a public servant.

Ms Sorte did not publish or cause to be published the article, nor is that pleaded. She did not choose the words. She did not make it available to *Eiker Bladet*, the newspaper which carried it, nor did she upload it to Roy's Press Service where it is currently published online. It is notable that Mr El Diwany directed his take-down request to Roy Hansen only, and in the letter before action, the reference to which is bundle C27 page 373, he refers Mr Hansen to "your website". As a source, one does not have control over the finished product, as I take Mr El Diwany to suggest in his evidence and skeleton, nor where the finished product, the journalism, will be disseminated.

Contrary to what he suggests, the source tends not to have copy approval as it is against journalistic ethics and conventions. What a source may say to a journalist can well end up on the cutting room floor and this is out of his or her control. A good known example is actually seen in what was published. It is Ms Sorte's evidence to the court at paragraph 17, the reference bundle A tab 9 page 178 paragraph 17, but she deliberately refrained from using Mr El Diwany's name in

the interview as appears to be some sort of police practice in Norway, and indeed Mr Hansen must have taken the decision to name him in the article.

A I would concede that a source for an article can in some circumstances be the driver for publication, however this is not that case. The circumstances I have in mind is where an allegation or revelation is communicated to a journalist which is just so hot and sensational that the journalist cannot afford, for the progress of their own career, to ignore it. The allegations in this case of harassment and mental instability, which are complained of, had of course received relatively wide circulation prior to this publication in the Norwegian Press, a reference to this is

B the *Dagbladet* article, the reference in Mr El Diwany's witness statement is tab B, page 6.

MRS JUSTICE SHARPE: So far as the application, this is an application for no reasonable grounds of success, what is the status of the evidence in relation to whether or not, what she did or did not say? The only matter which is relied on in the Particulars of Claim is the article.

C

MR HIRST: Yes, my Lady.

MRS JUSTICE SHARPE: She says that she did not name him.

MR HIRST: Yes. The evidence is her evidence of how the conversation proceeded.

D

MRS JUSTICE SHARPE: I follow that but for the purpose of this matter I look at the pleading, do I not?

MR HIRST: I am sorry.

MRS JUSTICE SHARPE: I look at the pleading.

E

MR HIRST: One looks at the pleading and one sees that no oral communications are pleaded even though they are referred to. One would expect, in the practice direction, obliges claimants to set out as well as can be done the words complained of. If oral statements are being made, in my submission that is not present here. The limitation period in any event --

F

MRS JUSTICE SHARPE: I follow all those arguments but so far as this one is concerned, if it were in the hands of another pleader it might be said it is to be inferred that she must have named him from the fact that he is named in the article.

MR HIRST: Can I turn you to her evidence on this?

G

MRS JUSTICE SHARPE: I have read her evidence and what she says about it, that she deliberately did not, but what I am asking you is what is the status of that evidence having regard to the nature of the application which you make at the moment?

MR HIRST: The status of the evidence would go to -- it is her case on what was said. There is no other evidence. We do not have a witness statement from Roy Hansen as to what was said. It may be that there is an inference (because his name is in

H the article) that she referred to him. She said says that she did not. The reference

that I was suggesting to you is, as Ms Sorte said in her evidence, is that he came to her, Roy Hansen came to her for an interview because the information had been covered recently in the -- Mr El Diwany accepts that he complains about the other newspaper articles. So, a newspaper called *Dagbladet* the month beforehand had made these allegations in relation to Mr El Diwany. So it cannot have been that Mr Hansen, this is her evidence, he was not flying blind into this journalistically. He had other materials which had prompted him to follow up the story and ask for an interview. Indeed her evidence is that Mr Hansen was also following up the public statements that Mr El Diwany is making at this time whereby he is using his own website to do so and also the websites of Norwegian media outlets.

As you clearly have on board from the thrust of these submissions and from the skeleton, it is a slander claim out of time in a foreign country and it follows that the English court has no jurisdiction over this. The conversation in question is an act which takes place in Norway face to face.

MRS JUSTICE SHARPE: I follow all those arguments. This is a different point which is that she says, "I did not name him". But what is sued on is an article to which she has contributed and in which she is quoted, in which he is named. The question I asked was what is the status of her evidence, in relation to this aspect only, for your application? In other words, it is not a Part 24 application, no reasonable prospect of success, no realistic prospect of success. It is an application under CPR 5(3).

MR HIRST: Yes. I am not sure I follow the precise concern you have with the evidence.

MRS JUSTICE SHARPE: Am I simply to accept her evidence without more?

MR HIRST: It is not contradicted and I see no grounds on which it can be contradicted.

MRS JUSTICE SHARPE: All right.

MR HIRST: It follows, and you have this I am sure, that considering that it is a conversation in a foreign land and there is no jurisdiction under the relevant provision of the Lugano Convention 2007, which is the international convention that governs civil proceedings between Norway and the United Kingdom. I can turn you to it but suffice to say that the relevant provisions that a person domiciled in a contracting state may be sued in another state bound by the Convention in matters relating to tort, defamation is a tort under English law, *delict* or *quasi delict* in the courts of the place where the harmful event occurred or may occur. If the harmful events, on any reading, are in Norway --

MRS JUSTICE SHARPE: What you are dealing with now is paragraph 36.2 of your skeleton, is it?

MR HIRST: Yes it is. The Lugano Convention is in tab 20 in full of the authorities bundle. Article 5(3) is on the fourth page.

MRS JUSTICE SHARPE: Do you want me to look at it?

MR HIRST: Yes, please. The full text says:

> "A person domiciled in a state bound by the Convention may in another state bound by this Convention be sued in matters relating to tort *delict* or *quasi delict* in the courts of the place where the harmful event occurred or may occur."

It is well known.

MRS JUSTICE SHARPE: Are you reading from page 3?

MR HIRST: Yes, sorry, it is page 3. My apologies. Article 5(3). It is well known under English law that the harmful event, i.e. publication, in claims for slander or libel, where the act takes place is either where the material is accessed or read, or purchased if it is a hard copy, and it must follow from that, the location when one is considering a slander claim is where the conversation or the statements are spoken.

None of this is pleaded. We would concede obviously that a sting(?) concerned with harassment might be an actionable slander in certain circumstances because it connects commission of offences. The mental instability sting in my submission would not be actionable because it does not fall into any of the categories for actionability per se and no proof of special damages otherwise identified.

MRS JUSTICE SHARPE: You would have to argue that it did not fall within section 2 of the Defamation Act 1952.

MR HIRST: I need to look at what that says. (pause) Sorry, my apologies. Yes, we would have to show that it does not fall into section 2. These are words not spoken of someone in a calling or profession is spoken of as a man, as an individual. It is really not something relevant to trade or carrying on business or profession, in my submission. It does not say Farid El Diwany is an English solicitor in the translation. It just says Englishman.

My second argument, or perhaps third argument, is that any plea of justification is bound to succeed. There is no prospect of Ms Sorte or Mr Hansen for that matter failing to prove the essential truth of Mr El Diwany's pleaded defamatory meaning in his Particulars of Claim based upon a number of decisions made on the public record in Norway. It is worth the court reminding itself of the pleaded meaning which is that the claimant harasses several Norwegian women including, and in particular, Heidi Schøne and also Police Chief Torill Sorte, and that the claimant is mentally ill, and that his being Muslim has a connection to the behaviour complained of. Two essential stings here of the meaning are that Mr El Diwany harassed women and that he is mentally ill. It is not for the court today and it is not my application to ask it to determine whether the second part is defamatory or not, or passes the test threshold in Thornton v Telegraph Media Group [2011] EWHC 1884 (QB).

But the four matters that we would say that justify the primary harassment sting are set out in paragraph 35 of my skeleton argument. They are, and I am hoping (because it will cut short some time) that you have had a chance to review the underlying documents, they are a conviction of 2 November 2001 under the Norwegian penal code for harassment in the Eiker, Modum and Sigdal District Court. The reference is bundle A, tab 3, pages 44 to 50. The second matter of

public record is the dismissal on 11 February 2002 by the Drammen District Court of Mr El Diwany's private prosecution for defamation of Ms Schøne based on allegations that she published in these papers that he had sexually harassed her and was mentally unwell. The court found these allegations by Ms Schøne to be justified. I am referring you to English translations, which have been professionally commissioned for this litigation by the Ministry of Justice and the Police, so that any point can be made on translation quality. What Charles Russell have done is where they had the documents in both languages, they put the Norwegian behind it. But Mr El Diwany does not take any points on the documents we are relying on being poorly translated.

The third matter of public record -- I may not have given you the reference. The reference for the first instance libel case decision is bundle A, tab 3, 66 to 83.

MRS JUSTICE SHARPE: You set all this out in your skeleton.

MR HIRST: Yes.

MRS JUSTICE SHARPE: It is all listed at paragraph 36.

MR HIRST: It is all there, as is paragraphs 36, 6 and 7 of my skeleton. An explanation of why the conventions at least do not fall foul of the provisions of the Rehabilitation of Offenders Act 1974. Suffice to say that the provisions are that an equivalent conviction under foreign law, under English law the conviction is treated as an equivalent sentence, for the purposes of Rehabilitation of Offenders. So, a suspended sentence of eight months by the Norwegian court handed down in October 2003 is dealt with by section 5(2)(b) of the Rehabilitation of Offenders Act and that would be a sentence exceeding 6 but not 30 months and therefore for adults it is spent after 10 years. So the sentence is not yet spent and it can be referred to without that Act biting or deployment of it in any defence in a libel claim. I have included the Rehabilitation of Offenders Act in full.

MRS JUSTICE SHARPE: I do not think you need to refer to it.

MR HIRST: No. It is at tab 18 of the authorities if required. For the English court to arrive at a conclusion that Mr El Diwany had not harassed Norwegian women would conflict with clear decisions made in both the civil and criminal branches of the Norwegian justice system and findings otherwise would of course conflict with the notions of mutual respect, which stipulates that nations afford to each other's judicial systems. I know that Mr El Diwany will disagree profoundly with that sentiment later on when I am finished.

The same point may arguably be said of the statement that Mr El Diwany is mentally unstable. This received consideration within the Norwegian criminal justice system rather as part of a complaint to the prosecution authorities in Norway that Ms Sorte should be proceeded against in relation to this article and a couple of other articles. The reference for this is bundle A, tab 3, page 125.

My Ladyship, do you have this document?

MRS JUSTICE SHARPE: I am just getting it. Yes.

MR HIRST: One will see on page 125 that the complaint is outlined. At the top one sees it is an official document with a case number and the description has a heading. Under the complaint is says:

> "Police Inspector Torill Sorte is accused of giving false information to the press. The article states that El Diwany was involuntarily committed to a psychiatric institution in 1992. In the article *Eiker Bladet*, Police Inspector Sorte is quoted as saying that she considers El Diwany to be mentally unstable."

This was a complaint made, as the preamble says, on 2 March 2007 asking that Ms Sorte be proceeded against under sections of the Norwegian criminal law. It says that the Public Prosecution Authority passed the complaint to the body that made the final determination, the Norwegian Bureau for the Investigation of Police Affairs. This is their determination. It is dated 19 June 2007. One sees at page 127 that the man who decided it was the Deputy Director of the Bureau, a man called Martin Welhaven.

MRS JUSTICE SHARPE: What is the point you are making here?

MR HIRST: The point I am making is that, if one turns to consideration of the *Eiker Bladet* article, one finds it on 127. The point is that this has been considered through the prism of this invitation to prosecute which was made in 2007.

MRS JUSTICE SHARPE: Which is whether the claimant is mentally unstable?

MR HIRST: Yes, it is the second limb. I am really just addressing the second limb here of what he complains of in the present action, to show that it has received consideration directly in terms of this article as well.

MRS JUSTICE SHARPE: Therefore what is the point of it?

MR HIRST: Therefore this is, I would suggest, a document that your Ladyship would be entitled to take judicial notice of as having been decided on a previous occasion by a competent body.

MRS JUSTICE SHARPE: This is an equivalent of what in this jurisdiction?

MR HIRST: I suppose this would be the equivalent of laying in information or a charge or complaint at a police station, and then perhaps a Magistrate's Court determining the validity of the complaint and whether it should then be referred to the Crown Prosecution Service.

MR EL DIWANY: My Ladyship, can I interrupt?

MRS JUSTICE SHARPE: No, I will hear you, Mr El Diwany, when we have finished. As I said, everybody does their submissions in one go. Yes?

MR HIRST: I am suggesting that it is a decision made by a public authority acting with due process under the Norwegian Law. Of course on a separate matter the court is of course free to form its own view as to whether the hallmarks of persistent and

obsessive harassment conducted over the decade or more, including the present proceedings, do not carry the stigma at the very least of a mental obsession or a conduct which reasonable persons would hold to be abnormal or highly unusual.

MRS JUSTICE SHARPE: You were just going to show me what is on page 127.

MR HIRST: Yes. I will read you the fourth paragraph we rely on in relation to this submission. With respect to the comments in *Eiker Bladet* that El Diwany is mentally unstable, we consider it neither punishable as negligence nor defamatory. We here refer to the contents of El Diwany's website and the other facts of the case. It is not a particularly expansive statement but it is essentially a submission that I just made to you that when one pays regard to the underlying facts of the case and Mr El Diwany's website. As you have already seen, we have produced in the evidence at page 140 just some small flavour of what it is to be found there.

MRS JUSTICE SHARPE: They say it not actionable.

MR HIRST: The decision is that it is not actionable because --

MRS JUSTICE SHARPE: It has no grounds to investigate.

MR HIRST: The decision is that it is not as a matter of the regulations and codes and law of Norway that bind on this action on the police, on her making the statement, that it is not negligent. They also find that it is not defamatory. I would take the second sentence of this paragraph to be simply saying that it is a fair inference from everything that one sees in the case history, the history between these two people, i.e. as the witness in civil proceedings and also the convictions for harassment which are referred to on page 126 of this decision.

My next more substantial argument is that there is not a sustainable case in publication.

MRS JUSTICE SHARPE: Can I just ask you before you go on to that, is there any particular order because you have dealt with these in slightly order in your grounds you set out in paragraph 30?

MR HIRST: Of my skeleton?

MRS JUSTICE SHARPE: You set them out and then in your skeleton you deal with them in a rather different order.

MR HIRST: There is no particular reason for doing it. I think what I have probably done is I have tried to make the more significant ones towards the end.

MRS JUSTICE SHARP: All right.

MR HIRST: I mean, this is the most substantial of the points that I wish to make.

MRS JUSTICE SHARP: That you are coming to now?

MR HIRST: It is also one that, if you are with me, will dispose of the claim in its entirety.

MRS JUSTICE SHARP: Which one are you coming to now?

MR HIRST: I am coming to now, if you have my skeleton argument in front of you, paragraph 36.8. It is also an argument which the documents which I handed up at the beginning of my submissions will go to help illustrate the fallacy of the claim as it is presented.

As you are well aware, publication of articles on the Internet is not to be assumed in Mr El Diwany's favour. The case from which it is reasonable to infer publication must be proved by claimants, in line with established principles. The burden lies on the claimant of demonstrating that third parties have read or accessed materials sued upon. The authority for this is Al Amoudi v Brisard [2006] 3 All ER 294. It is at authorities, tab 1. In that case, the case on publication against a Swiss terrorism investigator was pleaded on -- would it assist you to look at these principles in Al Amoudi v Brisard?

MRS JUSTICE SHARP: Yes, I think we might as well.

MR HIRST: It is at the first tab in the authorities. If you turn to paragraph 10 of the judgment, Gray J says:

> "In relation to the issue of publication, a convenient starting point is to set out the way the claimant puts his case ... [which is very similar to this case] ... until at least May 2004 the defendants owned and maintained a website ... until the date identified ... above the defendants published or caused to be published on the Internet at [the website] to a substantial but unquantifiable number of readers in the jurisdiction ..."

In the absence of clear evidence of publication in the jurisdiction, the claimant applied --

MRS JUSTICE SHARP: Where are you reading from now? Are you reading from paragraph 10?

MR HIRST: No, no, paragraph 13. The defence contains a summary of the defendant's case, that in the relevant period (this is paragraph 13 of the judgment) there was no evidence of publication in the jurisdiction, in that it was a Jameel v Dow Jones [2005] 2 WLR 1614 abuse. Nobody had been identified, no third party, as having downloaded or seen the words in the relevant limitation period, and the point on proportionality at 2.9.

It was then argued by the defendants that a libel claimant has many presumptions in their favour. This is to be seen at paragraph 24. The argument presented here was that there were many presumptions in favour on damage and falsity, but that it is essentially publication, because something is simply on the Internet, is not a presumption that the law will make in favour of the claimant on an Internet defamation claim.

The decision that Gray J arrived at is to be found at paragraphs 31 and following. I read paragraph 31:

> "The question which I therefore have to decide is whether the Claimant is right to say that there is a rebuttable presumption of law, in the sense which I have indicated, that the publication on the Internet of the two items complained of was to a substantial but unquantifiable number of people within the jurisdiction."

Then at paragraph 33 he said:

> "It is well known (and juries are routinely so directed) that some facts are capable of direct proof, whereas others may properly be proved by inference. Thus publication of the items complained of in the present case to a particular individual could be proved by calling that individual to say that he or she accessed the items and downloaded them within the jurisdiction. A wider publication may be proved by establishing a platform of facts from which the tribunal of fact could properly infer that substantial publication within the jurisdiction has taken place."

My submission on these statements of Gray J is that no platform of facts has been created from which publication could reasonably be inferred. Mr El Diwany has not named a single person who read the article.

His case on publication is based on too many unsafe assumptions. Firstly, publication would appear to be dependent on Internet users entering his full name, Farid El Diwany, into a Google search, but there is no evidence that people do this. They may do it, they may not. Mr El Diwany is not a household name and there has been nothing in the United Kingdom, at least, to catapult him to notoriety.

Secondly, Mr El Diwany makes the assumption that because the link to the article is amongst the Google search results of his name, readers in England must have accessed it. It is submitted that the fact that a particular search engine (but this is submitted by Mr El Diwany in his evidence rather than by me) provides a link to the article is one that one can infer substantial publication from.

But the point of a search engine is that it is comprehensive, and in the case of the word set "Farid El Diwany" there are only four Internet hits on this particular combination of words on Google, the search engine that he references, and they are all associated with him. This can be seen at (it is the document that I sent with my skeleton argument yesterday) page 429 of bundle A. At page 429, you will see that I have taken a screen print of the Google search, which Mr El Diwany relies upon, and you will see that there are four results, the top four, which clearly refer to him and are producing material from the Internet in which his name has been included. The link that we are considering today is the fourth of those results. The fact that Google picks up his name is therefore, I would suggest, as equally likely to be a function of the scarcity of the search term than any popularity of the article in question. It is my submission that the fact that a site is found by Google is neither here nor there, because this is the purpose of search engines, to return a comprehensive set of results.

This is illustrated also by reference to the same search performed on rival search engines. This is the documents that I handed up earlier. They are at the back of bundle A at tab 12.

MRS JUSTICE SHARP: What do you want me to look at?

MR HIRST: If you look at page 433, you will see there, the same search term as is run on Google is run on Bing, which is the Microsoft rebranded search engine, which was launched with fanfare a year or so back. The sixth search result is the fourth search result on Google, it is the link in question. At the bottom of this page, you will see that it is on the fifth page of the results, which Bing deems to be relevant to the search inquiry on the name "Farid El Diwany". You will see at the bottom, it lists the number of pages. I hope you can see it. I hope the copy is good enough to see that it is number 5 which is in bold, which indicates that I am printing from the fifth page and not from the first page. I did not print off pages 1 to 4, because obviously a search engine does not give you the same result 20 times.

The same point can be made briefly --

MRS JUSTICE SHARP: What point are you making then?

MR HIRST: The point that is being made here is that there is no inference, based upon being high on a search return, of substantial publication. I am simply making that point by reference to two other search engines, which put this article on the fifth page of results, i.e. well down the batting order. Also, at page 432 of bundle A, you have the same exercise conducted on the yahoo.co.uk search engine, where it is on the eighth page. This is really to try and scotch the idea that the fact that something is on Google means that there is a substantial publication in the jurisdiction as a result. Yahoo and Bing certainly suggest that there is not.

Of course, the facts of the case, the facts of the publication, work against there being any reasonable inference. Roy's Press Service is not some major blue chip website like the BBC or MSN.com. It is a local Norwegian press service, which can hardly be of interest to people in England where, in all probability (I have been unable to find the statistics) the number of Norwegian speakers must be fairly low. Indeed, I can say that Norway has one of Europe's smaller populations linguistically, with a mere 4.9 million people, which I think is sort of the numbers found in Wales.

Contrary to Mr El Diwany's submission, the site is actually written and published in Norwegian only, and not in English. It may help you to look at the front page of the website in this regard, which is at page 430 of bundle A. As we can see, it is a Norwegian language website. There are no pages in English. It cannot properly be supposed that Internet users would casually stray across an article buried deep by this point (because it is an archived publication) within a Norwegian language media site. This point runs against Mr El Diwany's pleading that he relies upon an English version. There was no English version published by Mr Hansen. Readers in this jurisdiction would clearly, if they accessed it as Mr El Diwany invites the court to suppose, need to know who he was, to start with; they would clearly have to perform a search on his name, and then they would have to decide within that search to access the link which came up, which was very clearly to a foreign website. If one looks at that fourth search result, it is clearly in a foreign language, whether one knows or not it is Norwegian; and when one considers the article, they would have to have understood Norwegian.

The publication that Mr El Diwany really complains about is not by Mr Hansen or Ms Sorte at all, but by a third party, Google Inc, domiciled in California under far more favourable media laws. One can only speculate whether that has been a factor in Mr El Diwany pursuing the claim that he has, rather than as against Google as an intermediary.

When one looks at the search results (this is on page 429) it is clear from this fourth result that the link itself, the material itself, is in Norwegian. This is the underlined hyperlink that the user clicks on to access the underlying material, and alongside it, it is relatively clear that Google is offering its own translation service, where the square brackets say, "Translate this page". One can see when one looks at the other entries on this return that, because they are in the English language, no such facility is offered. For example, Mr El Diwany's own law firm website, which is the top entry, and his LinkedIn entry, which is written in English, no "translate this page" facility is offered.

This service, you may have noted, is not delivered by Bing and Yahoo when the same search result is performed. Therefore, on the basis of the three searches which I have put before the court in evidence, the translate facility is unique to Google.

At this point I would ask the court to turn to the Google facilitated translation, which is at bundle A3, page 132. You can probably anticipate what I am going to say about it. One does not really need to read more than the first three paragraphs to see this is gibberish, which no self-respecting website publisher or journalist would ever consider putting out. In fact, the very unreadability and unintelligibility of it would, I would submit, rationally serve as a deterrent to anyone reading anything more than a few lines of it.

This factor is obviously picked up by Mr El Diwany in his pleadings at paragraph 4 of the Particulars of Claim, where he uses the "sic" abbreviation in square brackets at several points when he sets out the words complained of. It is also noticeable that, when one compares this version, which was produced as one can see on 24 January this year, with other versions which may be found in exhibits to Mr El Diwany's supplemental witness statement (the reference is bundle C, tab 25, page 353) one can see that the translations produced by Google Translate change with the seasons and that words and combinations or words, some of which may well be vital to meaning, become altered, depending on when one happens to run the translate facility.

Quite straightforwardly, this is a publication which it would be highly unjust and unreasonable to fix Ms Sorte or indeed Mr Hansen with responsibility for, and yet it is the one sued upon. The lack of responsibility for this was inadvertently referred to by Mr El Diwany in his letter before action, which the court will find at bundle C, tab 27, page 373, if I can ask you to refer to it. Mr El Diwany writes to Mr Hansen on 10 March last year:

> "I refer to my telephone call to you last year [which he pleads was in the summer of 2009] when I asked you to remove your own article entitled, 'Forsettering' ..."

I cannot read it.

MRS JUSTICE SHARP: You do not need to try.

MR HIRST: Yes. I shall not attempt any Norwegian. The sentence I rely on is the last one of this paragraph:

> "Your website is available in the United Kingdom in English, thanks to the Google translation facility, and the English version of your article contains false and defamatory allegations about me."

Nor can it be right, in my submission, that just because Google translations exists as part of the search engine service, can it be reasonably foreseeable that publications are made available in English in this jurisdiction, although no doubt it would do wonders for forum shopping and libel tourism if that were the case. Publishers may not know that their output is being rendered unintelligible by software based in (I suppose) California. One sees that there is no sign of this facility when you use the search engine in your own language. Again, with the colour copies at the back of bundle A, if one looks at page 434 (I have not succumbed to Googling myself, but I have Googled my chambers) so you can see that it just provides an English language search return for "5 Raymond Buildings". If you turn to page 436, you will see that I have run the same search in Google Norway, which of course has the second line compatibly with the English search on Mr El Diwany. One sees that it offers a translation, and when one runs the translation, at page 435 of the bundle, one will see the chambers' website rendered into, I doubt fluent, but nevertheless Norwegian. I will bet my bottom dollar that nobody I work with thinks that the content we slave over is being turned into some kind of international software language by anyone who chooses to look at it outside the jurisdiction. I just think people will not be aware of that, and there is no reason to think that websites are deliberately opting to have this service applied to them. It would appear to be more like a blanket provision, an automated service provided as part of the search.

My last point on no reasonable grounds for bringing the claim is that this claim is a disproportionate interference with Article 10 of the convention. Any claim that may exist on the facts, as I would submit they are, i.e. a slander claim or a publication claim, is a stale one dating from early 2006 at the latest, and to the extent that allowing the claim to continue, this would be a disproportionate interference with freedom of expression. Although the article remains online (it was published five years ago) this never-ending liability point (it is archive material, I would suggest) was considered in the context of claims in relation to newspaper website articles, i.e. non-contemporaneous material in Times Newspapers Ltd (Nos 1 and 2) v United Kingdom - 3002/03 [2009] ECHR 451, which is at bundle --

MRS JUSTICE SHARP: I have set those passages out in Budu v The British Broadcasting Corporation [2010] EWHC 616 QB.

MR HIRST: Yes. It is the point you have made in Budu, which I have cited in the skeleton argument. In fact, it is wrapped up rather nicely in that. You have it in my skeleton. It is really a question of weighing the competing convention rights and competing prejudices to the parties when one considers this question. Taking the phrase that one has to show exceptional circumstances from the European Court's judgment at paragraph 48 of its judgment, the point is made that it would be disproportionate to allow a claim unless some exceptional circumstances show that bringing a claim in relation to archived material after a lapse of time; that case does not say what a lapse of time is, but I would suggest that five years in this case is certainly that. When one considers the Internet has only really been a medium for 10 or 15 years, that is a reasonably long period of time.

Mr El Diwany does not show any exceptional circumstances for issuing in June 2010, he simply states in his evidence (the reference is paragraph 28, bundle B, page 21) that he only discovered the article in 2009. I know two things in relation

to that statement. If he did discover it in 2009, and the pleadings suggest it was the summer of 2009, he still took almost a year between telephoning Mr Hansen and issuing the claim in June 2010. The onus, of course, is on claimants in defamation actions to move with some speed.

Secondly, disclosure in 2009 is actually contradicted by the evidence. On 2 March 2007, as I showed you earlier on, Mr El Diwany submitted a complaint in relation to this article in Norwegian, and two others, to the Norwegian prosecution authority, in the past it is the Norwegian Bureau for the Investigation of Police Affairs. His complaints about the publication were all dismissed, as we saw. You already have the reference. It is bundle A3, pages 125-127.

In terms of prejudice, one can only speculate what the journalist's position would be, but it may well be that Mr Hansen's involvement in the facts of this case went as far as the one article that was produced. Certainly, having to investigate defences, perhaps responsible journalism defences, evidence after a period of four or five years may be considered prejudicial.

MRS JUSTICE SHARP: What do you submit I should do about the position of Mr Hansen?

MR HIRST: As I am going to come on to in abuse of process, there are some very strong arguments in this case that perpetually re-litigating matters, which have been comprehensively investigated and determined hitherto, is an abuse of process, and the public interest that there should be a finality to litigation would not be best served by allowing the claim against Mr Hansen to continue. It may be that when you have heard what I have to say in relation to abuse of process, that you may form a stronger view on Mr Hansen's position. If I may turn to the issue of abuse of process in this case --

MRS JUSTICE SHARP: You have put it on two bases, the Jameel basis first, and the second is the more conventional Henderson v Henderson [1843] 3 Hare 100 type of abuse.

MR HIRST: Yes.

MRS JUSTICE SHARP: But is the way you put it that it is an impermissible collateral attack? Is that the principal ground?

MR HIRST: Yes.

MRS JUSTICE SHARP: So you are not saying it is *res judicata* strictly?

MR HIRST: No, we are not saying it is a strict application of *res judicata* because the parties are obviously different in the present Torill Sorte claim. What we do say is that this is the re-litigation even between separate parties where the issues are substantially overlapping or the same is a species of abuse of process that the court should view as substantially overlapping or the same, is a species of abuse of process that the court should recognise.

MRS JUSTICE SHARP: Do you say that by reference to Dexter Ltd v Vlieland-Boddy [2003] EWCA Civ 14?

MR HIRST: Yes. I have prepared some relatively detailed submissions for the court on what Auld LJ had to say in Bradford & Bingley Building Society v Seddon & Ors [1999] 1 WLR 1482.

MRS JUSTICE SHARP: Yes, before you get to that, I just want it to be clear in my own mind, mapping out what your points are, because it is just in paragraph 51 of your skeleton argument, you say that an allied form of abuse of process which is also relevant.

MR HIRST: Yes.

MRS JUSTICE SHARP: All that I was trying to understand was exactly what you are saying there. What are you saying, it is relevant in addition to what, Jameel, or something else?

MR HIRST: There are clearly two different grounds for considering abuse, one of which is when proportionality is in issue. I should say that the categories of abuse are not closed but I am focusing today on proportionality being an issue here where the gain is not worth the candle.

MRS JUSTICE SHARP: That is the Jameel.

MR HIRST: That is the Jameel point and I rely on Mr Justice Eady's encapsulation of it in Kaschke v Osler [2010] EWHC 1075 (QB) at paragraph 22. I am saying, on this basis, it is a no real and substantial tort case with no evidence of damage and with considerable prejudice to the defendants.

On the second limb, I am saying that re-litigation even where the parties are different may also amount to an abuse of process which is well recognised by the Court of Appeal, if not the House of Lords or the Supreme Court, and my basis for saying so will be the judgment of Auld LJ in Bradford & Bingley v Seddon. Is it more helpful if I take you through the stats?

MRS JUSTICE SHARP: I think I understood it correctly that there were two bases, one is Jameel and the second effectively, what amounts to an impermissible attempt to re-litigate issues which have already been decided, an impermissible collateral attack.

MR HIRST: There seem to be two parts to the test as suggested by Bradford & Bingley.

MRS JUSTICE SHARP: Well, let us go to that then.

MR HIRST: It is at tab 3 of the authorities. This is a case where there had been litigation before by the same parties, albeit that on the second occasion the issues were slightly different. If we can pick it up at the introduction of Auld LJ, it is page 1484, at the bottom, he said:

> "The appeal raises the question in what circumstances a court may strike out as an abuse of process on the ground of inconsistency an action between parties and on issues different from those in an earlier action. Is inconsistency enough in the absence of special

> circumstances or, for example, must there be some additional factor such as dishonesty or a collateral attack ..."

A

He then says that the broad question is whether the second claim in Bradford & Bingley fell foul of the established principle in Henderson v Henderson that where a party should, save in special circumstances, bring forward his whole case in one go and not seek to re-open the matter.

So although this case did concern the same parties, he also said at page 1490F, after he had set out the well known dictum of Sir James Wigram, Vice Chancellor, in Henderson:

B

> "In my judgment, it is important to distinguish clearly between *res judicata* and abuse of process not qualifying as *res judicata*, a distinction delayed by the blurring of the two in the court's subsequent application of the above dictum. The former, in its cause of action estoppel form, is an absolute bar to re-litigation, and in its issue estoppel form also, save in special cases or special circumstances [he gives references]. The latter, which may arise where there is no cause of action or issue estoppel, is not subject to the same test, the task of the court is to draw the balance between the competing claims of one party to put his case before the court and of the other not to be unjustly hounded given the earlier history of the matter."

C

D

Then, and this is what we do rely on, at the bottom:

> "Thus, abuse of process may arise where there has been no earlier decision capable of amounting to *res judicata*, either or both because the parties or the issues are different, for example, where liability between new parties or a determination of new issues should have been resolved in the earlier proceedings. It may also arise where there is such an inconsistency between the two that it would be unjust to permit the later one to continue."

E

And then at page 1492, under the heading of "Re-litigation and additional elements", he said this:

F

> "In my judgment, mere re-litigation, in circumstances not giving rise to cause of action or issue estoppel, does not necessarily give rise to abuse of process. Equally, the maintenance of a second claim which could have been part of an earlier one, or which conflicts with an earlier one, should not, per se, be regarded as an abuse of process. Rules of such rigidity would be to deny its very concept and purpose. As Kerr LJ and Sir David Kerr emphasised in Bragg v Oceanus Mutual Underwriting Association (Bermuda) Ltd. [1982] 2 Lloyds 132 respectively, the courts should not attempt to define or categorise fully what may amount to an abuse of process."

G

He then goes on to say:

> "Sir Thomas Bingham MR underlined this in Barrow v Bankside Agency [1996] 1 WLR 257, CA stating, that the doctrine should not be 'circumscribed by unnecessarily restrictive rules' since its

H

purpose was the prevention of abuse and it should not endanger the maintenance of genuine claims. Some additional element is required, such as a collateral attack on a previous decision."

Also what may assist your Ladyship are some paragraphs on page 1494 where he discounts in effect the claimant having to show that there are some special circumstances which allow them to bring the later claim but that rather the duty is on the person alleging abuse to demonstrate the later claim is an abuse. That point is made at 1496C. So that is what was said in 1999 by Auld LJ.

The Henderson v Henderson principle, the classic embodiment of *res judicata* between the same parties as a ground of abuse, was given a modern re-statement in Johnson v Gore Wood & Co [2002] 2 AC 1.

In that case a businessman brought a personal claim against solicitors in circumstances that an earlier claim brought by his company was settled on favourable terms and the defendant firm applied to strike out the second claim as an abuse. I shall not take you to the classic re-statement of Lord Bingham because it was a case essentially between the same parties but the reference to it is paragraph 31 of the judgment.

The thrust of what he said applied to cases between the same parties but there is an associated species of abuse, which I rely upon, where a party makes collateral attacks on the final decision averse to him, which had previously been made by a court of competent jurisdiction. The abuse need not involve the re-opening of a matter already decided but may cover issues of fact which are so clearly part of the subject matter that it would be an abuse to allow new proceedings to be started in respect of them. That principle I have set out in my skeleton argument and it is supported as a recognised principle by what was said by Peter Gibson LJ in Dexter Ltd v Vlieland-Boddy and then summarised by Clarke LJ.

If I just take you to that briefly, it is at tab 5 of the authorities bundle.

MRS JUSTICE SHARP: Well the point that is made in 4, on the face of it, it looks as though what he has in mind is a situation in which something could have been raised in earlier proceedings.

MR HIRST: Yes.

MRS JUSTICE SHARP: And that does not arise here.

MR HIRST: No, it does not, but if you turn to paragraph 49 of Dexter at tab 5, you will see that the principles to be derived, Clarke LJ states, of the which the most important is from Johnson v Gore Wood, can be summarised as follows, and this follows a consideration of the law by Peter Gibson LJ where the point is considered that cases between different defendants may also give rise to abuse and you will see that his distillation of the principles is certainly wide enough to cover the present case.

MRS JUSTICE SHARP: It is well settled, is it not, that if something can be held to be an impermissible collateral attack, albeit not between the same parties, then that can amount to an abuse of the process.

MR HIRST: Yes. In a libel context certainly it has been well decided. It is the ratio of Schellenberg v BBC [2000] EMLR 296 which formed really a hybrid of the proportionality and re-litigation abuse principle, and secondly a very good example of it in operation in the context of defamation is the decision of Gray J in Pedder v News Group Newspapers Ltd [2003] EWHC 2442 QB. In Pedder the claimants began separate libel actions against different newspapers over what was essentially the same story. When one claim was dismissed at trial, the defendant in a later action, i.e. another newspaper group, applied to have the claim dismissed because the issues were effectively all nearly the same.

MRS JUSTICE SHARP: But what you say here is that the issue in relation to, certainly the harassment point, with the connotations which have been described, has already been determined in the Norwegian courts.

MR HIRST: Yes.

MRS JUSTICE SHARP: And what is sought to be done here is an impermissible collateral attack upon that decision.

MR HIRST: Yes.

MRS JUSTICE SHARP: That is what you are saying.

MR HIRST: Yes. That is right; I have noted various sections of the evidence that I can take you to, which are exactly that. There were sustained and clear attempts on collateral attack of the criminal convictions and the civil decisions involving Mr El Diwany.

MRS JUSTICE SHARP: That is, in short, where you put your case in this on the second limb, as it were, category of abuse.

MR HIRST: Yes, because the re-litigation, as I understand the authorities to establish, it is not enough to show simply whether a different party is involved. The re-litigation of itself amounts to abuse of process. It is clear that one has to go further than that and show an additional element, is what Gray J called it in Pedder, and that may be a collateral attack, which this certainly is, but it may also be some circumstances of harassment or unnecessary vexation, which we also say this is.
My Lady, you have seen a largely overlapping complaint about the same newspaper article, which was made in relation to the police prosecution of Ms Sorte already. That complaint was dismissed. The decision of the Bureau considering it refers to earlier complaints of perjury against Miss Sorte, which were also dismissed by prosecutor and also by the special police investigation commission. Also at the heart of that complaint lay the second limb allegation of mental instability.

MRS JUSTICE SHARP: Do you need that in addition to the findings in the criminal case?

MR HIRST: It is there to meet the anticipated point that the mental instability allegation has not received judicial treatment. We would say that when you look at the

decision of the prosecutor and the prosecution authority, i.e. the Bureau, that it has received a proper investigation. It is difficult to make comparisons between the systems.

MRS JUSTICE SHARP: Of course the point does not arise if you succeed on publication and the Jameel abuse.

MR HIRST: That is absolutely right. The re-litigation piece is obvious. The references I would rely on to show it from the materials produced by Mr El Diwany are these references: it is at bundle B, the supplemental witness statement, pages 1 to 25. The paragraphs are not broken down but if you was to be referred to paragraph 5, paragraph 9 and paragraph 11 on page 13.

MRS JUSTICE SHARP: You are saying that Mr El Diwany's own witness statement shows that this is what this is all about?

MR HIRST: Yes. He is not doing anything to disguise that it is an attempt to undermine and demonstrate the previous decisions, which were made under the Norwegian system, were wrong. He is very open about that. The Particulars of Claim go to this as well, in paragraph 8.

There is a second element to this, we say, which is that there is an obvious unjust oppression in requiring a foreign public servant, a police officer, to answer these claims, which have been judicially and non-judicially investigated several times in her own country and dismissed. There is an unmistakeable pattern of harassment in the way that Mr El Diwany has sought to bring Miss Sorte to account for evidence in the Norwegian civil proceedings and her statements to the press.

The process of bringing her to account has been pursued, we say, with an unusual and abnormal fervour. The same body, for example, in the case of the prosecution authority has been asked twice to consider the same complaint about Miss Sorte, namely that she is a perjurer for introducing the allegation of mental instability into the proceedings in the defamation claim.

MRS JUSTICE SHARP: I think the complaint about that is that it is said she said that Mr El Diwany had been in a mental hospital for two years and that is the point that is objected to.

MR HIRST: Yes. It is clearly the same essential sting as suggesting mental instability. I mean it is an extension of the sting no doubt, but it is the same essential sting. Of course what is being complained of is an allegation of mental instability because that is the only one that is in the translated version of the article, not an allegation of incarceration.

MRS JUSTICE SHARP: "Contention", in that context.

MR HIRST: Yes. The last matter on the Torill Sorte claim is in connection with the recordings, which I referred to at the outset.

MRS JUSTICE SHARP: Do you have something?

MR HIRST: I do. There are two ways of listening to them. One is tried and one is untried. My iPhone produces a very clear audible version of the recording, which I think, if everybody is reasonably quiet, would sound quite well around the court, unless this court --

MRS JUSTICE SHARP: Can you tell me what it is I am going to listen to and what is the point that you are asking me to consider in relation to what is going to be played.

MR HIRST: It is for consideration of the point that these proceedings go beyond mere re-litigation and that they are designed to harass and vex Ms Sorte. For example, the present proceedings are referred to in the voicemails. I should say again, the prospects of these proceedings are referred to in the voicemails.

MRS JUSTICE SHARP: But what relevance do they have?

MR HIRST: What they tend to suggest, on listening, is that the claim that has been brought is an exercise in harassment. An ugly exercise in harassment and dragging somebody into court in this country against the --

MRS JUSTICE SHARP: You are saying they are brought for an impermissible collateral purpose.

MR HIRST: Yes, an impermissible collateral purpose, but they also evidence a contextual background of anti-social behaviour and they are highly suggestive of a vendetta being pursued against Ms Sorte.

MALE SPEAKER: And the dates?

MR HIRST: We have transcripts. We believe they are 2007 and 2008.

MRS JUSTICE SHARP: All right.

MR HIRST: I would invite your Ladyship to --

MRS JUSTICE SHARP: Do you have transcripts?

MR HIRST: We have transcripts and we have the original recordings. They are very short, by the way. They are no more than 30 seconds each.

MRS JUSTICE SHARP: Can I have the transcripts then, please? (handed)

MR HIRST: I invite your Ladyship to read --

MRS JUSTICE SHARP: Do you want to just play them? Go on.

MR HIRST: I can certainly play them. It might be better if I hand my iPhone towards the bench. Mr Quartermaine makes a valid point. This is not the totality of communications that Mr El Diwany attempted to make to Ms Sorte. This is merely a selection. There were occasions where she picked up the phone or her

son picked up the phone, we are instructed, or that she is in the office and the call was made to the police station and she picked up the phone.

MRS JUSTICE SHARP: And these are left on her answer machine at home?

MR HIRST: Yes, those are our instructions.

MRS JUSTICE SHARP: All right.

MR HIRST: Your Ladyship, I do not know if you prefer to play them or if the associate would --

MRS JUSTICE SHARP: I am not going to touch it, Mr Hirst. Get the associate to --

MR HIRST: So there are five recordings in order, all that one does is press the button to play. When it is done, one presses done. Returns to this screen, press the next one.

> "(1 second of Norwegian spoken)
> MR EL DIWANY: You cowardly bitch, answer the phone. The only excuse you'll have is if you're in a mental hospital. Your mother is probably visiting you now. Anyway, how does it feel to be on the front page of a website, you piece of trash. Inbred, Norwegian trash, that's all you are. Now I'll keep on until you resign or are sacked, you piece of trash.
> (2 seconds of Norwegian spoken)
> MR EL DIWANY: Come on, coward, just pick up the phone. Come on, cheat, pick up the phone, you piece of trash, you liar, abuser, crooked policewoman. Pick up the phone, you piece of shit. You bloody coward. God damn you, you dishonest trash.
> (2 seconds of Norwegian spoken)
> MR EL DIWANY: If I can't speak to you, let me speak to the psychiatrist who is taking care of you in the mental hospital. At least he should have the honour to tell me what your condition is, apart from being a lying pervert that is, and well protected by Judge Nilsen, weren't you? You're all trash, you lying bitch, Come on, answer the phone. You ruin lives, you do. You cheap little shit.
> (2 seconds of Norwegian spoken)
> MR EL DIWANY: Come on. Come to the phone, you piece of shit. Come to the phone you piece of damn little shit. Come on. You pervert. You sickening pervert. If only we could get you into court in England, you piece of fucking shit. What's it like being an abuser, a liar and a cheat? A corrupt policewoman, hmm? Nothing you can do about it now because you made the big, fatal error, so just resign. I'm going to have to do something. I'm going to have to speak to the judge or the court, because you, you must be dismissed. You utter piece of trash.
> (2 seconds of Norwegian spoken)
> MR EL DIWANY: Come on, you wretched pervert. Answer the phone. You disgusting piece of trash, a liar and there's nothing

> you can do, nothing you can do to help yourself because you're a perverted, lying pig who perverts the course of justice and is protected by your trash judge. You know you've lied. I know you've lied in such an extreme, stinking way and this will follow you for the rest of your life. You Norwegian piece of inbred trash."

MR HIRST: My Lady, my final submission on the abuse of process is that, with these recordings in mind, and bearing in mind the application to strike out at an interim stage, the court is reminded to consider what a reasonable person would think the purpose of pursuing this claim actually is. When a broad merits-based approach, which lies at the centre of Lord Bingham's test in Johnson v Gore Wood is adapted, the court can exercise its discretion rightly to dismiss the claim as an abuse. That completes my submissions on the Torill Sorte claim.

MRS JUSTICE SHARP: You did not deal with the limitation period, or did you?

MR HIRST: The limitation period was dealt with on two bases. Either the conversation was in 2006, and therefore, as a slander claim, is out of time. There is no application to disapply limitation, for either a claim based on oral statements or a publication claim based on the online article, which itself was published in 2006. Now, I do not dispute that it is still on Mr Hansen's website. We have been able to access it until quite recently for preparing the court documents. My submission in relation to that is really contained in the point in Budu v BBC and the disproportionality point that the European Court referred to at the end of their judgment in Loutchansky.

MRS JUSTICE SHARP: That is on the footing that your argument on whether she is responsible for the publication at all.

MR HIRST: Yes.

MRS JUSTICE SHARP: But that only comes into play then.

MR HIRST: It only comes into play then if the court does not see it simply as a slander. If the court is concerned that there is some further causation elements that can be justly fixed to Ms Sorte, it comes into play then.

MRS JUSTICE SHARP: Right. Thank you.

MR HIRST: On the Ministry claim, I bear in mind the submission that Mr El Diwany made at the outset this morning. He would appear to concede, for the reasons which are set out in my skeleton argument at paragraphs 76, 77 and 78, that he was unable to satisfy the procedure, which is both set out in the White Book in the notes to 6.37.24 under the heading of Actions Against Foreign States, both that and the proper procedure for serving a claim form out of the jurisdiction, which includes emanation of a foreign state as a defendant, which is addressed in the NML Capital Ltd v Republic of Argentina [2011] UKSC 31 case in the Court of Appeal. I should point out that this is a decision which is under appeal, although I

do not believe that the procedural grounds that I am referring you to form part of that appeal, as you will see if I can just take you --

MRS JUSTICE SHARP: Putting aside the procedure for a moment, if the position was that there was no cause of action for the reasons you have given in relation to Ms Sorte, then there would be no case involving the Ministry of Justice, because their only involvement in it is if they are vicariously liable for her publication. If there is no claim against her, it follows there would not be any involving the Ministry of Justice, is that right?

MR HIRST: Yes.

MRS JUSTICE SHARP: And then secondly, so far as the other matter is concerned, apart from the principle, as it were, what has to be shown in order to have found jurisdiction, you raise the question whether, even if he had followed the proper procedures, there would not be any case against the Ministry of Justice at all.

MR HIRST: Yes, for the reasons on jurisdiction, which I referred to actually in connection with the argument on the Torill Sorte claim. Those reasons are that there is no jurisdiction under Article 5(3) of the Lugano Convention. Those reasons are sufficient to dispose of the claim in both matters because, of course, if today both claims were not before the court in isolation, we were just considering --

MRS JUSTICE SHARP: But basically what you say is he would not be able to satisfy the procedural grounds because of the state immunity here. Is that what you are saying?

MR HIRST: It is both. He is not going to be able to satisfy that state immunity does not apply to the bringing of the action against the Ministry and, even if that is wrong, there is no jurisdiction, depending on the view that the court takes as to what the tortious act was. If it takes the view that I am suggesting, that it is a slander claim, then there is no jurisdiction either, which would be a ground on which the claim could be struck out or the order set aside because obviously it has to be shown to be a good claim as well as one which does not involve the principle of immunity of state.

MRS JUSTICE SHARP: What I am asking you is, put aside for the moment what was or was not demonstrated to Master Eastman at the relevant time, what do you say are the grounds upon which this claim should go? First of all you say because there is no case against Ms Sorte at all.

MR HIRST: Yes, I mean it is all of the reasons which were advanced as to why the claim should be struck out against Ms Sorte.

MRS JUSTICE SHARP: Yes, but secondly you say it is not a case in any event where -- or are you saying that this is a case of state immunity?

MR HIRST: Yes, I mean we do say it is a case of state immunity and this is also a basis on which the court should set aside Master Eastman's order. It is brought in

relation to things done by an officer of the state in the execution of public duty as a police person. Police communications with the media are not prohibited and in this case the specific statements are not --

MRS JUSTICE SHARP: That is the evidence of the lawyer.

MR HIRST: That is the evidence of Christian Reusch. The reference is at bundle A9, 169-171. It does not conflict with law or the regulations on the police, which are designed to promote better understanding of police work or to give information about specific cases, dispel information and rumour and promote law and order. As Ms Sorte says in her evidence to the court, she was contacted in late 2005 by a number of journalists in her role as a police officer because she had been exposed, as a police officer, in the Heidi Schøne case and as a witness as a result of that in civil proceedings, and this has exposed her to attacks by the claimant. The statements that she made to Mr Hansen were completely consistent with the public record in Norway, in the form of Mr El Diwany's convictions and the decisions of the civil courts. Mr El Diwany used websites himself of the Norwegian newspapers and his own website to attack her as a policewoman.

MRS JUSTICE SHARP: I follow those arguments, it is not a case of simply saying, "Well, he followed the wrong procedure", because the point is that, if you are saying that even if he tried to demonstrate what needed to be demonstrated, he would not be able to because the principles of state immunity mean that there would be no proper case to be brought against the Ministry of Justice.

MR HIRST: Yes, because the underlying actions that were relied upon are actions of a police person in the line of duty, which is part of the principle of a sovereign act of the state. I mean, clearly police activities are essential and fundamental to the essence and wellbeing of the state and its ability to order itself and defend itself and to good law and order.

Is it helpful if I take your Ladyship to the House of Lords authority on the acts of public servants when foreign states are sued? It is in the bundle, it is not tabbed. It is Jones v Ministry of Interior of Kingdom of Saudi Arabia [2006] 2 WLR 1424. It is behind the last tab. It is helpful on this question. Unfortunately my clerks have let me down with the print document, it does not have page numbers and it is clearly not the proper law report cited. But, nevertheless, on the third page, you will see that Lord Bingham introduces the conjoined appeals, which are brought against a foreign state and its officials. He said one principle, historically, the older of the two, is that sovereign states will not, save in certain specified instances, assert its judicial authority one over the other. Then when you see who the parties are, it is the Ministry of the Interior in the first action, a lieutenant colonel sued as a servant or agent of the Kingdom.

MRS JUSTICE SHARP: Where are you looking now?

MR HIRST: I am looking at paragraph 2. The claims were for torture, false imprisonment, trespass and assault and battery and, as in this case, the kingdom applied to set aside service of the proceedings and to dismiss the claim on grounds of state immunity. In the second action:

> "Messrs Mitchell, Sampson and Walker are the claimants in the second action giving rise to this appeal. They issued High Court proceedings on 12 February 2004 against four defendants. The first two defendants were sued as officers in the Kingdom's police force. The third defendant was sued as a colonel in the Ministry of Interior of the Kingdom and deputy governor of a prison in which the claimants were confined. The fourth defendant was sued as head of the Ministry of Interior."

If you turn to paragraph 9, over the page, this is the general proposition that the rule laid down:

> "Thus the rule laid down by section 1(1) of the 1978 Act is one of immunity, unless the proceedings against the state fall within a specified exception."

It is the principle of restrictive immunity. At paragraph 10, halfway down, Lord Bingham says:

> "There is, however, a wealth of authority to show that in such case the foreign state is entitled to claim immunity for its servants as it could if sued itself. The foreign state's right to immunity cannot be circumvented by suing its servants or agents."

Various authorities are cited for that. At paragraph 11, it was said:

> "In some borderline cases there could be doubt whether the conduct of an individual, although a servant or agent of the state, had a sufficient connection with the state to entitle it to claim immunity for his conduct. But these are not borderline cases. Colonel Abdul Aziz is sued as a servant or agent of the Kingdom and there is no suggestion that his conduct complained of was not in discharge or purported discharge of his duties as such. The four defendants in the second action were public officials. The conduct complained of took place in police or prison premises ..."

MRS JUSTICE SHARP: In this case, it is said expressly that the Ministry of Justice is vicariously liable, so the claimant himself is saying that the principle of vicarious liability would only work if Ms Sorte was acting within the scope of her employment at the relevant time.

MR HIRST: Unfortunately it is not quite as simple as that. That is certainly what the pleaded case says, unfortunately his evidence is contradictory and he says both. He says on the one hand it is an act of state and it is an act of public duty by police personnel and, at the same time, he tries to maintain that it is a private PR issue of private statements.

MRS JUSTICE SHARP: Yes, but I am saying, so far as the pleaded case against the Ministry of Justice is that it was vicariously liable. On that basis, then it is not open, on the face of it, for the claimant to argue that the claim, in respect of the Ministry of Justice, is in respect of the private conduct by Ms Sorte, because --

MR HIRST: That is my understanding. I believe, from his --

MRS JUSTICE SHARP: So it follows that, if that is right, the principle of state immunity cannot be undermined by seeking to rely upon her conduct in this context.

MR HIRST: I believe that to be right.

MRS JUSTICE SHARP: Anyway, do you want to carry on to show me the rest of this? Is there anything else you want to show me?

MR HIRST: It is evident from the passages I was reading that it was not disputed in the Jones case and that the House of Lords certainly did not consider otherwise that police people in the line of duty are responsible for sovereign acts of the state. I have spoken for rather a long time this morning but I believe you have my submissions.

MRS JUSTICE SHARP: Yes, all right. Thank you very much. Yes, Mr El Diwany.

SUBMISSIONS BY MR EL DIWANY

MR EL DIWANY: Yes, thank you, my Lady. These conversations, on the face of it, of course, that I left on Torill Sorte's voicemail, indicate that I am extremely angry. The reason I left them is because she had written in *Dagbladet* newspaper.

MRS JUSTICE SHARP: Because she did what?

MR EL DIWANY: She had been quoted in *Dagbladet* newspaper on 21 December 2005 and the next day on the main newspaper on 21 December that I had been put in a mental hospital and I had been in one for two years. Following that, immediately, and also in the newspaper it said that I wanted Heidi Schøne's child to die. Heidi Schøne had been a psychiatric patient since 1989 to 1990. Her psychiatrist, Dr Petter Broch, was in court in 2003 to say she suffered from an enduring personality condition, she sexualises her behaviour, and in 2003 she went on a 100 per cent disability pension for mental illness. Her life has been a succession of sexual adventures. She had two abortions before I met her. She had two suicide attempts over the father of her child. She has written love letters to me, talked about marriage and in 1990, when I went to see her, she told me she was exorcising demons, spoke in tongues and was a born again Christian and she sent me a book called, "I Dared to Call Him Father" in which a Pakistani woman had converted to Christianity because of the abuse suffered by her Muslim husband.

So we were friends on and off up until 1991 but in 1988 she phoned me up in my office. She admitted requesting my help in court. So she phoned me up in my office in 1988 to say that the father of her child, Gudmund Johannesson, had told her to, "F off" and she wanted immediate revenge. She asked me to come over and assist her with my best friend, who is now the drummer in Uriah Heep but he is a third dan in karate. She wanted physical revenge on Johannesson by taking him to the woods and tying him up, or something, but we were not going to do that. Anyway, next morning, she changed her mind. Following that was a suicide

attempt caused by Johannesson and then she went into the BSS Psychiatric Clinic in Lier.

When I sued her for libel in 2000, I could not cross-examine her at all. I was completely barred from cross-examining her; the reason that I cannot quite understand, but was that she was a psychiatric patient. I should have been allowed to cross-examine her. That is a fundamental aspect of a right to a fair trial in Article 6. She was saying all sorts of things. If you think the allegations, which you may not have read yet, I am everything under the sun. I am a rapist, I am a potential child killer, I am a sexual blackmailer, an abuser, and death threats to everybody. She said I wrote 400 obscene letters to her. In court not one of them turned up. She did not keep any, gave them to no one. But it was still regarded as true, and how can that be? They do not exist. She did not ever complain to anyone before about them. So a mental patient is allowed to say all this.

In 1995, I discovered an allegation that I had attempted to rape her. In 1986, she went to the police saying I had attempted to rape her. But that allegation to the police, she only went there two weeks after I wrote to her father saying she had terrible behavioural problems and he had to do something about it.

MRS JUSTICE SHARP: Why did you write to her father?

MR EL DIWANY: To warn him, to tell him that she is pregnant again to a chap injecting heroin, he was an ex-convict, Gudmund Johannesson, she tried to commit suicide before over him by taking pills, and so I wrote to her father and said, "You have to do something". Within two weeks, out of spite, she went to the police to allege I had attempted to rape her, and that was 18 months after I last saw her. That 1986 attempted rape allegation changed to rape in 1988 and Torill Sorte told me that.

I was having very amicable conversations with Torill Sorte in 1996 to 1998 and you have the transcriptions of the conversations and they are all available on my website, very amicable. The first policeman there, Mr Svein Jensen said, "There is so much stuff here, I do not believe her. This cannot be true." And they were going to drop the case. There was no great reservoir of evidence there that I have been sexually harassing her, blackmailing her, for instance --

MRS JUSTICE SHARP: I think, if I remember correctly from looking at the transcript that there was some suggestion that if you took down your website that matters might be left, as it were the proceedings would not begin and everything would be as it was.

MR EL DIWANY: Yes, the website. Why? Because not one newspaper in 19 articles in Norway gave me a right to reply. I could say nothing. Three 1995 newspapers, the articles referred to me as an "insane man" and a "Muslim man suffering from erotic paranoia". They could not believe that my description of Heidi Schøne's life history was true or that she liked me.

MRS JUSTICE SHARP: What are you reading from?

MR EL DIWANY: Sorry, I beg your pardon my Lady, I am reading from page 1 of my supplemental witness statement. We have these articles here and it is totally unacceptable for a newspaper to refer to me as "the Muslim man" 19 times in one

article without saying why they are doing it. We have this article, it is exhibit FED/11. (pause)

MR HIRST: Tab A, 389.

MRS JUSTICE SHARP: Thank you very much. Yes?

MR EL DIWANY: In the article I gave you, I did highlight the 19 occasions in which "Muslim man" was used and that is coupled with, on the next page, the "suffering from erotic paranoia" with two psychiatrists saying I may or do suffer from erotic paranoia. Why am I suffering from erotic paranoia? What is it? It is firstly called "old maid's syndrome" where somebody imagines a woman loves him. Well, I did not have to imagine, I knew Heidi Schøne once loved me because her letters to me speak of marriage and what a decent chap I am and all the rest of it. These 1995 articles from the very start, every article that has been done on me in Norway, say that, from the very moment I met her, I was sexually harassing her. I was committing all sorts of crimes. But these 1995 articles came out without her knowing that I found the newspaper articles. She did not think I would read them.

MRS JUSTICE SHARP: Right, well, it is 1.00pm now. I will rise and sit again at 2.00pm, so you can continue your submissions at 2.00pm.

MR EL DIWANY: Thank you, my Lady.

(The short adjournment)

MRS JUSTICE SHARP: Yes.

MR EL DIWANY: So, three 1995 newspaper articles. One large provincial and one national newspaper. *Verdens Gang.* In *Bergens Tidende* , they are calling me "Muslim man" 19 times, "suffering from erotic paranoia". "Threatened Heidi Schøne's life." "Harassed her because she did not want to be with a Muslim man." In *Verdens Gang*, "13 years of sex terror." So it all began in 1982. 13 years before 1995, in 1982. So we can have a look, if we may, at one of Heidi Schøne's letters.

Exhibit FED/7. I have typed it out because her writing was illegible in many cases, but I can undertake it is correctly typed. The typed version is absolutely correct. This letter, do you have it, my Lady?

MR HIRST: It is page 348 of bundle A.

MR EL DIWANY: This was post stamped 22 August 1984. She says halfway down on the typed up version:

> "Bloody he! I don't know why I think of you. Oh, can't you marry two women! He-he! That was a joke. I can finish my studies in Norway first and then I'll come over to England and get married to ... You will probably be old and dead by then. He-he! What about marrying an Egyptian and Norwegian girl? A blonde and a dark one, that should be a good or should I say nice combination. Marry

the Egyptian one first and when you are fed up with each other I'll come over."

Later on she says, at 690:

"It feels good to know that you care about me as a person, and not just as a "sex object. Seriously, I mean it. It feels very nice. But I still think we are going to lose contact when you are married."

This is a very complimentary letter and there is a card she writes to me. I did not keep many of her letters, but you can see there is another one. She wrote a card, a few pages on:

"For someone special; I'll be there if you need me. Anytime, anywhere, I'll be there if you need me."

She writes to me in this black letter, it is a few pages on, in the last half from the back, undated 1984. She says:

"It is always nice talking to you. You're such a nice person and you know that too. But how are you now? Have you heard anything from the Egyptian girl recently?"

And she goes on, postcard:

"Thank you very much for your letters. I just want to write this card to you to show that I think a lot of you. I do really hope you take care of yourself and that everything works out for you, love. Lots of love, Heidi [and several kisses]."

So, that was 1985. Yet we find her evidence to the newspapers, in 1982 paints me as basically the devil. She did that in revenge for me telling her neighbours her past, because of her false allegation of attempted rape. I am not the only one who has been accused of that. She accused --

MRS JUSTICE SHARP: Sorry? She did it in revenge for you telling the neighbours?

MR EL DIWANY: Yes. I told her neighbours her past --

MRS JUSTICE SHARP: Why did you do that?

MR EL DIWANY: Because I just discovered an allegation of attempted rape made a few years earlier. To this day I cannot find out from the police what the attempted rape is. That could have got me into a lot of trouble.

MRS JUSTICE SHARP: I am just trying to follow why you told the neighbours.

MR EL DIWANY: Because I found out. I told the neighbours her past. Her past.

MRS JUSTICE SHARP: Because --

MR EL DIWANY: Because I had found out that I had been subjected to a false allegation of attempted rape, which has now changed to, well, actual rape. No charges were brought, none that I am aware of.

So my convictions, my first conviction was due to the information campaign that I conducted to correct what the press had written because they were not taking any notice of my communications to them, lengthy communications with her letters. (pause)
I am just trying to find the campaign articles I wrote; sent to the public.

MR HIRST: Can I help?

MR EL DIWANY: It is at FELD/3.

MRS JUSTICE SHARP: That is your supplementary witness statement?

MR EL DIWANY: Yes. So-called press release.

MRS JUSTICE SHARP: Just wait a minute.

MR EL DIWANY: So, it was directly relating to her past. They have written about me, so I wanted them to know exactly about the woman who was writing it herself, to the newspapers. It is just a historical précis to go with the second article. It is entirely shown more and more --

MRS JUSTICE SHARP: This is written by you?

MR EL DIWANY: Yes, that is my letter to correct the press.

MRS JUSTICE SHARP: You refer to yourself in paragraph 3 as, "The Muslim man"?

MR EL DIWANY: I do. Only because they started it. They put, "The Muslim man" originally. It was to let them know who it was. I am not going to put my name to such awful stuff, so I put "The Muslim man" only in response to their -- they started, "The Muslim man", without saying why. (pause) All of this, all my information was deemed as more or less correct by the judge and by her psychiatrist. "Core of truth", said the psychiatrist. So, there is no disputing this, it is correct.

MRS JUSTICE SHARP: Where do I find that?

MR EL DIWANY: It is only in my reports on the cases myself. Because, although I asked the judge to note that, and that was why I went to appeal as well, they did not do it. But, I can give a personal undertaking that Dr Petter Broch in 2003 described my reports on her as containing a core of truth. Judge Anders Stilloff, in 2002 I believe, said my reports were "more or less correct". I have referred to that in my appeal documents.

MRS JUSTICE SHARP: Yes, but it is not in the judgment of the court?

MR EL DIWANY: No. There is a lot in the judgment of the court that they do not put in. It is very mischievous in my opinion. Especially the fact that I did not write 300 letters to Heidi Schøne from 1997 to 1998. They conceded that was untrue. It was not put in the judgment. Nor was the fact that one of the journalists who

wrote that I was suffering from erotic paranoia, she said that she did not know what erotic paranoia meant and she only lifted it from another newspaper, which was *Bergens Tidende*. I think it points in my favour. The editor said he could have researched the matter much better. But, of course by then the newspapers were not in the dock because they had craftily slipped out of it in 2000 after making me promise not to sue them in return for the Norwegian Press Complaints Bureau, (Norwegian phrase). They said, "We will only look into your complaint if you promise not to sue the newspapers". So, naively, I promised. Only to discover that they do not look into the truth or falsehood of the comments made in the newspapers. They just look into the general matter of whether a newspaper has a public interest story.

After that, I appealed to the Supreme Court of Norway to ask the judge to let me sue the newspaper. Unfortunately my lawyer, Stig Lunde, my second lawyer, missed the time limits. So, new case law was going to be created with the Press Complaints Bureau in Norway. It was not, because my lawyer had missed the time limits.

I complained to the Press Complaints Bureau in 1996 after I had my articles translated. I was luckily sent the articles by my lawyer who was investigating Heidi Schøne's conduct in the 1990s. He sent me the newspapers, I had them translated and I complained to the Press Complaints Bureau in Norway. They wrote to me over the course of four months, eventually deciding that I was out of time. So, I could not progress there either.

MRS JUSTICE SHARP: Which newspaper articles are you talking about?

MR EL DIWANY: I complained about all three. *The Verdens Gang*, *Drammens Tidende* and *Bergen Tidende*. *Tidende* just means news. So, it is Bergen News, Drammen News and Verdens Gang, which is the big tabloid. I found out later that they had an independent right to investigate newspaper articles themselves if there is religious hatred evidence, well, there certainly was. Nineteen times, "The Muslim man suffering from erotic paranoia". Which has now been proven to be baseless. They refused. They were very aggressive as well.

So, I tried. In the end I said to them:

> "This stuff is so blatantly Islamophobic. I had a German mother. I was born here. I like rock music, my best friend is the drummer in Uriah Heep. I am not a fanatic of any sort."

So, I decided the only way to teach these people a lesson was to institute my own campaign, which was a leaflet campaign to all and sundry in Norway by whatever means I can manage. So, it just --

MRS JUSTICE SHARP: When you say, "Teach these people a lesson", which people are you referring to?

MR EL DIWANY: The newspapers. They must have sold tens of thousands of newspapers on that salacious stuff on me. So, I sent it to the public to let them know. What else could I do? I could not sue, because my first lawyer, Karsten Gjone, missed the time limit. Oh, another one missing the time limits. He was found guilty by the Norwegian Bar Association of negligence. I do have that report.

Again, at FELD/6, my Lady, his name is Karsten Gjone. (pause) It has the Norwegian decision. Plus, well there is a professional translation in the fax, I can promise that. At the very last page of the English:

> "Lawyer Karsten Gjone acted in breach of good lawyer's practice. Missed the time limit."

(pause) The conclusion in the Norwegian, that that has been passed to, your Honour, I do not speak Norwegian, (Norwegian phrase).

MRS JUSTICE SHARP: Well, if there is a translation you should read the translation, should you not?

MR EL DIWANY: Yes. This translation is off my website, but it is an actual correct translation, and Norwegians do not refer to, when they put "NN" in there, that means the party, Heidi Schøne. They do not put the names. But I can undertake personally that this is a correct translation. He was found in breach of good lawyer's practice.

MRS JUSTICE SHARP: It is bit difficult for you to do that if you do not speak Norwegian.

MR EL DIWANY: I got it translated by my usual translators; RWS Translations, Gerrards Cross. I just did not have time to find the -- it is tucked away. But, I can undertake that is correct. (pause)

So, out comes the next article. There were two articles in 1998. One of them I did not know about for five years, which was *Verdens Gang*, I think that says, "Sex crazed man". But I did sue on the 1998 *Drammens Tidende* article, which went to the Supreme Court. I sued in 2000, the newspaper and the journalist and Heidi Schøne. As I have told you just now, the newspaper managed to get out of it by sleight of hand, saying that I had promised not to sue. I did not know that even though you used the Press Complaints Bureau in Norway you can still sue them afterwards if you do not like their decision. I did not have that chance at all because the Court of Appeal in Norway decided that my promise was permanently binding. I could never sue them now. So, we went to the Supreme Court and missed the time limit.

So that just left Heidi Schøne before Judge Stilloff, and I could not cross-examine her. I was stopped from cross-examining her. She said all sorts of stuff about me being a sexual predator. Her evidence from 1982 to 1995 was all uncorroborated. There was not one scrap of evidence from any witness or anyone else, her neighbours. Writing 400 obscene letters. "Can you produce one of them please?" Not one, because she has thrown them away, which made my (several inaudible words).

She was a psychiatric patient; her evidence was given freely as to all my crimes. None of that evidence was put to the police ever, up until 1996 when Heidi Schøne decided to complain because I had insisted Torill Sorte investigate her for her basic attempt to pervert the course of justice by saying I am a danger to the public.

So, there was no evidence at all. It all came after this, in 1996. I begged Torill Sorte, "Please investigate this woman". But, at the same time I was continuing to send my reports to the Norwegian people about Heidi Schøne's past. Because newspapers are supposed to phone you up and get your comments before -- they

are supposed to print your response. But, their main agenda was that I was Muslim with a German mother.

What I hope does not upset the court is that my grandfather was a German soldier, killed in Stalingrad. The Germans, of course, are not liked particularly by the Norwegians. They invaded them in World War II and they had a huge story about the abuse of the children of German soldiers born to Norwegian women, because they rather liked each other during the war. They were called "the German whore children". Not my words, but the words of Norwegians. They were sexually abused in a most disgusting manner and put in mental hospitals. So the mental hospital approach is one that has been tried and tested before. They do that anywhere. People outside are mental if you do not agree with them.

I had that article called, "Sleeping with the enemy". I am not going to read it to you, my Lady, because the gist of it is quite clear. Severe psychiatric, mental and sexual abuse of children. It went to the European Court for Human Rights, because the Norwegians covered up for years and did not admit to their crimes, but I think they have now. One of these ladies was -- one of these German "whore children" was singer in Abba, Frida, whose father was a German soldier. So I was an ideological enemy, being Muslim and having a German grandmother.

Henrik Lunde gave evidence in court in 2003. He was from the Anti-Racist Centre, to say that no newspaper in Norway refers to the victim, or a subject as Christian or Jewish. So, it was absolutely wrong to refer to him as a Muslim, particularly as being a Muslim is an opposing religion, even though my mother is a born Protestant.

Was this just a one-off, this religion thing? No. 2002, headline, "British Muslim terrorises Norwegian woman on the Internet". I had a conversation with a journalist before that. Reidun Samuelsen was her name. Her duplicity has to be read out. (pause) "Sleeping with the enemy" is the -- sorry. I beg your pardon. FELD/31. (pause) I can undertake that this is an RWS translation. Professional translation:

> "British Muslim terrorises Norwegian woman on the Internet. Started after an au pair job 20 years ago."

Again, we are going back to 1982, quite long. Why put "British Muslim"? Why not just put "Briton"? My conversation with the journalist who got in touch with me by email. Again this is in page 1, this is on my website at the moment.

MRS JUSTICE SHARP: What, this article is on your website?

MR EL DIWANY: Oh, they are all on my website. The point is I record their conversations and I give them the norwayuncovered.com\sound for these conversations. You can hear them at your leisure.

On the first page of this I telephoned the newspaper on 10 April, once they had seen my website. They emailed my ISP to ask me to make contact. Halfway down:

> "We need to establish, to me the story here not is not about the past, by why you are writing on the Internet about this."

MRS JUSTICE SHARP: What are you reading from now?

MR EL DIWANY: I am reading halfway down this untitled document, it is a transcript of a phone conversation I had with them.

MRS JUSTICE SHARP: What page is that on?

MR EL DIWANY: This is page 1 of 3. It is at the end of the Norwegian article. At the top it has got, "I telephoned the newspaper".

MRS JUSTICE SHARP: Yes. (pause)

MR EL DIWANY: So, I talk about that they keep putting, "A Muslim man".

MRS JUSTICE SHARP: You contacted the journalist yourself?

MR EL DIWANY: Yes, I did. We had a chat and I recorded this. On the second page, halfway down, she says, "We need to establish, did they put your name in print, or something?" That is very hard to see your name in print. That is why -- I think that was a calculation on their part, because they can say whatever they want. I think the main thing is the abuse. So, she said to me, "Did they put your name in print or something?" I said:

> "No. They didn't put my name. The main thing is that I'm Muslim. They don't care about my name, they care that I'm Muslim. You see the newspaper articles on the website, you people in general do not like Muslims. I know that because I have spoken to enough Norwegians over the years. The main thrust of the May 1995 *Bergen Tidende* article, they don't care what my name is. They know and want to attack me as a Muslim."

Reidun Samuelsen says, "I didn't know that you were a Muslim." And I put:

> "Obviously, she hadn't in fact looked at my website for very long because the three 1995 newspapers were up there in Norwegian, together with the English translation."

Then she goes on to say, "Nobody told me that and it doesn't matter for me."
So, that was my conversation. I did not know about this article that she did, "British Muslim terrorising Norwegian woman on the Internet", for 1½ years. The only reason I knew about it is because Heidi Schøne in court let it slip out. So, I go home after the case, Googling the word "Muslim" and "Norwegian", and out comes this article, "British Muslim terrorises Norwegian woman on the Internet."

MRS JUSTICE SHARP: Sorry. I am just looking at the conversation in 397-398. The position is that you ring her out of the blue. You tape your telephone conversation. She discovers that a quarter of the way down. You tell her what is on your website?

MR EL DIWANY: Yes. She contacted me because she had seen my website.

MRS JUSTICE SHARP: Before this?

MR EL DIWANY: Yes. Oh yes. She left a message on my email asking me to ring her.

MRS JUSTICE SHARP: Why is that?

MR EL DIWANY: I am very careful with Norwegians and clearly recording people has been a God send, as you can see with my recording with Torill Sorte who said I always abused her. There were three years of conversation and not one word of abuse when she was being sensible. It all changed, of course, when she said I had been put in a mental hospital, which is about the worst thing you can say when it is not true. You have my family doctor's letter.

MRS JUSTICE SHARP: What changed when she said that? What, that you started abusing her after that?

MR EL DIWANY: I did not abuse her all.

MRS JUSTICE SHARP: You said, "I didn't abuse her before and it all changed after she ..."

MR EL DIWANY: Oh yes, it all changed.

MRS JUSTICE SHARP: I was asking you what you were saying changed.

MR EL DIWANY: What changed? My whole attitude towards her as an honest policeman supposedly by going on oath in court to say that my mother had put me in a mental hospital. This was outrageous. What a thing to hear. My lawyer, Stig Lunde, during the case he said, "We've got a tape recording cassette here of Mr El Diwany's mother", because I asked my mother to speak to her, to deny the fact that Heidi Schøne had said my mother wanted to put me in a mental hospital. Coming from a psychiatric patient like Heidi, "Wanting to put me in a mental hospital". We played the tape and it said Mr El Diwany's mother never wanted to put him in a mental hospital. I have not been in one, that is quite definite.

In the evening, my lawyer Stig Lunde rings up Torill Sorte to say, "Look, we're going to cross-examine you in the morning about this mental hospital thing", and she said to Stig, "If I'm asked to come back, I will retract what I said. I will make a complete u-turn and I will say that Mrs El Diwany phoned me up again to retract what she said, to say in fact that he had been put in a mental hospital."

I know I have never been in one. My doctor's letter confirms that. We played it to the book. We did not ask her back because he said it would be very bad in front of the judge if it seemed as if I had been in a mental hospital. I said to my lawyer, "I've never been in one". It was too late. He had told her the night before she is not going to come to court so we could not cross-examine her. That is why I appealed against Stilloff.

I cannot be accused of abusing the Norwegian court process if I am described by Heidi Schøne as a potential child killer, written her letters threatening to kill her son. Where is the letter? I did not write it. She never had a copy, nothing. Did not even give it to the police, nothing. I think she said she gave it to the police but they had lost it, surprise, surprise.

Torill Sorte next time at the court before Anders Stilloff. I had my family doctor's letter from 2003 and I said her, "Well, you have put in a witness statement from 1997". I am going to refer to you that witness statement, my Lady; 1997 witness statement. (pause) Exhibit FED/3.

MRS JUSTICE SHARP: Whose witness statement is this?

MR EL DIWANY: I beg your pardon?

MRS JUSTICE SHARP: Whose witness statement is this?

MR EL DIWANY: Torill Sorte's own witness statement.

MRS JUSTICE SHARP: All right.

MR EL DIWANY: FED/3; it has the Norwegian and an RWS translation.

MRS JUSTICE SHARP: Page 259?

MR EL DIWANY: FED/3.

MR HIRST: Yes, it is at page 259.

MR EL DIWANY: Just the bottom paragraph:

> "The author has also been in touch El Diwany's mother. She is an elderly woman [I think she was 62 at the time; hardly elderly] who has given up trying to help her son. She says he is sick and needs help. This is something they've always struggled with and on one occasion he was admitted for treatment. His mother could not cope with all the trouble again and therefore just lets him carry on."

I mean, that is a despicable thing to say. I have never been admitted for any treatment and I have a tape saying the exact opposite where my mother had told her, "I never wanted to put him in a mental hospital". Because I had my mother once to speak to the police officer when we were having a good time. I recorded all those conversations and my mother has written to Judge Stilloff to complain bitterly about this lie and that is FED/4. I think, ultimately, I mean my doctor's letter and the fact that I have never been in one proves that I have not been in one. FED/4, Judge Anders Stilloff, 22 January 2002. I will read it, shall I?

MRS JUSTICE SHARP: Yes.

MR EL DIWANY:

> "Dear Sir,
> Policewoman Torill Sorte.
> I write in connection with the above named policewoman's evidence given at the recent trial in your court between my son Farid El Diwany and Heidi Schøne. I was shocked and distressed to hear that Torill Sorte swore under oath that I told her that I had put Farid into a mental hospital. This is an outrageous lie. At no

> time has my son been in a mental hospital or had psychiatric treatment of any kind. His family doctor will confirm this in writing to you.
> I, myself, was deeply insulted at this preposterous suggestion. You have heard the tape from 1996 wherein I specifically told Torill Sorte that I had not threatened to put Farid into a mental hospital as has been written in the newspapers. This was the only time I had spoken with Torill Sorte.
> For 28 years I was the wife of a doctor in general medical practice and often assisted my husband in his work. I am not being manipulated by my son in any way and it is grossly offensive of others to suggest that this might have been the case.
> I would be grateful if you could ensure that Torill Sorte is dealt with in the appropriate manner."

I will refer to my family doctor's letter, which I specifically requisitioned for the court in 2003. His name is Dr Athreya. He works in the Shenfield, Essex, Department of Health Practice. And it is FED/2. (pause)

MRS JUSTICE SHARP: Page 257?

MR HIRST: Page 257, yes.

MR EL DIWANY:

"To whom it may concern", 22 April 2003, it has my name, date of birth and address:

> "I confirm that I am the general medical practitioner of the above named gentleman. On careful perusal of Mr El Diwany's medical records I can state categorically that I can find no evidence that Mr El Diwany has being committed as an inpatient at any psychiatric hospital. I trust this is satisfactory for your requirements. Please do not hesitate to contact if you need any further information."

So, it is in black and white, no psychiatric treatment.

I used that letter in court in 2003 in my appeal before Judge Stilloff. I said, "Torill Sorte, you clearly stated in a witness statement that my mother put me in a mental hospital". I said, "We have a taped conversation saying the opposite so when did you call her again?" "Oh, no record, you know, nothing". I said, "Well, you are a liar. I have not been in a hospital because my family doctor's letter says so". At that precise point Judge Stilloff intervenes and says, "I will stop the proceedings there". When Torill Sorte leaves he says, "If you ever have an outburst like that again I will not let you cross-examine further in this court". My tone of voice was calmer than now. I just said to Torill Sorte, "Well, my family doctor's letter clearly indicates that you are a liar". That tone of voice. I could not cross-examine any further.

We were on the point of getting her. She is a crook. She is a dishonest police officer and if it happened in England she would be sacked. I do not know that perjury investigation -- I think it was a cover up, personally. Cover ups do happen. And they are very opaque as to the reasoning they give. I do not think she was consulted properly. There is no consultation basis for their decisions, these

Norwegians. They do it all on paper. You cannot put anything in except your letters. They do not even tell you if they consult the other side. Not very good at all. Certainly not the British way of doing things. I think she should personally be in prison for lying.

But we had another chance. Now that she was being let off she was free to carry on. We come to her newspaper article and this is the crux of my complaint and my present claim. We come to the newspaper article in *Dagbladet* exhibit FED/1. (pause) RWS translation.

MRS JUSTICE SHARP: Page 241?

MR EL DIWANY: Page 241. It has: "Sexually pursued by mad Briton".

MRS JUSTICE SHARP: Yes.

MR EL DIWANY: "Twenty-three years", this is a 2005 article, so again we are going back to 1982, quite inaccurate. They tried to say that, once again, everything started the minute she went back to Norway. "Has been sexually harassed"; they think my leaflet campaigns on her past are sexual harassment. They talk about me as a sexual madman so I put a path which is correct. What am I? I sexually harassed her. Again, halfway down:

> "For her, the nightmare began when, as an 18 year old au pair she met half-Arab Briton on a boat trip between France and England. She was travelling with a girlfriend when she noticed a five-six year older man looking at her."

So it began when I met her, 18. Clearly wrong. Second page, subheading, "Terrorised":

> "She did not want to have any further contact with him when she later moved back to Norway."

Well, we have seen her letters. She is a liar. I mean, in others they have said I have written, "F off". Letters telling her to F off, all the time, daily. I carved, "F off", on her door. No way. Why do they not photograph the door? That was nonsense. Anyway, this is the crux of the matter, I am reading from the third paragraph from the bottom:

> "The terrorising continued right up to 1992. The man was then committed to a psychiatric hospital in the UK. A Norwegian police official investigating the case [and this is Torill Sorte because she was only one that was investigating it] explained later that it was his mother who had him committed. When he came out again two years later it carried on worse than ever."

Two years in a mental hospital. I spoke to the journalist, Morten Overbye, who wrote that article. He did not ring me up before, refused to print my reply, but I recorded his conversation in which he called Torill Sorte a liar. That is a no-brainer and that conversation (pause) FED/15. I have given you the disc in evidence.

MRS JUSTICE SHARP: I do not know what page this is on.

MR EL DIWANY: I beg your pardon?

MRS JUSTICE SHARP: I do not know what page this is on if you are asking me to look.

MR EL DIWANY: You have it at FED/15.

MRS JUSTICE SHARP: I have a very large bundle with a large number of pages in it which are not separated.

MR EL DIWANY: No. It is three pages FED/15.

MRS JUSTICE SHARP: For future reference, for people putting bundles together with large exhibits. it is very helpful it they put --

MR HIRST: Page 410.

MR EL DIWANY: I beg your pardon, my Lady, I am sorry about that.

MRS JUSTICE SHARP: All right.

MR EL DIWANY: I think we better read it all out:

> "El Diwany: I do not know why you thought that because, first of all, do you admit you have lied about two years in a mental hospital?
> Overbye: No, I wrote up the website on 20 December, a police officer said so and in the wording --
> El Diwany: And you believe her, do you?
> Overbye: It came from a police officer explaining when I think that it's ...
> El Diwany: No. Did you speak to Torill Sorte to ascertain your facts?
> Overbye: Had I spoke to her? Yeah, of course. You have been harassing her as well, haven't you?
> El Diwany: No, I've not been harassing her. I've just been questioning her, okay. She's been harassing me by saying that I've been in a mental hospital or my mother wanted to put me in one or I have been in one. Now, where'd you get the two years from?
> Overbye: I just told you that the sourcing on the website is her, a Norwegian police officer.
> El Diwany: So, Torill Sorte is the source for the two years, yeah?
> Overbye: Yes, and on the bottom of my first story it says. 'P.S. Also the police officer who led the investigation of the Brit is now being harassed by name on his website.'"
> El Diwany: [I replied] Well, it's not harassing. It's a right to reply. Do you not understand? I mean, you're a journalist, obviously the point is that you're a second rate nothing. You wouldn't get a job in a British newspaper in a million years because ..."

Later on, I put:

> "El Diwany: Well, no other country on earth would be so perverse and bigoted as to get their own(?) back. Isn't it some kind of criminal offence to insult Norway by printing the truth about their -- certain institutions? That's what it's all about.
> Overbye: [In reply he said] I don't think so.
> El Diwany: Oh, just because the Muslim man hit back and put something up on a website.
> Overbye: I don't think this is about you being a Muslim, sir.
> El Diwany: Well, to me the association, so why every time print the word 'Muslim'?"

He printed the word "Muslim" in his article:

> "Why every time print that? And also there's one article that says I am ... Torill Sorte printing in *Eiker Bladet* that I'm clearly mentally unstable."

I had not known about the English translation of that from Google actually until 2009:

> "Torill Sorte, the policewoman, says that you are mentally unstable ..."

MRS JUSTICE SHARP: Sorry, what point are you making?

MR EL DIWANY: I had referred to Torill Sorte printing in *Eiker Bladet*. This is the article I am suing on now, that I am clearly mentally unstable. Of course I knew about that article. But the reason I am suing now is because, for the first time in 2009, I found it in English. In English, on the net with my name, which is downloaded here in the UK where a deal of damage is presumed:

> "El Diwany: Yes, 'Clearly mentally unstable', is the quote.
> Overbye: She was the person who investigated the case against you. She was the leading investigator.
> El Diwany: Oh yeah, top woman. Yeah, fantastic investigative policewoman. Where did she have thought from that I was clearly mentally unstable? Because she is nuts. Anyone who says that I have been two years in a mental hospital when I have not is clearly a spiteful, vindictive bitch and I told her as much. In fact, I phoned her up a few weeks ago. She did not have the guts to speak to me. If it is not true that I have been in a mental hospital then clearly she is a wicked liar. Agreed? [Silence] You cannot even agree on that?
> Overbye: Of course I can; if she says that you have been in a mental hospital when you haven't been in a mental hospital then she's lying.
> El Diwany: Yeah, exactly.
> Overbye: That's a no brainer."

So the journalist there confirms that she is a liar.

MRS JUSTICE SHARP: The journalist's opinion about this, that or the other is really not very helpful to me.

MR EL DIWANY: It goes some way. I have not been in a mental hospital and --

MRS JUSTICE SHARP: You have made that point.

MR EL DIWANY: What happened after all that? Some vicious hate email. Email that Interpol was investigating. I am going to read one or two of those out if I may. Exhibit FED/6. (pause)

MR HIRST: It is page 325, bundle A.

MRS JUSTICE SHARP: Thank you.

MR EL DIWANY: I wrote a letter to the Brentwood Police. We will go on to the second one, if we may. It is entitled (Norwegian phrase) means "pig" in Norwegian:

> "Wow, I just browsed at your website and I must say you strike me as the most filthy, pig-eating, Muslim maniac I have ever encountered. When you eat pigs, do you lick the pigs' arsehole clean before digging in? I have one advice for you, take out your willy, that is your mangled penis and shove it into a pig's arse, maybe you'll get some weird looking kids. I seriously doubt that anything other than a pig would take your semen. Best regards and good luck on dying pig fucker! By the way, you really do a good job of showing Muslims as crazy, even better than Osama."

The first one:

> "I would like to give a big laugh to you, the most stupid, crazy fuck. Have you gotten your head examined lately? I would like to point out to you that being stupid knows no colour. I was once a Muslim but, when I realised that Mohammed couldn't be anything other than a confused paedophile, I knew that the true god would never speak to such a loony. So, you think that killing a foetus that has not gained consciousness is more wrong than raping children. It is more and more clearly that you are insane. The only human thing to do is to place a gun to your head and pull the trigger but I suppose it wouldn't do much damage as the damage is clearly well done. I heard that your mother got you into hospital."

So, they clearly believed the newspaper:

> "Bad Muslim taking orders from a woman. May I recommend a rope around your neck since you are never going to paradise. Better to end your misery right?"

There is another one, "Sick devil go fuck Allah the Camel". The next one, "May Allah put you behind bars where you belong fucking creep". The next one:

> "You must be the sickest fuck ever. Muslims are root of all evil and you are living proof of it."

The next one, "You Arab pig swine pervert". Next one:

> "We have a €10,000 reward on your head. We're going to get you man. We're going to clear the world from an idiot like you. Burn in hell. P.S. Going to fuck your mother, she like white man."

The next one:

> "Are you by any chance a Catholic priest? And did your daddy touch your penis and/or dropped you on the head when you were born? Or maybe your parents suffered for BSS (baby shaking syndrome) either way you are one fucked up dude. Did someone touch your bum bum in the mental ward? Oh hell, all Norway knows you are crazy as fuck man but I think you are funny, very sad and funny. I give you let's say 10 years and I bet that you've killed yourself or at least got another hobby than harassing women you can't get. Ha-ha, such a wanker. What triggered your funny behaviour? Are you sick or just a horny helpless loser? Tried Prozac with Viagra? Oh wait, I'm sure someone tried that combo in the mental ward when they made love to your bum bum. Do you call your penis King Kong? Happy Christmas mother fucker. Oh wait, I bet you are inbred. Your dad is your son is your mum is your sister is your uncle in your bum bum. P.S. I eat foetuses for breakfast. And it's Mr Americum."

The next one, "You stink please die". The next one:

> "After visiting your website I can now understand why your mother had you put away for a while, clearly the best option."

Here is one that makes a difference:

> "Hey you, I'm from Bergen in Norway. I've read all your stories on the Norwegian site. I don't really know what to believe but yours seems more likely. I don't know. In Norway you are made out to be a sexed up maniac who was a freak from the first meeting. Well, I don't know but today it's all over the net in Norway about you and how they had to block you from lots of Norwegian Internet sites because you were disturbed. Well, I don't know but I hope it gets sorted out and I think, I'm not sure, but I think I support you."

That went off to Hate Crimes Unit in Harlow and Interpol in London and they sent it to the Interpol in Norway. One year later, nothing. I inquired at the Harlow Hate Crimes Unit. We have their letter as proof it went to Interpol. (pause) FED/6.

Last letter, confirms Interpol are doing nothing with Torill Sorte telling the newspaper I have been in a mental hospital; obviously helped the people thinking in Norway I was crazy, especially reference to wanting a child to die and being Muslim. This is proof I did contact the Hate Crimes Unit.

The Interpol in Norway passed the buck to a gentleman called Johann Martin Welhaven. His decision supports saying there is nothing libellous or slanderous,

saying it was right to call me as clearly mentally unstable. He did not even contact --

MRS JUSTICE SHARP: What are you asking me to look at now? Decision of who?

MR EL DIWANY: Yes, Johan Martin Welhaven, who is the police investigator. I would just like to say that I did correspond with him and I will refer to that correspondence but he refused to listen to or tell me what he thought of the disc of journalist Morten Overbye saying that Torill Sorte was a liar. He refused to say why I am clearly mentally unstable. No reasons given. You must give reasons. But he is not a court of law, he is not a doctor. No doctor was employed by them. I am not re-litigating because you have to give reasons and you must consult the parties. Torill Sorte would have to be consulted. My correspondence, which I will show you is adequate --

MRS JUSTICE SHARP: Your correspondence is where?

MR EL DIWANY: My correspondence with Johann Martin Welhaven on this point and my complaint to him is -- (pause)

MR HIRST: I believe it is at page 400, bundle C.

MR EL DIWANY: Exhibit FELD/32. (pause)

MRS JUSTICE SHARP: I see in that bundle, page 401. (pause)

MR EL DIWANY: Shall I read it out?

MRS JUSTICE SHARP: If you want to.

MR DIWANY:

> "Dear Mr Welhaven, *Dagbladet*, *Eiker Bladet* and Torill Sorte.
> I received yesterday your letter dated 28 June and please accept this letter to you as my appeal against your decision on all counts. I note that your department has purposely not returned my calls in keeping with the usual cover-up that precedes all the police investigations into my complaints. I note also from your decision that you have not spoken to Morten Overbye, the journalist with *Dagbladet* who wrote those stories on me on 20 or 21 December 2005. If you had, then he would have confirmed to you that police officer Torill Sorte was the source for the false information that led him to think that I have been in a mental hospital for two years.
> As this is clearly not the case, then Torill Sorte is an abject liar and has purposely given false information to the newspapers to help blacken my character. Morten Overbye himself, as you will see from the transcribed telephone conversations I had with him on 12 May 2007, all of which can be read on my website, has told me that, presuming the fact that I have never been in a mental hospital to be correct, then Torill Sorte is a liar. Our whole conversation is on tape ready to be sent to you but speak with him first.

In particular, you yourself are in dereliction of duty by not speaking to Morten Overbye or Torill Sorte or indeed myself to obtain clarification and certainty as to the facts. Your personal opinion that *Eiker Bladet* quoting Torill Sorte are correct, to call me, 'clearly mentally unstable' is an indication of your own complete bad faith and bigotry in this investigation.

You say that my website and other facts in the case support the allegation that I am clearly mentally unstable. You do not mention which facts and what in particular on my website supports your belief. Reasons must be given. And even though this is not a court, Article 6 of the European Convention of Human Rights, reasons must be given for decisions. The fact is that if someone like me writes certain home truths about the Norwegian system that upset Norwegians, then automatically the offender is mentally ill. This approach is an age old inbred Norwegian trick.

[I do not like Norway, my Lady.] It is probably the reason why the British authorities have not co-operated with your police in any way over your ardent desire to have my website shut down. In England, we call it freedom of speech. Your police authority's dirty tricks to get me prosecuted and fined mean nothing to anyone over here. What you people have done to me is unforgivable and your people's perverted actions must continue to be exposed on the Internet."

On page two:

"*Dagbladet*, in their articles on me, have specifically mentioned my religion and coupled this with slanderous allegations which resulted in those many emails denigrating me as a Muslim and the religion of Islam. *Dagbladet* have therefore clearly incited religious hatred and it is just another reflection on your inbred mentality that you cannot accept this.

The British police accept that those emails were in the nature of a hate crime and it is deceitful of Interpol Norway, composed of partisan Norwegians, to lie to Interpol London on this matter. That is why I have asked Interpol London to request Interpol Norway to reassess the matter for clarification and explanation.

Please also understand, that as Torill Sorte is quite clearly a liar and perjurer, then it is my absolute right to have the freedom of speech to say this on a website. It is not harassment of her. Just as I have the same right to express my side of the story on the mental patient, Heidi Schøne.

You will see in any case I have support for my views from others whose contributions I have quoted on my website.

You people established a whole series of falsehoods and build on them to create a sick fantasy. The world deserves a website such as mine to see the scale of the bigotry and hatred that exists in your country.

I look forward to hearing from you on this appeal."

It went to appeal and, without giving reasons, they dismissed my appeal, no reasons given.

I have Norwegians who have supported my website. Norwegians, honourable people. I do not dislike Norwegians per se, just the ones that do not play fair.

I will read you out FED/10. (pause) I have taken out his name. He wants anonymity, but I do have the originals. I can undertake -- I can promise this.

MRS JUSTICE SHARP: Which page?

MR EL DIWANY: This is the first page after the exhibit cover sheet.

MR HIRST: It is page 381 at bundle A.

MRS JUSTICE SHARP: Yes?

MR EL DIWANY: This is a gentleman who actually wrote to me:

> "Dear sirs, I have incidentally come across this page on the net and found interesting notes about my home country. I just want to say that I find most of your experiences credible and to the point. In my opinion Norway is lacking in true professionalism in many aspects of public life, leaving quite a number of people, also 'native Norwegians', victims of circumstance and ill doers.
>
> As I gather from the Internet page, your bad experiences and interest in the 'dark side' of Norway started with Heidi Schøne. I can only offer my sympathy and also add that there has been a number of such women exposed as liars and criminals the last decade.
>
> Unfortunately, political correctness is a disease under which the Norwegian society suffers heavily. "Women are poor and defenceless" and "All men are rapists" are only two of the politically correct (incorrect!!) statements in Norway. Coupled with the lack of professionalism in the newspapers and the judicial system these politically correct statements have paved the way for a large number of miscarriages of justice.
>
> The most common case is that of a divorce involving children. A very common practice, I am ashamed to say, has been for the wife to claim some sort of sexual abuse towards her or the child (when in reality no such thing has occurred). The reason for such a claim is to obtain full parental control of the children after divorce. This would make sure that the wife can control the husband's contact with the children (making it no contact usually) and at the same time make sure that the husband would have to pay a very substantial amount of money to the wife regularly, until all children are considered adults by law, that is 18 years of age. The very unfortunate fact about the Norwegian judicial system is that until recently the wife (and her lawyer) usually backed this claim only by quote "expert" statements from psychologists. Except for one or two outrageous cases that were appealed all the way to the Supreme Court, the Norwegian courts never contradicted these experts' psychological claims.

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This situation was revealed to the public in a series of articles in the Norwegian newspaper *Adresseavisen* in 2000 or 2001 (cannot remember exactly), when a number of lawyers wanted an end to the shameful practice. The lawyers also said that lawyers dealing with divorces knew a number of psychologists willing to give any kind of "expert statement" in the court for money. Thus, they could arrange a divorce to whatever outcome, just by false accusations through a very severe lack of professionalism on behalf of both lawyers, psychologists and courts. The use of psychologists in Norwegian courts have now being changed, also due to the abysmal part in the 'Bjugn case', where a vast number of children were falsely claimed to have been abused by a number of men. The Norwegian Society of Psychologists has also publicly excused the misconduct of some of their members involved in this case.

This is just to say that I think part of your impression of the Norwegian general disliking of Moslems and Islam is that you have experienced the kind of injustice many 'native Norwegians' also have experienced. I do not think it makes your experience better but one should always try to call a spade a spade.

I think there has been a change of attitude in the courts in Norway over the last years and a number of people have had their cases reopened and gotten their names cleared. These cases were given major headlines in the newspapers when they were first run, but when they are now reopened, the newspaper does not care about them. This goes only to show that the papers are not very serious in this country but I think it also shows that even here a lie is a lie and will only take you so far. I also feel that, even though feminist movements still are a major factor in establishing what is 'politically correct' in Norway, they also have begun to feel some embarrassment by some of the acts of their 'sisters'.

My thoughts on abortion mirror yours, I think, and even if you might not think so from the public debate in Norway, there is a number of people that are really frustrated by the abortion laws. For instance, it has been very difficult for the hospitals to find enough doctors and nurses willing to work at the abortion clinics. This is a fact that the media and official Norway have been wanting to stay out of public knowledge. In fact, abortion is such a sensitive subject it is not seen as the proper subject to discuss at all. The government does not want a public debate on abortion, and I think this is so because they know that a majority, or at least a large minority of the Norwegian people is against it, and the way it is practised. It is a disgrace, but people who officially protest about the abortion laws are frozen out of society."

I myself am against abortion:

"I hope you will continue this webpage because I find it to be an important addition to the shallow Norwegian debate on our society. However, I think the way some part of it is written down, many

Norwegians will feel offended before they manage to get to the truth of it."

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I will leave that one. There is another one, 5 March 2007:

"Thank you for enlightening me. I am disgusted with the Norwegian attitudes against, well, everything. Norwegians are the most intolerant selfish bastards ever to have walked this earth. By Norwegians, I do not mean everyone of course, but a great deal of the Norwegian population is narrow-minded, with very little

B

enlightenment about the rest of the world except what the USA wants us to know. We are just hanging on to American attitudes against everything, from drugs to religion. The only news we get is American or Norwegian/other Western news

The drinking culture in Norway is the most shocking. A lot of Norwegians drink to become intoxicated and mad. That is my impression at least after living here for soon 25 years. There is no

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way of describing the hatred here of the unknown which lies deep in the Norwegian people, rotting them from the inside.

Fear, my friend, is what I believe is the problem. They are all afraid to find out anything about anything, maybe because the truth will shock them as positive; a very rare feeling for the Norwegians, obviously.

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I apologise to you on behalf of the Norwegian people. I am ashamed to call myself a Norwegian after I read the emails which you have received. The most peaceful of all greetings to you and keep up the good work. Very interesting material."

One of the most interesting emails that I received is this one from a lady, who wrote me a couple of them:

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"Dear Frederick [because that is what I call myself on my website], I have read a lot about your story regarding HS [that is Heidi Schøne]. There is no doubt in my mind, based on your taped conversations, that you have experienced grave injustice, mainly from Norwegian newspapers and the Press Complaints Bureau [that is the PFU] but also from Heidi Schøne and the embarrassing

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fact that Norwegian officials and law enforcement officers hardly speak English.

That said, I am surprised that you are so harsh regarding Torill [that is Torill Sorte]. From what I have read, she is the only person that understands you. Did she do something wrong regarding your case after what is referred to in the page mentioned above? And please do not send me everything you had. I understand it is quite

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a lot.

Why have you not pressed civil charges against the newspapers and the PFU? It seems obvious that they have even made up large parts of your story, a story based on bad oral translation, or relied on lies from their source. In either way, they, or Heidi Schøne, are doing to you exactly what they claimed you did to Heidi Schøne. 'Invade the sovereignty of your privacy', bring shame on your

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good name or whatever it translates to in English, not only because

they wrote false articles in which they did not name you but because the PFU have done a dreadful job in gathering facts - if they tried to at all - to decide your complaints. It should be perfectly simple to find out whether you have been admitted to some treatment or not and if you have actually threatened to kill anyone. Their failure to do so would only strengthen the suspicion that things have gone wrong since the alleged letter in which you are supposed to have threatened Heidi Schøne's son got lost in Bergen.

The most disturbing thing is that is that the Press Complaints Bureau - PFU - not only ruled in favour of the newspapers but they re-claimed that you are a mentally disturbed individual that is not given the right to have your side of the story to 'protect yourself for your own good'."

That is because one newspaper, since discredited, refused to print my response because they said they were protecting me from myself. The ultimate insult:

"To me, the newspapers' claim you have sent Heidi Schøne 400 letters. Based on this again, you are sexually ill in some way. Based on this also. If there is no mental illness of relevance to the matter, this is infinitely more worrying than the wrongdoings of Heidi Schøne in the past, with the effect that you are not able to forgive Heidi Schøne for her wrongdoings. Not that I blame you. I know how disturbing it is when someone never asks for forgiveness but receives it from God and Jesus instead.

Your web pages, I have no idea why you do not focus on the simple matter of Heidi Schøne. Every other article on your pages are, as you probably know, vilely offensive to most people, giving them perfect excuse to regard you as insane, much more convenient than to believe you. These articles plainly were anti-Norway articles written by the foreign press but also by the Norwegian Press."

MRS JUSTICE SHARP: You have put them up on your --

MR EL DIWANY: They are on my website and I have some examples here:

"Personally, I think it is wrong of you not to separate your views rooted in your religion that collide with common Norwegian sense and your views/truths regarding your experience with the Norwegian legal system, newspapers and PFU. If you do not see that comparing people with pigs [I actually did not do that in any major way. There is one which is the editor of the newspaper, his image of his face turning into the face of a pig but that is exactly how he should be described. We are dealing with reality here] and claiming that most people are maniac idiots killing unborn children and fucking around on drugs [I am against abortion and so it does double up as an anti-abortion website] ruins your case as a serious bringer of truth. You might as well be completely insane. You could still be right about your claims regarding Heidi Schøne and PFU and the newspapers but no one will ever listen to you."

MRS JUSTICE SHARP: This lady says that what she has seen on the website gives people a perfect excuse to regard you as insane.

MR EL DIWANY: Ah, but she carries on later, takes that all back:

> "If you really most of all are interested in being believed regarding Heidi Schøne, you can simply try to look beyond the fact that we are not all Muslims. You have the tapes on the page mentioned above. They must be a completely devastating blow if accepted in a court of law [that is the taped recordings that I had had with a number of the people] but they probably will not. I assume they were made without consent.
>
> It might also serve you justice if you redesign your pages, remove the general hatred pages."

I mean I have a thing, a general hatred of Muslims in which the international press and other articles about how they despise Islam (overspeaking)

MRS JUSTICE SHARP: General hatred to everyone and Norwegians in particular?

MR EL DIWANY: No, it is just a general hatred about -- I mean, I did not write the articles. They are from a third-party press.

MRS JUSTICE SHARP: So you put them on your website.

MR EL DIWANY: Yes, that is right. I will read one to you later.

MRS JUSTICE SHARP: We do not have all day. I use that as a metaphor. This case is going to finish at 4.15pm. Mr Hirst has his right to reply to your submissions so bear that in mind.

MR EL DIWANY: This lady continues to the next email:

> "Dear Frederick, I found what I missed earlier (I Googled keywords regarding an article in *dagbladet.no* since the Norwegian search-engine "*Kvasir*" did not give many results).
>
> Firstly, I only found fragments of your story, but now I realise that the whole thing is on your "hate pages". [That was a euphemism. The Norwegians call my website hate pages but obviously I do not.] No wonder you hate us... I do not know what to say. You probably have no idea who Tor Erling Staff is, what position Faremo used to have. [These are the people in the Press Complaints Bureau.] You should have had someone by your side all the way to ensure you got correct advice whilst enabling you to manoeuvre our corrupt labyrinth of bureaucracy.
>
> I hereby declare my unconditional support of you regarding the HS case (still doesn't mean we are all killer maniacs on drugs). I can only in my wildest dreams imagine what you have had to fight over the past years, and I guess I as a Norwegian, is 'supposed' to be amazed that you have taken all this so far. Usually, we just bend

over and take it up the ass when the mighty troll turns its ugly head our way.

I am lost for words as to your taped conversation which I know to exist for a fact. Still, corruption is clearest from me in the PFU/Elden case (Faremo) but the policewoman lying under oath and the writer that claimed you accused her of living in sin is really just ... mind-boggling ... where does it end? I for one have never been brave enough to tape conversations with officials displaying this same kind of behaviour as your villains, but you actually given me hope. Instead of fleeing this God-forsaken country, I might start my own war from now ..."

Fully supportive once she has read the website properly.

I will just go to two articles on my website regarding the Norwegian press. (pause) It is FED/16.

MR HIRST: Page 412 of bundle A. (pause)

MR EL DIWANY: If I may go briefly first to the *Aftenposten* newspaper, "Memoir insults Muslims". This is a politician who retired (Carl Hagen) who wrote a book, second paragraph:

"A passage where the controversial Hagen calls the Prophet Mohammed a warlord, man of violence and abuser of women has, unsurprisingly, caused offence."

That is what he thinks of Prophet Mohammed. The one above that, "Norwegian preacher kindles religious strife". Second sentence in the first paragraph:

"A high profile sermon where Sorgaard called the Prophet Mohammed 'a confused paedophile' has triggered fears of religious war."

Again, there is one of Hagen, a politician making Islamophobic comments. The Times, front page, Oslo Notebook, Tony Samstag, 27 December.

MR HIRST: Page 413.

MR EL DIWANY:

"Norwegians' charity to foreigners ends at home. [This is a Muslim chap, page 48.]

Aslan Ashan is a graphic artist who came to Norway 20 years ago from his native Pakistan, settling in a suburb of the capital. Recently he had what must have seemed a good idea. A Christmas party for those residents of Oslo, particularly the elderly, who would otherwise be alone. Mr Ashan and his friends, mainly Muslims, reasoned that their willingness to work during the Christian holiday was, as he put it, 'an exploitable resource'.

According to what statistics you read, up to half of the population of Oslo may be living alone, ironic in a society crippled by religious fundamentalism where the sanctity of family life is cited as justification for a depressing shortage of social amenities.

> The local council was happy to put up about £3,000 for the party. But weeks passed and not one Norwegian had accepted the invitation. So Mr Ashan went on a national religious radio programme to repeat his offer. This time the lonely responded in force, from all over the country; not, however with even one grateful acceptance but with scores of abusive telephone calls. A consensus emerged that the bloody foreigners, not content with taking their jobs, social benefits, women and so on, were now trying to steal Christmas from the Norwegians. This seasonal tale from the folk who claim to have invented Father Christmas illustrates the Dag Hammarskjöld Syndrome: the tendency of small, provincial countries to wax idealistic over exotic, impoverished peoples while abhorring the stranger in their midst."

I will not read any more of that.

I will make the point about Torill Sorte's article in *Eiker Bladet* calling me "clearly mentally unstable". She mixes it, of course, with convictions. The reason I was calling her clearly mentally unstable is because she said that I have been put in a -- I called her a liar, abusing her position, for saying I had been put in a mental hospital in 1997 and spent two years in a mental hospital. She said that in 2005, that I spent two years in a mental hospital.

Now, after that hate email campaign, I was quite confused. I tried to speak to her sensibly over the phone but she would not say anything. I knew there was no recourse to any justice in Norway. So I left some messages on her voicemail to make sure she got the point. So it is no use saying that we are re-litigating because I am not suing Heidi Schøne. I am not suing any newspaper, except a journalist. I am suing Torill Sorte purely for calling me "clearly mentally unstable", for saying that I have been in a mental hospital for two years. That is all it is.

MRS JUSTICE SHARP: That is not all it is because in your Particulars of Claim -- do you want to have a look at what you said in your Particulars of Claim?

MR EL DIWANY: I have mentioned harassment, yes.

MRS JUSTICE SHARP: Yes, you did.

MR EL DIWANY: Harassment in England, you think he goes -- the convictions for harassment, the first one was pertaining to obscenity for my campaign of denying what the newspapers have said. No newspaper gave me any right to reply so I said to them, "Heidi Schøne has put her name and photograph in the newspaper so I have the right to reply". And they said, "Look, by putting her name, you are intruding on her privacy". And I said, "Well, in that case, I can never reply. Your newspaper is not helping." "Oh, that is not our problem."

So I put my point of view and that is why I had a conviction. But at this actual hearing, I was told that the hearing was three weeks hence, or two weeks hence, and I was in the middle of preparing my civil case. I could not possibly go out there but they said, "You might go to prison if you do turn up. In any case, even if you do go, Heidi Schøne would not come. She does not want to face you." So I said, "Well, what is the point in coming, if (a) I might go to prison and (b) I cannot cross-examine her?"

They charged me under a strict liability offence but there was not made available a defence of justified comment.

MRS JUSTICE SHARP: Was it a strict liability offence?

MR EL DIWANY: Yes, section 390.

MRS JUSTICE SHARP: Certainly, I have read somewhere somebody mentioning *mens rea* and *actus rea* so maybe it is something.

MR EL DIWANY: I did not turn up. I did not go. I had a lawyer appointed at the last minute. He had told me Torill Sorte was making mental hospital rumours again.

MRS JUSTICE SHARP: Did you appear or did you not?

MR EL DIWANY: No, no.

MRS JUSTICE SHARP: You did not appear personally. Did you have a lawyer appearing?

MR EL DIWANY: Yes, they only received the documentation the day before. He tried to have me charged under section 390 as opposed to section 390A by saying I am justified on my comments on Heidi Schøne because she has told so many lies to the newspapers. So the magistrate, Marianne Djupesland, went back to consult the statutes but came back without giving reasons and said, "We are going to continue". So I was guilty. Just a small fine but they also said I might have gone to prison, but I will tell them about it next time anyway for my Court of Appeal.

During my civil appeal in 2003, I could not cross-examine Heidi Schøne at all. That was the whole reason for the appeal. A lawyer, Vegard Aalokken, agreed four hours for her to be cross-examined. There is just so much there and all of a sudden, two days into the trial, the judge said, "I'm going to stop the case on Thursday at 1.00pm and that won't leave much time for you, Mr El Diwany, to cross-examine". Anyway, after doing that, he gave me 20 minutes. He asked the questions. It was hopeless. It was just a complete waste of time.

At the end of the trial, the civil trial, I was arrested at the door of the court. The police were there, took me back to the cells for my website. British Embassy officials came, Neil Hulbert. They said to me, "There's no way you should be convicted for a website. We've seen it. You shouldn't be convicted for that. You have the right to reply."

The prosecuting magistrate said to me, "You've got two choices, (a) you're going to prison straightaway for eight months or (b) you can go back home to England, take the website down within seven days and we'll give you an eight-month prison sentence, suspended for two years, one or the other", and that is still subject to the Magistrate's discretion. That was after 12 sleepless hours in the cells. I pleaded guilty under duress. I just wanted to get out. There was going to be no fair trial, nothing. It was strict liability again. We have a right to reply, the newspaper vilification over -- it was eight years then. So duress, you can say that was a conviction under duress. I was in a dreadful state.

So those convictions for harassment, people reading them here in the UK would think, "Oh, he goes well into the blackmail for sex with Heidi Schøne". They will

not understand she is a mental patient. They will not understand that all her evidence is from her own word and completely uncorroborated. So Torill Sorte has also withdrawn her lie. She is putting a type of value on like Heidi Schøne in the family since 1982 and in her witness statement, paragraph 4 of the witness statement of 2 February written on behalf of the Ministry of Justice, she says:

> "They became friends. Heidi Schøne and Mr El Diwany corresponded for some years amicably after she had left England and returned to live in Norway."

The gist of my article is well understood. It has a passage at the bottom in red saying that I am clearly mentally unstable. It is not all gibberish. It has my name at the top. People can get the gist of it and also this article can be changed. Anyone can change it to make it read properly. Torill Sorte has withdrawn one of the lies. That is clearly set out in my witness statement. She has not offered any clinical substantiation of why I am clearly mentally unstable and why I have been in a mental hospital for two years. She has not made it clear at all that she is calling me clearly mentally unstable for my refutation of being two years in a mental hospital. It is doubling the wickedness by saying that the poor chap who has denied being two years in a mental hospital and called her a liar and an abuser for not being in a mental hospital and is clearly mentally unstable for saying that.

Roy Hansen is not defending my claim so I have won against him. It is an anomaly, but how can I -- I have won against him but not Torill Sorte.

I have spoken to my Lady about the state immunity. The one flaw in my application before Master Eastman is that I did not put in my application with grounds why the state should be immune. I did put it in here in my witness statement, Commercial Transactions under Section 3(3)C of the State Immunity Act and that Torill Sorte was engaged in the commercial transaction with the newspapers. In speaking to the press, she was engaged in supplying information to newspapers that sell their copy for money. It is related to a commercial transaction entered into by the state.

Section 3(3)(c) contains a very wide definition of commercial transactions being:

> "Any other transaction or activity whether of a commercial, industrial, financial, professional or of other similar character into which a state enters or engages otherwise than in the exercise of sovereign authority."

She was acting *ultra vires* in saying I was clearly mentally unstable relating to my denial that I had been in a mental hospital for two years so she was not exercising any police objectives, no objectives as enumerated by Christian Reusch in telling the public about police cases. This had nothing to do with anybody's case. It finished long ago. She was just -- she went out on her own as a police officer in a private non-police related action to say (a) I am clearly mentally unstable because I have denied living in a mental hospital for two years.

MRS JUSTICE SHARP: If she went out in a private non-police related action, why should the Ministry of Justice be vicariously liable for what she said?

MR EL DIWANY: Because she spoke as a police officer. It was alleged that --

MRS JUSTICE SHARP: If it is in a private capacity on your argument then she was not acting in the course of her employment.

MR EL DIWANY: But she spoke as a police officer. It says in the article she spoke as a police officer, only Christian Reusch --

MRS JUSTICE SHARP: What is your case? Is your case she was acting in a private capacity or in an official capacity?

MR EL DIWANY: She was acting in an official capacity as a police officer but not furthering the objectives of police work and that is a clear exception in the States Immunity Act, that she was not acting under sovereign authority. Sovereign authority means that she was obliging the policy of police, of the police in giving the public good information about criminal cases, furthering the repute of the police, but she was not. She was acting outside state sovereignty and I have put that in detail in my witness statement, as a commercial transaction. She regularly supplies information to the police and although --

MRS JUSTICE SHARP: She regularly does what?

MR EL DIWANY: She regularly supplies information to the police. She is engaged in a professional transaction by --

MRS JUSTICE SHARP: Well, she is a police officer.

MR EL DIWANY: Yes, but she is still engaged in professionally in her transaction with the newspapers and she is paid, in effect paid for giving information to the newspapers. There is some transaction there. There is no case law on this but I think this could have been viewed as a very loosely defined commercial transaction.
I am a solicitor here in London, very close to this court.

MRS JUSTICE SHARP: What sort of solicitor are you and what sort of work do you do?

MR EL DIWANY: Commercial and residential property.

MRS JUSTICE SHARP: Do you work for yourself or for a firm?

MR EL DIWANY: No, I am with a firm. I have some high profile Arab clients, very high profile. Putting my name in it, I cannot have clients and prospective clients, the Google search is the most popular, Google UK, Google.com. We have seen if you type in my name up comes the few references to me. People are going to be enticed by Farid El Diwany in Norwegian. They only have to click on it to translate this page. There may not be many of them. There is enough maybe to have a severe effect on my reputation and respect(?).
The reason that this Google article is up there in Norwegian is because it has been put there on the net by Roy Hansen. I am not famous. I do not want to be. But I still have a living to earn and I cannot risk people in the future or now typing at it and one day someone is going to make that translation perfect. As it is, I did have

one person phone me up and say, "Clearly mentally unstable it's got" and I did not even tell him it was on there. I think someone said something yesterday there is 22 monthly searches on my name, brought it to court. But for the Roy Hansen article being on there in Norwegian it would not be here in English and I have only known about it since 2009 when it is English. Reading that, clearly it just cannot carry on. I am not going to stand for that article being up there and I am going to try and do something about it.

The opposition, no one wants to sue me for my websites just because it is distasteful to some people and the English like it here. Lots of Norwegians like it. If I wrote something, for instance, bad about Muammar Gaddafi, who I personally detest, then when you go to Libya, people are going to say, "Oh your page is against Gaddafi. We love Gaddafi." Every country, if you write against them, they say, "You hate us; you're mad". But if you are a pioneer in these things -- I have exposed Norway a lot and they will not welcome me back and their newspapers went on for a decade in terms that the British press would never accept and although I have said things that hurt them, under the European Convention of Human Rights, just because someone finds an article distasteful does not mean that it is wrong. That is clear under European Convention law.

I am so tired, my Lady. I cannot carry on.

MRS JUSTICE SHARP: Thank you very much.

SUBMISSIONS BY MR HIRST

MR HIRST: If I can briefly pick up on a few points. In my submission, what you have heard this afternoon from Mr El Diwany barely engaged with the majority of the substantive submissions made on publication this morning by myself and, in particular, I would highlight his singular failure to address the submission which was at the centre of what I had to say which is that the claim as against Ms Sorte is a claim based upon oral statements only, which is outside the jurisdiction of this court and not actionable in terms of limitation.

The way I would categorise the large parts of the submissions made to your Ladyship this afternoon is that they were an exercise in revisions of the public record of various decisions made in Norway over the last decade. In short, it is my submission that Mr El Diwany would, through the prism of this litigation, put Norway on trial. He seems not to see the distinction that he is free to air his grievances in accordance with the law by use of his own website and any publications that he may choose to make, whether online or otherwise, but he seems not to grasp the point that when court proceedings are initiated in which his cause is to be ventilated and public resources are to be consumed as a result, that the considerations may be different.

He has referred us this afternoon to the Norwegian Press Complaints Commission and the decisions that it made as regards his case. The 2001 conviction for harassment, also in the decision of the Drammen Court in the first instance decision in the defamation case, and also predominating the issue of whether Ms Sorte had misled that court. His intention is clearly to prove that Ms Sorte's evidence back in 2002 was misplaced and that she misled the court. Various attempts have been made to do so within the criminal justice system in Norway.

Essentially, Mr El Diwany does not recognise that there are any impediments to revising all of this material in the present proceedings. I would wish to develop

one point I did not make by reference to evidence earlier this morning. What I did not do to save on time was to take your Ladyship through the decisions of the Norwegian criminal and civil courts. I do not consider that I need to do so in relation to the criminal convictions but it may be helpful if I can ask you to turn to page 66 of bundle A, which is the first instance decision in the libel proceedings. My submission and argument here is geared essentially to showing that all aspects of the claim that Mr El Diwany wishes to bring before the court in both of the present claims on both of its limbs was addressed in the civil proceedings for defamation in Norway.

At page 77, one sees that the court's judgment records the argument that Mr El Diwany made to that. It introduces his submissions and in the fourth paragraph, it explains:

> "What has particularly upset El Diwany is the allegations that he should have raped or attempted to rape Shøne and that he should have threatened go kill her son Daniel."

Of the contents of *Drammens Tidende*/*Buskerud Blad*'s article of 14 July 1998:

> "It is particularly the following statements in El Diwany's view jeopardise his sense of honour and reputation which are essentially are untrue."

Here we have the sexual harassments limb:

> "El Diwany has not pursued ...(reading to the words)... subject of sexual harassment, harassed or subject to terror or death threats."

Over the page, the court's recording of his submissions continues in the first paragraph:

> "Schøne was very open about her sex life which resulted in sexual morals becoming a discussion topic and Diwany finding reason to make constructive criticisms in an attempt to guide her. He was concerned about her ongoing mental health. Ms Schøne had not understood this and regarded his involvement with her as persecution and terror. She should have let him know this. He has never made any death threats although his description of Schøne's son, Daniel, 'Bastard, he doesn't deserve to live' was certainly crass."

MR EL DIWANY: I never said that.

MR HIRST: The next section I rely on as well, which is clearly the court, in my submission, has tried to replicate what it had done over the page and has reproduced allegations which the veracity of was being pursued as part of Mr Diwany's case on this occasion. Here we will see, "Mad man, mentally ill, very sick, mentally ill, erotic paranoia". Again, his evidence that he has never been hospitalised for treatment for mental disorders is recorded.

As is normal in any judgment of any court around the world, the discussion and the decisions tend to come towards the end and at page 81 you will see the conclusions section of this particular judgment. I refer the court from the third paragraph onwards which reads:

> "The court's point of departure is that Diwany has clearly had a very intense and prolonged interest in Schøne, far exceeding that resulting from a normal acquaintance. Despite the fact that Schøne – at any rate from 1985 – rebuffed the form of attention he showed her as time went on, of which he must have been aware, he continued to send her letters, call her by telephone, spy on her and seek her out. There is no doubt that she justifiably perceived this as persecution and harassment. This all culminated in Diwany's reports sent to neighbours, friends and family of Schøne [Mr Diwany took us to one of those earlier] already prior to publication of the newspaper articles in 1995. These reports and the many thousands of similar reports that Diwany sent all over the country following publication of the newspaper articles constitute gross breaches of Schøne's confidence.
> They fully reveal the unhealthy interest he showed for her and his motive of revenge following her rejection of him. The court therefore does not believe that the motive of revenge that Diwany has admitted was limited to what he perceived as allegations of rape and death threats directed at Schøne's son Daniel. There can be no doubt that Diwany's highly unusual interest in Schøne was of erotic character. The letters and postcards and, not least, the reports he sent her concern to a great extent her sexual morals and relationships with other men. Sexual harassment is an apt designation of these writings. Schøne cannot be reproached for publicly dissociating herself from extremely personal and sensitive information concerning, inter alia, abortions, sexual matters and suicide attempts, even if the information may to a greater or lesser extent have been correct."

Then, the judge states:

> "Following an overall assessment, the court has concluded that the information, opinions and formulations for which Schøne is responsible are essentially true and are not inappropriate."

Now, wound up in the exercise of overall assessment, I would submit, is both of the limbs, of which the current proceedings complain, relating to mental state and harassment. Hopefully, taking your Ladyship through the court's record in this matter will illustrate the extent to which both aspects of his complaint have been properly considered by a competent court in a foreign country.

The overall thrust, I would suggest, of what Mr El Diwany seeks to achieve is to be found in his supplemental witness statement in bundle B. pages 1-25, which is that he really sees the exercise that he undertook historically in terms of his own communications, and also the bringing of these proceedings in England, as a pure exercise of his own rights to freedom of expression and his own rights to communicate and reply, right of reply and to put his own spin on events.

The freedom of expression is not an unqualified right. There is a balance to be struck in all matters and it is my argument the competent bodies have already determined that no balance was struck by Mr El Diwany. His actions have clearly been taken on several occasions to have disproportionately interfered with the legal rights of other people. Of course, I am referring to Ms Schøne in this regard.

If there is anything further I can assist the court with. (pause)

MRS JUSTICE SHARP: Just give me a moment. (pause) I do not think so.

MR HIRST: There is one point that I omitted. It was raised towards the end of Mr El Diwany's submissions this afternoon; that he can bring himself within the exclusion from state immunity, which is when a foreign state has entered into commercial transactions. It is section 3 of the State Immunity Act. This point is addressed by Lord Millet is one of the authorities before the court. It is at tab 19:

> "It is the concept of restricted immunity means that if a party bringing a claim can show that the state is not immune if the proceedings relate to a commercial transaction entered into by the state or an obligation of the state which by virtue of contract whether a commercial transaction or not forced to be performed wholly or partly in the United Kingdom."

This is dealt with by Lord Millet in Holland v Lampen-Wolfe [2000] 1 WLR 1573, which is in the bundle at tab 8. Unfortunately, the formatting on your copy has stripped out the numbering on the paragraphs but it is the third page from the back of the authority. Lord Millet addresses section 3 and the essence of what he has to say is that the proceedings need to relate to a contract, very simply. This was a libel case, Lampen-Wolfe, and the memorandum is in fact the defamatory article and Lord Millet says, "These proceedings are not about the contract. They are about the memorandum." There was a background of whether work was being done under a US Army contract in Great Britain and failed to be excluded under another section of the Act. It does not follow the procedure related to contracts which is what Section 3(1)(a) requires. Mr El Diwany's suggestion that there was some commercial contract going on here in which Ms Sorte was involved that these proceedings relate to, is, in my submission, fanciful.

MRS JUSTICE SHARP: Thank you very much.

MR EL DIWANY: My Lady, can I just come back briefly?

MRS JUSTICE SHARP: Yes.

MR EL DIWANY: This judgment referred to by my friend here, I could not cross-examine Heidi Schøne at all on her evidence. I could not do that and that is a fundamental flaw in the Norwegian procedure. It is not a jury trial out there. The first decision was by Judge Stilloff was flawed because he was sitting on his own and his English was not good. I could not cross-examine the woman. I have a host of allegations against me that are sickening. I must have the chance to cross-examine. That is why we appealed. She is a registered mental patient whose own psychiatrist has said she sexualises her behaviour. She has motives for revenge. I am the last person on earth who is sex focused and writes filthy sexy stuff. I do not blackmail her for sex. If I cannot touch her breasts and kiss her, she said I would go and tell all her neighbours that she has been sexually abused by her grandfather.

She has put evidence in court. It is in my bundle that her sisters mentally abuse her. Her mother mentally abuses her. Her grandfather sexually assaulted her. Her

psychiatrist has said she has a pathological relationship with her parents and on and on it goes.

I must be able to cross-examine that evidence on her. It must be made clear that she is a mental patient whose evidence cannot be relied on as reliable. None of that is stated in these judgments. I appealed on that. I could not cross-examine in the appeal. I was arrested. They did not want me at all. They started it by not giving me a chance to put my response to the newspapers.

I am not what they say and I will not have this being said about me in these courts that judgment is correct. We appealed to the European Court of Human Rights on this. I went to the Supreme Court in Norway. They gave no decisions for my appeal and under the European Convention of Human Rights a court must give reasons for its decisions for refusing an appeal. This clearly has been breached and at the European Court of Human Rights, who looked at it? One Norwegian, Sverre Erik Jebens.

MRS JUSTICE SHARP: What happened in the European Court of Human Rights?

MR EL DIWANY: Rejected immediately. He looked at it. I wrote to the court and I said, "Sverre Erik Jebens was a Norwegian judge the whole time these newspaper articles were coming out. How can he possibly sit on the case?. There is a whiff of bias." They wrote to me to say he is totally unconnected to Norway. He is independent. That just cannot be the case. I know Norwegians. They are very nationalistic, and the other was a Croat.

MRS JUSTICE SHARP: The other who?

MR EL DIWANY: The other lady was a Croat.

MRS JUSTICE SHARP: Which other lady?

MR EL DIWANY: At the European Court of Human Rights, and the third was a -- but all I got back was that there are 140,000 outstanding applications at the European Court and 95 per cent of them are routinely rejected. There has been severe criticism in this country of the system there and it needs reforming. They will not have the time to look in detail at --

MRS JUSTICE SHARP: I am not going to go into all that. I understand the point you have made. Thank you very much. Do you want to say anything more?

MR HIRST: No, my Lady.

MRS JUSTICE SHARP: I am going to reserve my judgment. I will hand it down later. The parties will be notified when it is ready for handing down.

(Hearing concluded)