JUDICIARY OF
ENGLAND AND WALES

R-v- Elliott Morley

R –v- David Chaytor

R-v- James Devine

R –v- Lord Hanningfield

Judgment on Parliamentary Privilege

1. I have to decide whether the Crown Court has jurisdiction to try these four Defendants for offences of false accounting. The Crown Court would not have jurisdiction if the conduct of a trial would infringe parliamentary privilege. If the Crown Court does not have jurisdiction, any determination of guilt or innocence, and if that determination is adverse to a Defendant, any punishment is for Parliament alone. Each of these Defendants faces a separate trial, but because the same question arises in each case, we are only having one hearing to decide that question.

2. Three of these Defendants were serving MPs at the time it is alleged that these offences were committed and the fourth Defendant, a member of the House of Lords.

3. The decision that I have had to make has not been easy. If the question of parliamentary privilege had not been raised, I would have initiated this inquiry myself, as I would have had to satisfy myself that the allegations to be investigated at trial were not covered by privilege. It has been common ground during argument that, if privilege does cover the subject matter of the indictment, it is the privilege of Parliament and not the privilege of any individual member. Therefore, even if the Defendants had wished to waive

privilege they could not have done so, and comments in the media and from prominent politicians to the effect that they could, were misconceived. It follows that the even more extreme suggestion in some quarters that the fact that the Defendants have raised this issue is some indication of guilt, is not only misconceived but also unfair. If the Defence had decided not to make submissions to the Court in support of the existence of privilege, then I would have asked for the assistance of independent Counsel instructed at public expense to ensure that the issue was properly argued. I hope that, in the light of these observations, similar comments adverse to the Defendants will not be made, irrespective of what my decision on this application may be.

4. In the event, the high quality of the submissions made by all counsel and the large measure of agreement as to the legal principles involved has reduced the area in dispute. That does not mean that this is an easy matter of law to resolve. It is not. Very important constitutional principles are involved which must be respected, and that must be the case even if it leads to a result which is unpopular not only with the public but also with Members of Parliament.

5. As a preliminary to the main argument, Alun Jones QC, on behalf of Lord Hanningfield has submitted that consideration of this issue now is premature, as further disputes about privilege may arise and it would be better to wait and consider all matters together. They may arise in the case of Lord Hanningfield because he asserts that whatever he has done was wholly consistent with the usages and customs of the House of Lords as can be shown, he says, from the conduct of other peers. I have considered that submission and recognise the force of it, but I have concluded that it is in the interests of justice to determine this important issue now. It may be that, whatever my decision, it will be subject to review by a higher court and the sooner that procedure gets underway the better. If the matter ultimately is to come to trial, then I believe that making this decision now will speed up the process and, however important the legal principle involved, speedy justice remains important.

6. This judgment is not intended to be a legal dissertation. It is intended to announce my decision and my reasons for making it. It is not only intended to inform lawyers of those matters but also, so far as possible, members of the public who are not lawyers but are interested in the outcome of the argument. Therefore, where agreement has been reached between the parties as to certain issues, I shall not repeat the reasoning that has led to it or make lengthy citations from authorities on which that reasoning is based. I have also tried to avoid citation from cases decided in the 19th Century or earlier. Those cases contain powerful statements of legal and constitutional importance from distinguished Judges. It has however become apparent to me that those statements are sometimes broader than can be justified on a proper analysis of them. For example, the Defence have cited to me, as an important statement of principle, part of the judgment of Lord Coleridge CJ in Bradlaugh v Gossett [1884] 12 QBD 271 at p. 275 where he said 'There is another proposition equally true, equally well established, which seems to me decisive of the case before us. What is said or done within the walls of Parliament cannot be inquired into in a court of law. On this point all the judges in the two great cases which exhaust the learning on the subject – Burdett –v- Abbott and Stockdale –v- Hansard are agreed, and are emphatic. The jurisdiction of the Houses over their own members, their right to impose discipline within their walls, is absolute and exclusive.' On examination, however, it transpired that no-one relied on that statement as being a correct statement of the law today, if given its literal meaning. All counsel, with the possible exception of Nigel Pleming QC, conceded that no privilege could attach to criminal conduct of a member within the House which was not connected to the activities of the House. Such conduct was labelled by counsel as 'ordinary criminal conduct' and covered such criminal offences as an assault in the corridors of the House, theft of another member's money, or a sexual offence, none of which relate to parliamentary activity or proceedings in Parliament.

7. That concession does not rely solely on what is perceived to be common sense, or the hallowed principle of equality before the law – that all persons, regardless of wealth, race, religion, social status or indeed the political power wielded by them, should be treated equally under the law; it is

based on the judgment of Stephen J. in Bradlaugh v. Gossett where he said 'I know of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice'. This was accepted as being the correct position by the *Report of the Joint Committee on Parliamentary Privileges* set up in 1997 under the chairmanship of Lord Nicholls of Birkenhead to consider possible reform of the law of parliamentary privilege and the need for legislation. As part of its task that committee considered in detail what the extent of parliamentary privilege was. It reviewed the cases as well as the existing practices of the court. The Committee published its Report and minutes of evidence in April 1999. I have found it an invaluable resource. No one argues that I should not have regard to it along with other pronouncements of Parliament and its officers. Equally all agreed that, while I can consider what they say, they are not binding on me. I am entirely satisfied that an 'ordinary crime', that is one that happens to be committed within the Palace of Westminster but is unconnected with any Parliamentary activity is not covered by privilege.

8. The starting point for my consideration is the allegations that the Defendants face. I have been supplied with helpful summaries of the prosecution case against each of these Defendants. It is unnecessary to consider the details. Each count of the indictments against each of these Defendants is a charge of false accounting and alleges that he supplied false information to officers of the House (either the House of Commons in the case of three of the Defendants or the House of Lords in the case of the fourth) as part of a claim for allowances and/or expenses. Each Defendant has entered a plea of not guilty to these charges, and I remind those that may report this decision that each of them is not guilty of that charge unless and until he is proved to be guilty. In particular they all deny that they acted dishonestly and that, along with any other issue in the case will, dependent on my decision on this matter and that of any higher court, be tried by an impartial jury. That is the entitlement of every citizen not only under the ECHR but also the common law.

9. Both Houses of Parliament have schemes for the payment of allowances and expenses to compensate them for expenditure in carrying out their Parliamentary duties. What can be claimed and paid as expenses and allowances are set out in rules which are prescribed by resolutions of each House. These rules are detailed and are available to members. Claims for expenses and allowances are made by individual members in claim forms which they then submit to the appropriate office of the House. Members are required to certify that the expenses claimed were incurred in carrying out their duties as members and they are entitled to the allowances or expenses that they are claiming. It is the submission of these forms that provides the subject matter of the counts on the indictments preferred in this case. The central issue in any trial will be whether the contents of those forms were false and whether the Defendant knew that they were false. When a member makes a claim, that claim is processed by officers of whichever of the two Houses the member belongs. The officers decide the entitlement of the member on the basis of what he or she has claimed. The officers who decide the entitlement work under the supervision of the appropriate committee of that House. It is asserted by the Defence and accepted by the Prosecution that, if the forms were covered by parliamentary privilege, any examination by a Court of their accuracy would be prohibited, because a Court cannot question the contents of any document which is covered by Parliamentary privilege. That concession having been made, it is unnecessary to consider the details of the scheme further.

10. In deciding whether the submission of the forms was covered by Parliamentary privilege, it is first necessary to consider the nature of the privilege and what it covers. While the privilege is Parliament's rather than the individual member's, it is clear that it can and does attach to the activities of an MP in carrying out some of his Parliamentary functions. Although Article 9 of the Bill of Rights 1689 is the best-known example of parliamentary privilege and has enshrined in Statute the privilege of freedom of speech in Parliament, it is part only of a much broader privilege which is found in the common law. Article 9 provides that 'the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any

court or place out of Parliament'. The existence of a broader privilege, of which Article 9 is only a part, was accepted in a number of 19th century decisions. It is unnecessary to refer to them because they are encapsulated in the words of Lord Browne-Wilkinson in the Privy Council case of Prebble –v- Television New Zealand [1995] 1 AC 321 at p. 332D 'In addition to Article 9 itself, there is a long line of authority which supports a wider principle, of which Article 9 was merely one manifestation, viz. that the courts and Parliament are both astute to recognise their respective constitutional roles. So far as the courts are concerned they will not allow any challenge to be made to what was said or done within the walls of Parliament in performance of its legislative function and protection of its established privileges'. Again the use of the phrase 'within the walls of Parliament' may not be intended to be interpreted literally. Parliament can exercise its functions outside the walls of the Palace of Westminster and it is likely that, when it does, parliamentary privilege applies to those proceedings in the same way as it does within the Palace. This broader privilege derives from the doctrine of separation of powers and is sometimes referred to as 'exclusive cognisance' although a more modern description which I shall adopt is 'exclusive jurisdiction'. In Office of Government Commerce v Information Commissioner [2008] EWHC 737 (Admin), Stanley Burnton J in the context of an appeal against a decision of the Information Tribunal, having considered a line of authorities relating to parliamentary privilege, summarised the principle in this way:

> [46] 'These authorities demonstrate that the law of Parliamentary privilege is essentially based on two principles. The first is the need to avoid any risk of interference with free speech in Parliament. The second is the principle of the separation of powers, which in our Constitution is restricted to the judicial function of government, and requires the executive and the legislature to abstain from interference with the judicial function, and conversely requires the judiciary not to interfere with or to criticise the proceedings of the legislature. These basic principles lead to the requirement of mutual respect by the Courts for the proceedings and decisions of the legislature and by the legislature (and the executive) for the proceedings and decisions of the

courts'.

11. An example of 'exclusive jurisdiction' may be found in the case of Re: McGuinness's Application [1997] NI 359. That case concerned an attempt to judicially review a decision of the Speaker not to allow a MP the use of certain services provided in the House because he had refused to take the MP's oath. Kerr J. found it unnecessary to decide whether the Speaker's decision came within Article 9 as he was satisfied that it came within the area of exclusive jurisdiction that the House enjoyed over its own business.

12. It is often unnecessary to deal separately with Article 9 and 'exclusive jurisdiction' and that might well have been possible in this case. Counsel, however, have separated them in the course of argument and to some extent, I shall do the same; but it is important to remember that they are not two different privileges. As the right to freedom of speech under Article 9 is a part of the wider privilege, there are no dividing lines between the two. Despite the difficulty of interpreting the words 'proceedings in Parliament' contained in the statute or perhaps because of it, Article 9 seems now to be understood as relating to freedom of speech; leaving all other aspects of parliamentary privilege to be considered under the wider concept of 'exclusive jurisdiction'. *The Joint Committee on Parliamentary Privilege* concluded in 1999 'A definitive history of the origins of Article 9 has yet to be written, but one thing is reasonably clear: the principal purpose was to affirm the House's right to initiate business of its own and to protect members from being brought before the courts by the Crown and accused of seditious libel. Also Article 9 reasserted the long established claim not to be answerable before any court for words spoken in Parliament. The modern interpretation is now well established: that Article 9 and the constitutional principle it encapsulates protect members of both Houses from being subjected to any penalty, civil or criminal, in any court or tribunal for what they have said in the course of proceedings in Parliament.'

13. That definition cannot be accepted entirely at face value, as it seems to restrict Article 9 to things said. At para. 98 of the report the Committee went

on to accept as a starting point the description of proceedings in Parliament in *Erskine May's Treatise on the Law, Proceedings and Usage of Parliament* that 'a broad description is not difficult to arrive at. The primary meaning of proceedings, as a technical Parliamentary term, which it had at least as early as the seventeenth century, is some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, and the whole process, the principal part of which is debate, by which it reaches a decision. An individual Member takes part in a proceeding usually by speech, but also by various forms of formal action such as voting, giving notice of a motion, presenting a petition or report from a committee, most of such actions being time-saving substitutes for speaking.'

14. So returning to the definition in the Committee's Report, the words 'what they have said in the course of proceedings in Parliament' clearly have an extended meaning, but the Article 9 privilege is still restricted to actions and words closely related to the conduct of the main Parliamentary business which is carried on through debate. The committee also accepted that the immunity under Article 9 would extend to such things as drafts of speeches and necessary research in preparation for a speech. (see para.113).

15. How far Parliamentary privilege extends to matters ancillary to the main work of Parliament is at the centre of this argument. There is a dispute between the Defence and Prosecution as to whether, when I come to decide whether the submission of a claim form was covered by parliamentary privilege, I should construe the privilege broadly or narrowly. Although most of the cases which are relied on come within Article 9 privilege, there is no reason why the same principles should not apply to the privilege of 'exclusive jurisdiction'.

16. The Defence rely on the dictum of Lord Browne-Wilkinson in Pepper - v - Hart [1993] 1 AC 593 at p.638D that 'Article 9 is a provision of the highest constitutional importance and shall not be narrowly construed'. The Prosecution argue that what is said by Lord Browne-Wilkinson should be seen

and interpreted in the context of what was being decided in that case, that is, the use by Courts of reports of what was said in Parliament to assist with the interpretation of statutes.

17. The prosecution argue for a narrow construction. They submit that only core activities of the House should be covered. They rely in support of their contention on the dictum of Viscount Radcliffe in Attorney-General of Ceylon v- de Livera [1963] AC 103 at p.120 that 'it is important to see that those privileges do not cover activities that are not squarely within a member's true function'. This dictum was approved by Lord Bingham in Buchanan –v- Jennings [2005] 1 AC 115. This was also the view taken by the *Joint Committee on Parliamentary Privilege* because of the absolute nature of the immunity (see the Executive Summary). The immunity under both Article 9 privilege and the 'exclusive jurisdiction' privilege are absolute and therefore similar considerations apply. At p. 75 *Erskine May* says: 'Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions.' It is noteworthy that that statement is echoed in the *Joint Committee Report* which states 'Parliamentary privilege consists of the rights and immunities which the two Houses of Parliament and their members and officers possess to enable them to carry out their parliamentary functions effectively …'

18. I am satisfied that in the context of criminal charges Parliamentary privilege should be narrowly construed. The principle that all men are equal before the law is an important one and should be observed unless there is good reason why it should not apply. To do otherwise would risk bringing both the Courts and Parliament into disrepute and diminish confidence in the criminal justice system. Parliament does not have an effective procedure for investigating and deciding whether a member is guilty or not guilty of criminal charges (see para. 146 of the *Joint Committee Report*). These considerations affected the first instance decision of Buckley J. in 1992 in R-v- Greenaway to allow the prosecution of a MP to proceed in the Crown Court. I do not place great reliance on that decision as it was never tested on appeal but it is

persuasive. Further the range of penalty available to Parliament is considerably smaller than that available to the criminal courts. If possible, it is preferable for criminal allegations to be decided by criminal courts who are equipped to deal with them. That also accords with the doctrine of separation of powers. Of course if Parliamentary privilege does prevent a trial in the courts, then Parliament will have to consider if and how they can deal with the matter.

19. Having now dealt with the general principles that inform my decision, I turn to the actual decision that I have to make. Important concessions on the facts of this case have been made by the prosecution. They are as follows:

> (i) The scheme for the payment of expenses as prescribed by resolutions of the Houses of Parliament is covered by privilege either under Article 9 or as part of the 'exclusive jurisdiction' of the House. This means, for example, that the High Court would have no power to judicially review the scheme.
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> (ii) The administration of the scheme by officials in the fees office under the supervision of a committee is also covered by Parliamentary privilege. Although I am prepared to make my decision on the basis of this concession, I think that it merits re-consideration in the light of what is said by the *Joint Committee on Parliamentary Privilege* at para. 248: 'Occasionally management in both Houses may deal with matters directly related to proceedings which come within the scope of article 9. For example, the members' pension fund of the House of Commons is regulated partly by resolutions of the House. So too are members' salaries and the appointment of additional members of the House of Commons Commission …. These resolutions and orders are proceedings in Parliament, but their implementation is not'. Consideration should also be given in this context to what Malcolm Jack the Clerk of the House of Commons said in his memorandum to the Speaker dated 9th September 2009 (to be found in the joint bundle of authorities provided to me.). On the face of it the Prosecution is

conceding that the privilege is wider than the House contends that it is. The views of the House are, of course, not binding but they need to be careful considered when it is their privilege which is under discussion. Despite my reservations I will treat the concession as being correctly made for the purpose of my decision.

(iii) While an instinctive reaction might be that, while honest claims are covered by privilege, dishonest ones are not, the Prosecution accept that, if the submission of forms by an MP is covered by privilege then dishonest claims are also covered. That is because, in order to prove dishonesty, the Prosecution would have to question the document, which is not permitted if it is covered by privilege. I am satisfied that this concession is properly made. As I said at the outset, if the submission of the form is covered by privilege, any trial of these Defendants would involve questioning the contents of the form.

20. It is therefore possible to narrow the issues considerably. The submission of the expenses form could be covered by privilege in two alternative ways, because either:

(i) It is part of the expenses scheme and as such is part of the business of Parliament and comes under its exclusive jurisdiction (the wider privilege) or under Article 9, or

(ii) It comes within the ambit of proceedings in parliament as part of the member's core activity or is so closely associated with it that it is covered by Article 9.

21. I will consider both alternatives separately but, before doing so, I shall deal with one matter which is common to both. While it is a matter for me to decide, it is nevertheless a fact that neither House has sought to assert that these proceedings come within the jurisdiction of Parliament. This is of particular significance as the privilege, if it exists, belongs to Parliament and not the individual members. Parliament has, to the best of my knowledge, co-

operated with both the police inquiry and the Court in these proceedings. It was the view of the Parliamentary Commissioner for Standards, Sir Philip Mawer, in 2003 that 'claiming an allowance is not a proceeding in Parliament and the provisions of parliamentary privilege do not apply'. The Clerk of the House of Commons in September 2009 was clearly of the same view when he said 'Although I accept that the ACA scheme arises from Resolutions of the House, the proposition that all actions or claims under it are proceedings, seems to me to be unsustainable'. Those views, whilst persuasive, cannot be decisive. In relation to the alternatives:

22. *(i) The expenses scheme*

22.1 It is agreed that the 'expenses schemes' are covered by Parliamentary privilege, as is the administration of those schemes. The prosecution say that the line is drawn there. The Defence say that that is illogical, and that, properly construed, the operation of the scheme must include the submission of the form. They point out that, without the submission of a form, there would be no need to have a scheme at all and that members need to claim their expenses to carry out their duties as MP's. I bear in mind that the 'exclusive jurisdiction' privilege covers the workings of Parliament. While I accept that the processing of the forms is part of the workings of Parliament on the basis of the concession made by the Prosecution and is therefore covered by privilege, I see no reason to extend that privilege to cover the submission of the form. The point made by the Defence is a valid one but there has to be a line drawn and it has to be drawn somewhere. If the form were included it would then become arguable that there would be no form submitted unless there were actual expenses to claim. Is it therefore to be argued that incurring those expenses is also covered by privilege? Wherever a line is drawn there may be anomalies. The fact that it is the submission of the claim form that sets the machinery of Parliament in motion does not make it part of that machinery just as putting a coin in a slot machine does not make the coin part of the mechanism of the slot machine just because it initiates the process. As

the extent of the privilege is to be construed restrictively for the reasons I have given, it is, in my judgment, appropriate to draw the line after the submission of the form. Further I accept the argument of the Prosecution that, as the privilege is that of Parliament, it covers actions which are part of the collective processes of Parliament. That does not mean that the individual actions of a member are never covered, as individual actions can contribute to a collective process.

22.2 The claiming of expenses is an individual activity for the benefit of the individual and any benefit to Parliament as a whole is not a direct one. Further it is not part of a Member's duty to claim his expenses or allowances. He could not be criticised for failing to carry out his duties as an MP if he did not claim his allowances and his expenses. It would not be an interference with the workings of Parliament or obstruct the carrying out of their business. None of the justifications for the existence of privilege would seem to apply to the submission of the form. In my judgment it does not come within the scope of the 'exclusive jurisdiction of Parliament' on any sensible construction of that privilege.

23. *(ii) Article 9*

23.1 This raises different issues and can be considered under the privilege accorded to free speech under Article 9. The argument is that in order to exercise freedom of speech in Parliament, it is necessary to be able to attend, and therefore expenses are ancillary to the exercise of freedom of speech and are included within the definition of proceedings in Parliament within Article 9.

23.2 The Prosecution submits that, as there is no generally accepted definition of proceedings in Parliament, each claim has to be considered on a case-by-case basis. It has never been asserted by Parliament that such a claim for expenses was covered. The Prosecution say that because Parliamentary privilege provides such a

wide immunity, proceedings in Parliament have to be interpreted restrictively to include only the core activities of members and claiming expenses cannot be described as part of the core activity.

23.3 The Defence argue on the basis of various attempts at defining proceedings in Parliament that ancillary activities such as a claim for expenses or allowances would be covered. None of these proposed definitions has ever been adopted in legislation and it is therefore difficult to attach much weight to them. The only assistance provided in a statute is to be found in s.13 of the Defamation Act 1996. S. 13 was introduced to allow a member to waive privilege to enable him to sue a non-member for defamation. The need for this arose from a case where a member claimed to have been defamed and the person sued relied on the defence of justification, relying on statements made in the House by the member. The Judge stayed the proceedings because to hear the case would inevitably involve deciding whether what had been said by the member in the House was true and that was not permitted by Article 9. The Defamation Act 1996 sought to remedy this situation. As well as allowing for waiver of privilege by the member in that situation it also preserved the existing law as to privilege. S.13(4) provides: 'Nothing in this section affects any enactment or rule of law so far as it protects a person … from legal liability for words spoken or things done in the course of, or for the purposes of or incidental to, any proceedings in Parliament'. By s. 13(5) Without prejudice to the generality of ss (4), that subsection applies to –

(a) the giving of evidence before either House of a committee;

(b) the presentation or submission of a document to either House of a committee;

(c) the preparation of a document for the purposes of or incidental to the transacting of any such business.

It is not necessary to deal with the other subsections, but on the basis of these, it is argued by the Defence that that definition would cover the preparation of a claim for expenses as that is incidental to a member carrying out his duties in the House.

23.4 While that is a powerful argument, those subsections only purport to maintain the existing law; they are not seeking to give a definition of proceedings in Parliament or to include within privilege activities which were not covered before. It has always been accepted that the immunity provided by Article 9 has extended beyond things actually said in speeches or committee to certain incidental matters such as drafts of speeches and the necessary research to prepare a speech. It is likely that this is what subsection (5) refers to. I can find nothing in the use of the word 'incidental' which indicates any intention of Parliament to extend privilege to a claim for expenses. It would in my judgment be stretching the meaning of the word 'incidental' beyond its ordinary meaning to do so, and would clearly be beyond the mischief the legislation was enacted to address.

23.5 Mr. Pleming QC in his reply sought to demonstrate that the Defence argument must be correct because of the concessions made by the Crown. He asked what would be the position if instead of the system for claiming expenses that is presently in force, Parliament required each member to address the House on his claim for expenses and the House to pass a Resolution directing what sum should be paid. If that were the system in place then clearly, he argued, the claim would be covered by privilege. Claims could easily have been dealt with in this way, he argues, and the type of mechanism employed cannot make a difference to whether it is covered by privilege. The argument clearly has merit but the simple answer, I believe, is that the system he described is not the system in operation and it is the system in operation that I must consider. If the system for payment of expenses were the one that Mr Pleming invented, then a claim made in oral submissions to Parliament might indeed be covered, but it isn't the system. Both sides have, in the course of argument, put forward extreme examples designed to show that the conclusion suggested by the other side would have ridiculous consequences. It is a permissible line of reasoning but it must be realised that whenever a line has to be

drawn, there will be examples which suggest that the line should be drawn elsewhere. In addition, there were a number of other arguments and authorities relied on by counsel to which I have not referred. The reason that I have not referred to them is because, in the end, they were not sufficiently persuasive to influence my decision.

24. I can therefore see no logical, practical or moral justification for a claim for expenses being covered by privilege; and I can see no legal justification for it either. I suspect that, if it had been suggested to members of either House, including these Defendants, that their claims for expenses were covered by privilege before these proceedings began, they would have been extremely surprised. In my judgment, their surprise would be justified, because properly construed the submission of the form is not part of 'proceedings in Parliament'.

25. Mr Millar QC tried to justify the inclusion of such claims in Parliament by suggesting that if it were not included, an allegation of making false expenses claims could be used by the executive to invent criminal charges against inconvenient opponents and justify their arrest. While that might be unthinkable now, depending on your point of view, he reminds me that that might not be the situation in the future, just as it was not in the past. The difficulty of using that argument as a justification for including expenses and allowance claims within parliamentary privilege is that Mr Millar has conceded that 'ordinary crimes' committed within the Palace of Westminster are covered by the criminal law. Any investigation of an 'ordinary crime' would properly come within the jurisdiction of the police as privilege would not apply. Mr Millar's proposition therefore begs the question in this case as to whether a submission of a false expenses claim comes within the category of an 'ordinary crime' or is part of the proceedings in parliament and covered by privilege.

26. In my judgment for all those reasons the conduct alleged against these Defendants is not covered by Parliamentary privilege and is triable in the Crown Court. I believe that this conclusion is consistent with the

pronouncements of Parliament on the subject, the authorities to which I have been referred and not least the principle underlying all allegations of criminal conduct of equality before the law. Unless this decision is reversed on appeal, it clears the way for what most people accused of criminal behaviour would wish for: a fair trial before an impartial jury.

27. If the defendants are to receive a fair trial before an impartial jury it follows that nothing must happen which could prevent this being achieved, and so I particularly ask that those who choose to report and comment on this judgment, whether favourably or unfavourably, should do so responsibly and refrain from making any comment which might prejudice this fundamental right. In the light of the guidance already issued by the Attorney-General, I shall ask that a copy of this judgment be sent to him so that he can ensure that his guidance is followed.

Mr Justice Saunders
Southwark Crown Court
11 June 2010.