

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Case No HQ15D03880

BETWEEN :-

MARTIN HEMMING

Claimant

- and -

PENGUIN BOOKS LIMITED

Defendant

STATEMENT IN OPEN COURT

Solicitor for the Claimant:

My Lord, I appear on behalf of the Claimant, Martin Hemming and my friend Ms. McKay appears for the Defendant, Penguin Books Limited. This claim arises in connection with a book bearing the borrowed title 'On Liberty' published by the Defendant and written by Ms Shami Chakrabarti.

The Claimant is a Companion of the Order of the Bath and a member of the Bar and was the Director General of Legal Services in the Ministry of Defence between 1998 and 2009. He also advised other major Departments of State during the course of a 30-year career in public service (including 25 years as a Senior Civil Servant).

The following words appear on page 99 of the book:

'If there is a special place in hell for the doctors who participated in torture by way of medical experiments in the darkest moments of the twentieth century, what about the lawyers who excused and legitimized torture with the thought experiments of the twenty-first? As late as January 2014, the former top CIA lawyer John Rizzo was promoting his aptly titled book Company Man with media appearances in which he justified torture techniques including sleep deprivation, cramped confinement, placing suspects in stress positions and waterboarding them. In an interview with Gordon Corera for BBC2's Newsnight programme Rizzo, the 'company man', admitted that he had reinterpreted the word 'torture' to suit his

clients and that the justification was fear of another 9/11 rather than any obvious legal reasoning.'

On pages 107 and 108 of the book a longer passage appears which refers directly to the Claimant as follows:

'When the [Baha Mousa] case was litigated, the House of Lords ruled that the Human Rights Act applied to places beyond our shores over which the UK government had control, a view that senior MOD legal advisers fought as hard as they did the setting up of the Gage inquiry itself. The decision in Al-Skeini and Others v Secretary of State for Defence was as important for the protection of military personnel serving abroad as it was to civilian prisoners, and is resisted and used as an anti-human rights gripe even to this day. Once more, accidental and perhaps unlikely human right heroes distinguished themselves as much as those at the heart of the security establishment brought shame upon their professions and institutions. Lieutenant Colonel Nicholas Mercer, now a Church of England vicar and self-identified 'Shire Tory, is an obvious case in point. The army's chief legal adviser in Iraq following the 2003 invasion repeatedly questioned the army's use of cruel interrogation techniques as contrary to Human Rights Law. As with many US military lawyers who did their best to stand for democratic decency, even in Guantanamo, Lt Col Mercer stood up to this own hierarchy and paid a high personal and professional price.'

In the spring of 2003 and six months before Baha was beaten to death, Lt Col Mercer had advised that a judge be sent to Iraq to supervise the handling of prisoners.

"My job was to protect soldiers from legal proceedings and the degradation of human beings," he told Guardian defence and security journalist Richard Norton-Taylor after the Gage findings in 2011. But Mercer's advice wasn't merely ignored. His army career was ruined. He says that he was told to keep his mouth shut and even threatened with a complaint to the Law Society by the chief MOD legal adviser, Martin Hemming, who shamelessly briefed against Mercer as a 'flake' and a fantasist, even in later meetings with me. It's a particularly nasty tactic to threaten inconvenient lawyers with professional discipline, like 'playing the man and not the ball'. It would seem that the lawyer as 'company man' is not a tradition unique to the CIA or USA. Campaigning solicitor Phil Shiner, who spent many years of his life representing Baha Mousa's grieving family and securing the Gage inquiry, was similarly subjected to a campaign of more than whispering contempt. Subsequent cuts to legal aid, including residence requirements, will make it very much harder to bring the powerful to account for any similar abuse and cover-up in the future.'

Taken as a whole, these passages are likely to have been understood by readers to allege:

1. that the Claimant told Mr Mercer to keep his mouth shut rather than to articulate legitimate concerns relating to serious human rights abuses, the degradation of human beings and the prospect of British soldiers facing grave charges;
2. that, in order to dissuade Mr Mercer from articulating these legitimate concerns, the Claimant threatened him with an unjustifiable complaint to the Law Society;
3. that, in order to discredit Mr Mercer's expression of his legitimate concerns, the Claimant "shamelessly" briefed against him describing him as a 'flake' and a fantasist, thereby suggesting that the concerns he sought to express were factually unfounded and a product of Mr Mercer's imagination; and
4. that the Claimant was a 'Company Man', in the sense those words are used of John Rizzo on page 99 of the book, namely that he was the kind of man who, notwithstanding his status, responsibilities and professional obligations as a senior lawyer within the Government Legal Service and the principal Legal Adviser to the Ministry of Defence, was willing to justify torture techniques including sleep deprivation, cramped confinement, placing suspects in stress positions and waterboarding them and to reinterpret the word 'torture' in defiance of any obvious legal reasoning.

These allegations are without foundation. The Claimant has never attempted to silence Mr Mercer by telling him to shut up, or by threatening to report him to the Law Society, and nor has he ever briefed against Mr Mercer as a 'flake' and a fantasist. The Claimant has, furthermore, never conducted himself in any way that could possibly justify the epithet 'company man', in the meaning ascribed to the words in the book.

The Defendant is in consequence here today, by its lawyer, to apologise for the distress and hurt which the allegations in the book have caused to the Claimant, and to withdraw them.

Solicitor for the Defendant:

My Lord, on behalf of the Defendant, I confirm all that has been said on the Claimant's behalf. The Defendant apologises to the Claimant for the distress and hurt caused to him. The Defendant has agreed to remove the offending passages from all future editions of 'On Liberty'. It has also undertaken not to publish the allegations in question in future and will be paying a sum that has been agreed in compensation to the Claimant together with his legal costs.

Solicitor for the Claimant:

My Lord, with that the Claimant is content to let matters rest.

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Dated 4 November 2015