



House of Commons
Foreign Affairs Committee

**Evidence from Mr
Andrew Gilligan to the
Committee's Inquiry
into The Decision to go
to War in Iraq**

**First Special Report of Session 2002–
03**

The Foreign Affairs Committee

The Foreign Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Office of the Foreign and Commonwealth Office and its associated public bodies.

Current membership

Rt Hon Donald Anderson MP (*Labour, Swansea East*) (Chairman)
David Chidgey MP (*Liberal Democrat, Eastleigh*)
Fabian Hamilton MP (*Labour, Leeds North East*)
Eric Illsley MP (*Labour, Barnsley Central*)
Andrew Mackinlay MP (*Labour, Thurrock*)
John Maples MP (*Conservative, Stratford-on-Avon*)
Bill Olnner MP (*Labour, Nuneaton*)
Richard Ottaway (*Conservative, Croydon South*)
Greg Pope MP (*Labour, Hyndburn*)
Rt Hon Sir John Stanley MP (*Conservative, Tonbridge and Malling*)
Gisela Stuart MP (*Labour, Birmingham Edgbaston*)

The following member was also a member of the committee during the parliament.

Sir Patrick Cormack MP (*Conservative, Staffordshire South*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/parliamentary_committees/foreign_affairs_committee.cfm. A list of Reports of the Committee in the present Parliament is in the inside front cover of this volume.

Committee staff

The current staff of the Committee are Steve Priestley (Clerk), Geoffrey Farrar (Second Clerk), Elizabeth Sellwood (Committee Specialist), Jane Appleton (Committee Assistant), Sheryl Bertasius (Secretary) and Andrew Boyd (Senior Office Clerk).

Contacts

All correspondence should be addressed to the Clerks of the Foreign Affairs Committee, Committee Office, House of Commons, London SW1A 0AA. The telephone numbers for general enquiries are 020 7219 6106/6105/6394; the Committee's email address is foraffcom@parliament.uk.

Introduction

1. On Tuesday 3 June, we announced our decision to inquire into The Decision to go to War in Iraq.¹ The Inquiry considered whether the Foreign and Commonwealth Office, within the Government as a whole, presented accurate and complete information to Parliament in the period leading up to the decision to go to war in Iraq. The Committee's Report was published on Monday 7 July.²

Mr Gilligan's evidence

2. On 19 June, the Committee heard oral evidence from Mr Andrew Gilligan, a BBC Radio reporter, who also writes for the *Mail on Sunday* and other journals. Mr Gilligan gave the Committee an account of a conversation he claimed to have had with a senior source within the intelligence community, a long-standing contact.

3. Mr Gilligan has refused to answer, in writing, or in private oral evidence, the question put to him by our Chairman: on what date, and at what time, did the meeting with this source take place?³ He also refused to disclose any further information about his source over and above that given in oral evidence on 19 June. He bases his refusal to discuss any detail about his contacts with his source on what he calls "a necessary principle of free journalism".⁴ We accept that journalists regard the maintenance of this principle as being fundamental to their ability to carry out their work.

4. However, any witness—including a journalist—is free under the cover of Parliamentary privilege to make an allegation before a select committee about a third party, who then has no recourse to a legal remedy.

5. *Erskine May* states that "A witness is bound to answer all questions which the Committee sees fit to put to him."⁵ As is clear from the attached extract from *May*, this duty is not qualified by reference to any professional code. However, as is shown in the Clerk of Committees' letter of 14 July to a Member of this Committee, appended to this Report, Mr Gilligan's is the first case—certainly in modern times—where a journalist has refused to reveal a source which formed the basis for an allegation made in evidence before a Committee, as distinct from, for example, refusing to divulge the source of a leaked copy of a select committee Report.⁶

1 Foreign Affairs Committee Press Notice 23, 3 June 2003

2 Ninth Report from the Foreign Affairs Committee, Session 2002–03, The Decision to go to War in Iraq, HC 813

3 Letter from Donald Anderson to Andrew Gilligan, 15 July 2003

4 Letter from Andrew Gilligan to Donald Anderson, 16 July 2003

5 *Erskine May*, 22nd Edition, p 651

6 Letter from the Clerk of Committees to Sir John Stanley, 14 July 2003

Conclusion

6. We conclude that it is unsatisfactory that a witness who enjoys the full protection of Parliamentary privilege should be free to make an allegation against a third party, however serious, without revealing the source for that allegation. We invite the House to consider this matter, and to offer guidance to its committees and to their witnesses.

Formal minutes

Thursday 17 July 2003

Members present:

Mr Donald Anderson, in the Chair

Mr David Chidgey	Mr Bill Olnor
Mr Fabian Hamilton	Mr Greg Pope
Mr Eric Illsley	Sir John Stanley
Andrew Mackinlay	Ms Gisela Stuart

The Committee deliberated.

Draft Special Report (Evidence from Mr Andrew Gilligan to the Committee's Inquiry into The Decision to go to War in Iraq), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 6 read and agreed to.

Resolved, That the Report be the First Special Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the letter from the Clerk of Committees to Sir John Stanley MP be appended to the Report.—(*The Chairman.*)

[Adjourned till Tuesday 9 September at 2.30pm]

Appendix: letter from the Clerk of Committees to Sir John Stanley MP

14 July 2003

JOURNALISTS

Following your talk earlier today with the Clerk of the House, colleagues have been considering other cases in which journalists have declined to reveal their sources.

They have come up with the following cases which I hope may assist you. Most, as you will see, relate to cases in which there have been leaks from select committees and journalists have been asked to provide information.

Perhaps the most dramatic case (which is not related to a committee leak) derives from 1946-47, where the Editor and Political Correspondent of the Evening News refused to divulge the source of the evidence in a corruption story. They were summoned to the Bar and both agreed to divulge the source when they arrived there. [The source was an MP and by the time they got to the Bar a great deal of bitterness had been engendered: the case anticipated many more recent "payments to Members" cases.] As a result of the journalists' recantation the House resolved "That in the circumstances it is not necessary to proceed further in the matter". [Privileges Committee, Special Report, 1946-47 (HC 137); Report, 1946-47 (HC 138); CJ (1946-47) 377-378.]

In the cash for questions affair, in 1994-95, the editor of the Sunday Times refused to divulge his source of information to the Privileges Committee. The Committee criticised the newspaper for its use of entrapment, but did not recommend any formal disciplinary action either for that or for the refusal to name its source, although the Committee acknowledged that its inability to question the source was "not in the public interest" [First Report, Session 1994-95, HC 351].

All other relevant cases which we have unearthed are basically committee leak stories.

Session 1975-76: Complaint against the Economist concerning the draft Report of the Wealth Tax Committee. The Privileges Committee recommended the exclusion for 6 months of the Editor of the Economist (Andrew Knight) and the relevant journalist (Mark Schreiber). The House rejected the recommendation on 16 December 1976 (by 64:55) [CJ (1975-76) 64] on the grounds that "it would be wrong to punish a journalist merely for doing his job".

Session 1984-85: Complaint against The Times concerning a leak in The Times Diary of a Report from the Home Affairs Committee on the Special Branches of the Police. The Privileges Committee [First Report, Session 1985-86, HC308] recommended no action in this case, but indicated that it would consider the handling of such matters further.

Session 1985-86: Leak in The Times of concerning a draft Report from the Environment Committee on Radioactive Waste. The Privileges Committee recommended the suspension from the Lobby of Richard Evans for a period of 6 months and a reduction in the number of Times passholders for the same period. [Privileges Committee, First Report,

Session 1985-86 (HC 376)]. The Committee's recommendation was considered and rejected by the House on 20 May 1986 (by 158:124) [CJ (1985-86) 374].

In all three of the above cases the journalists concerned specifically refused to divulge their sources - ie to provide the information which the relevant select committee or the Privileges Committee required.

George Cubie

“Examination of witnesses before select committees

Witnesses are frequently invited, or occasionally summoned, to give evidence before select committees and committees on private bills. Committees may only exercise their power to summon witnesses when sitting within the United Kingdom, nor are witnesses formally summoned from overseas to give evidence. The practice in private bills committees is discussed in chapter 39.

Witnesses before select committees sit at a table facing the chairman. The degree of formality in the questioning of committees depends on the terms of reference of the committee and the subject matter of the questioning. However, committees, being extensions of the House, possess substantial powers to require answers to questions.

A witness is bound to answer all questions which the committee sees fit to put to him, and cannot excuse himself for example, on the ground that he may thereby subject himself to a civil action, or because he has taken an oath not to disclose the matter about which he is required to testify, or because the matter was a privileged communication to him, as where a solicitor is called upon to disclose the secrets of his client; or on the ground that he is advised by counsel that he cannot do so without incurring the risk of incriminating himself or exposing himself to a civil suit, or that it would prejudice him as defendant in litigation which is pending, some of which would be sufficient grounds of excuse in a court of law. Nor can a witness refuse to produce documents in his possession on the ground that, though in his possession, they are under the control of a client who has given him instructions not to disclose them without his express authority.

However, a witness who is unwilling to answer a question, after stating why he desires to be excused from answering, may appeal to the chair whether in the circumstances, or for the reason stated by him, he ought to answer. Where evidence is taken in private, a witness may also request that the whole or part of his evidence should not be published.”⁷