

HOUSE OF COMMONS

MINUTES OF EVIDENCE

TAKEN BEFORE

COMMITTEE ON ISSUE OF PRIVILEGE  
(POLICE SEARCHES ON THE PARLIAMENTARY ESTATE)

**POLICE SEARCHES ON THE PARLIAMENTARY ESTATE**

MONDAY 19 OCTOBER 2009

DAMIAN GREEN MP

Evidence heard in Public

Questions 1 - 114

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Oral Evidence

Taken before the Committee on Issue of Privilege

on Monday 19 October 2009

Members present

Sir Menzies Campbell, in the Chair

Sir Alan Beith

Ann Coffey

Ms Patricia Hewitt

Mr Michael Howard

Sir Malcom Rifkind

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**Memorandum submitted by Damian Green**

**Examination of Witness**

Witness: **Damian Green MP**, gave evidence.

**Q1 Chairman:** Before we begin evidence it may be for the convenience of those with an interest in these proceedings to know that the Committee will normally meet at this time on Mondays, although not every Monday due to other prior commitments which Members have already undertaken. The Committee will operate on a presumption that it will meet in public to hear all evidence, but if any witness has any particular objection we will consider carefully any representations which may be made to us. We have asked witnesses to prepare written statements for their and the Committee's convenience and these will be put up on the website together with any supporting documents. Mr Green, thank you very much for your attendance. In a moment I will ask you, for the record, to identify yourself and give us a very short account of your parliamentary history. Perhaps I could say by way of preliminary remarks that we have read your paper and, as I said a moment or two ago, it will be published, so it may be that taking that as the background we can move straight to questions, unless there is any particular piece of the paper or paragraph that you wish to draw to our attention.

*Damian Green:* There is an updated version, both compressed and extended, if you understand, which I would quite like to read out if that would help.

**Q2 Chairman:** Do you have a copy of that?

*Damian Green:* Yes.

**Q3 Chairman:** Perhaps, for the record, you will identify yourself.

*Damian Green:* I am Damian Green. I am the Member of Parliament for Ashford and the Shadow Immigration Minister. I have been a Member of the House since 1997.

**Q4 Chairman:** Thank you very much. Would you like to give us that updated version you have just described.

*Damian Green:* Thank you. Thank you for inviting me to give evidence. As a non-lawyer I think I can best help the Committee by outlining what happened rather than engaging in legal arguments over privilege. I will obviously restrict myself to those police actions and actions of the parliamentary authorities which directly impinge on the issue of privilege. I start with the Johnston report which was published recently which reveals that the police approached the Serjeant at Arms on 20 November asking in general terms about the search of a Member's office. The Johnston report concludes that the police did not comply with the requirements on search under the codes of practice brought in by the Police and Criminal Evidence Act 1984. On 26 November, again according to the Johnston report, the Serjeant at Arms went to consult the Clerk to the House of Commons at the Palace of Westminster and she intended to consult the Speaker. The following day, she gave the police permission to search my room. The effect of this permission was that the police did not need to apply to the magistrate's court for a search warrant. This account from the Serjeant at Arms seems to contradict the Speaker's statement to the House on 3 December when he said: "I regret the consent form

was then signed by the Serjeant at Arms without consulting the Clerk of the House". Now, either the account in the Johnston report is false or parts of the Speaker's statement are false. I assume the Committee will be taking evidence to try to determine who knew what and when they knew it. On the Saturday, two days after my arrest, I phoned the Speaker who told me that I should know he had not authorised the raid on my room but had been told that he "had to allow it". I am afraid I cannot remember if I asked him who had told him that. The Committee will be aware of the various proceedings on the floor of the House in the subsequent days. What they may not be aware of is the extensive attempts I and my legal advisers made to have the issue of privilege determined by the House. I have sent the Committee, as you know, a number of documents showing the full extent of my attempts to have the issue determined by the Standards & Privileges Committee and the full House. In practice, what happened was the Clerk made a decision, even though I would suggest he had no authority from Parliament to do so as he could only make recommendations, which the police took as final, as they showed in their letter of 10 February, and on the basis of this the police looked at all the remaining material without Parliament ever being given the chance to decide whether any of it was privileged. Throughout this process the House authorities were entirely unprepared to co-operate with me. This reached a nadir when the Director of Public Prosecutions and the Speaker were engaged in correspondence about the timetable for resolving the privilege issue. The DPP copied his correspondence to my solicitors, as would be normal and transparent in this kind of matter. The Speaker, despite my request, refused to do the same. I found it ironic that a Member of Parliament under criminal investigation found the prosecuting authorities more willing to be open with him than the House of Commons authorities. On 5 February I attempted to make a point of order about the refusal of the Speaker to refer the matter to the Standards & Privileges Committee. This was cut off by the Deputy Speaker on the advice of the Clerk. This produced another bizarre irony in that I was

at liberty to comment freely about this important parliamentary matter everywhere except in the House of Commons. The conclusion I reached was that the controversy surrounding my arrest and the fact that the House had allowed the police in without a warrant on the basis of legal advice, which I assume came from the Clerk, meant that the Commons authorities felt unable to fulfil a properly neutral function from then on. I hope the Committee can consider whether this is a systemic problem or one which could and should have been avoided.

**Q5 Chairman:** Thank you very much for that. I am sure we will deal with some of these issues which you have flagged up in your opening statement. I wonder if I might go a little further back. Mr Green, as you know, the Bill of Rights protects your freedom of speech as a Member of Parliament, as it does the House and its Committees. The consequence of that is whatever you say will be taken down and published, but cannot be used against you in a court of law. May I begin by asking, for the record, whether you received unauthorised disclosures of Home Office material from Christopher Galley?

**Damian Green:** As the world knows I did receive a number of documents which revealed various scandals happening inside the Home Office and I made those public, yes.

**Q6 Chairman:** I was going to ask if you knew how they got into the newspapers, but I understand from your first answer that you were the mechanism by which they got into the newspapers.

**Damian Green:** Yes.

**Q7 Chairman:** I wonder if I might ask you a general question. In the event that your party were to form the next government then there is a reasonable likelihood that you might become a minister. What sort of standard of loyalty would you look for in relation to people like Mr Galley in the event that you were a minister?

**Damian Green:** If those two events happen, if my party wins the next election and if I become a minister, I will have the same attitude as all ministers in all governments, that I will disapprove of leaks and I will attempt to stop them. As we all know, politicians of all parties have profited from leaks in the past, most notably perhaps the current Prime Minister, and what they tend to reveal is the serious problems in the department itself. I think a responsible attitude of any politician of any party, but particularly an opposition politician receiving them, is obviously to make a test of our national security, whether this endangers national security, or perhaps in particular whether it breaks the Official Secrets Act and clearly that would then be a criminal offence to make it public. As the Committee will know, the Director of Public Prosecutions made clear that nothing I did could be described like that at all. Therefore, to revert to your original question, throughout history there have been leak inquiries, some successful and some unsuccessful, and it seems to me that the response should be an internal departmental one, it is not something where the police should become involved in any way unless there is a threat to national security. Almost the most serious thing that happened in this case, if we are going back further and widening it beyond parliamentary privilege, was that a senior official in the Cabinet Office wrote to the police: "We are in no doubt that there has been considerable damage to national security already as a result of some of these leaks". That statement was false and it is quite clear both in the Johnston report and in the DPP's response that the idea that any of the leaks I was engaged with endangered national security was simply false. To be told by the Cabinet Office that there is "no doubt" that national security had been endangered was a very, very strong statement from the Cabinet office and a false one.

**Q8 Chairman:** Can I just explore that with you for a moment or two. Who makes the decision that something is not putting national security at risk? Supposing Mr Galley had

begun to provide to you information which related to one of the security services for which the Home Office is responsible, what would you have done in that situation?

*Damian Green:* If I had been given information that suggested to me that national security was being put at risk I would have privately spoken to ministers, that would have been the appropriate response there, but the situation never arose or anything remotely like it.

**Q9 Chairman:** You draw a distinction, which I think the Committee will understand, between issues of national security where, using the rather portentous phrase, the defence of the realm may be at stake and the sort of information which you received, but a judgment has to be made by someone as to when that particular line is crossed. In the analysis you have given us I think you rather suggest that would be a judgment for you as the MP, or anyone else as an MP, in receipt of information. Is that right?

*Damian Green:* I can only speak about the information I received. I took the clear and, as it turns out from everyone else who has looked at it, correct judgment that national security was not put at risk. I did not consider the hypothetical situation of what would happen if I was given a national secret. Some of it can be deduced from the Civil Service classification of the material I was given, some of which was restricted. One of the things that the leak investigation was concerned with was a PLP document commenting on the various states of minds of individual Labour Members. This is as far away from national security as it is possible to get in a political arena, it seems to me, and yet the police became interested in that kind of document which, as I say, seemed to me strange.

**Q10 Chairman:** Let me ask you something which is not hypothetical. Do you think that Mr Galley deserved to be sacked for what he did?

*Damian Green:* I can understand he was dismissed; it has happened to previous civil servants.

**Q11 Chairman:** At any time in your exchanges with him did you point up to him that that was a possible outcome of these events?

**Damian Green:** I cannot remember ever having an explicit conversation about it, but he had worked in the Civil Service for a number of years and I assume knew what he was doing.

**Q12 Chairman:** I have to ask you this question: in your exchanges with him did you ever encourage him to break what I think you would have recognised as a duty of confidence as a civil servant?

**Damian Green:** No, absolutely not. One of the things I am pleased has been published in the Johnston report is that he investigated quite carefully what the police have described as "the relationship" between me and Mr Galley. It was put to Mr Galley in the police interview that the relationship was "loose" and he volunteered "very loose", and indeed that was the case. Over a two and a half year period we met on four occasions, and on all four occasions at his instigation I think, so the idea that there was some close permanent relationship between us was always false.

**Q13 Chairman:** Did he seek you out in the first instance?

**Damian Green:** Yes. He did not seek me out, he wrote to David Davies who was the then Shadow Home Secretary.

**Q14 Chairman:** I deduce from the quite lengthy answer you gave a moment or two ago that you regard the reaction of the Home Office as being an overreaction to bring Scotland Yard in to investigate these allegations of leaks. Do you accept that a decision of that kind may be quite a difficult decision to take against a pattern of leaking if the implication is that although something which does not raise issues of national security does not come out there is



nonetheless the risk that if the pattern goes on there might well be an instance of something involving national security?

*Damian Green:* I take the point you are making. My understanding is that it was the Cabinet Office, not the Home Office, that was the driving force behind actually bringing the police in and I have already commented on what the Cabinet Office said to effect that.

**Q15 Chairman:** Can we call it “government” for the moment. It is quite a difficult decision, is it not?

*Damian Green:* I agree it is a difficult decision. What is interesting is that Mr Galley was first identified by an internal investigation if you read the Johnston report, so actually the whole police involvement was unnecessary, they had succeeded in a leak inquiry where common conception is ---

**Q16 Sir Alan Beith:** Very unusual to succeed. Most leak inquiries are unsuccessful.

*Damian Green:* Leak inquiries never succeed. Actually, this leak inquiry was successful. There was never any need to bring the police in, and yet the police were brought in with this very, very strong untrue rubric that national security had been breached.

**Q17 Chairman:** The charge of “misconduct in a public office” technically can lead to a life sentence. What is your view of that charge being proffered in this matter?

*Damian Green:* Indeed. While I was being interviewed by the police I was told I faced life imprisonment, as I understand Mr Galley was as well.

**Q18 Chairman:** Did you take that threat seriously, Mr Green?

*Damian Green:* I thought it was ludicrous. In other circumstances I would have thought it was laughable but the situation is not very humorous when you are banged up in Belgravia nick. It was clearly an attempt to get round the effect of changes to the Official Secrets Act in

1989. Very specifically, in 1989 leaks from the Civil Service were taken out of the Official Secrets Act precisely, as far as I can see, because after the Ponting case and one other case it was clear that juries were not going to convict civil servants who leaked even much more sensitive documents than Mr Galley leaked. At some stage between 1989 and now somebody had thought, "Is there a common law offence that we can twist a bit and try and use to bring back effectively a criminal sanction against leaking?" and I imagine the effect of their failure to prosecute either me or Mr Galley will be that will go away, and so it should. Parliament made its view very clear about the use of the criminal law against leaking and it seemed to me then, and it seems to me now, that attempting to recreate that offence under a fairly archaic common law offence should fail, and has failed.

**Q19 Sir Alan Beith:** Were you ever given the impression by the police that either you or Mr Galley were being investigated or might be investigated under the Official Secrets Act which you or he would have been if there was a genuine allegation of a threat to national security?

**Damian Green:** No. Again, it is clear in the Johnston report, and do not forget his report was done a couple of weeks after my arrest, that he is struck by the fact that at the early stages of the police investigation there was lots of talk about national security but by the time it came to interviewing both Mr Galley and me no mention of national security and no mention of the Official Secrets Act was made.

**Q20 Ms Hewitt:** I have just one factual point going right back to your opening statement. Would you just be very helpful and show me in which bit of the Johnston report does he conclude that the procedures followed in your case were not consistent with the Police and Criminal Evidence Act? I found the bits in his report where he says your arrest was lawful but disproportionate, in his view, and the search was both lawful and proportionate, but I have not found the bit that you referred to in your opening statement.

*Damian Green:* I seem to be the world's greatest expert! It related, I think, very specifically to the fact that ---

**Q21 Ms Hewitt:** Or if you would like to send us a note afterwards if that would be easier.

*Damian Green:* I assume it is somewhere on page 35.

**Q22 Ms Hewitt:** I do not want to take up time now.

*Damian Green:* It is the top paragraph on page 36: "While the form makes clear she is giving consent it does not make clear that the person is not obliged to consent. The codes of practice state that a person should be informed that they are not obliged to consent, but failure to comply with the codes of practice does not make the search unlawful". I think that was the point that was being made.

**Ms Hewitt:** Thank you. I had focused on a later section of the report.

**Q23 Ann Coffey:** Christopher Galley was arrested on 19 November and when you heard he had been arrested did you think you might be arrested?

*Damian Green:* Yes. I thought, "Well, that's interesting".

**Q24 Chairman:** Interesting!

*Damian Green:* He phoned me the following day. That was why I was surprised by much of the things that happened. I was not sure that I was going to be arrested, I was sure that the police would want to talk to me since it is widely agreed now that it would have been more sensible for the police to have phoned me up and said, "Would you like to turn up for an interview". I actually collected together the bits and pieces of material that I thought would be relevant to show them and kept them together in a drawer in my office. As the days passed it became less and less likely since, as I say, Mr Galley phoned me the day after to say that he had spent the previous day in Paddington Green Police Station being interviewed for 18 hours

or so. Since a week had gone by, by then I assumed that, as it were, a leak inquiry would take its normal course.

**Q25 Ann Coffey:** In gathering the bits of material that you thought the police might be interested in, what sort of material did you think they would be interested in? What did you extract that you thought might be of interest to them?

**Damian Green:** Any letters or copies of letters I still had to and from him seemed to me to be relevant. I think it was mostly that, if not entirely that. There was nothing else to hide because anything he had sent me that exposed failings in the Home Office was in the public domain by definition.

**Q26 Ann Coffey:** Did you take any legal advice?

**Damian Green:** No, not at that stage.

**Q27 Ann Coffey:** The timing of your arrest was interesting because on 26 November, the evening before, Parliament had been prorogued and then at nine o'clock the next morning the police came to arrest you but they failed to do that, although I think they arrested you later in that day. How did the police actually find you?

**Damian Green:** That is a good question which I do not know the answer to because it says in the Johnston report rather blandly that they failed to arrest me at nine o'clock. There is lots of circumstantial evidence that they were simply surrounding the wrong house. I say this because I was at a meeting elsewhere in Kent and they arrested me when I came out of the building and they said, "We want to take you back to your home", so I took them back there. About 200 yards before we got there, they said, "It's here, isn't it?", and I said, "No, you go up to the top of the hill" and I eventually directed them in. When I let them in they looked at me and said, "So, this is your home, is it?" I decided that in the circumstances sarcasm was

probably the wrong response but there was quite a lot of circumstantial evidence that it was my home: I know where I live; I had let them in with a house key and I do not carry other people's house keys around with me.

**Q28 Sir Alan Beith:** Not all Members seem to do so!

*Damian Green:* Indeed. The policeman who had arrested me went outside, went on his mobile and five minutes later eight other police turned up, all the searching party. It is perfectly clear that was why they did not arrest me at nine in the morning, which they had intended to, they had just been round the wrong house. I should remind the Committee this is the anti-terrorist police: they cannot find a Member of Parliament at home at an address that is published every year. I never find newspapers have any difficulty finding my home, and photographers when they need to take pictures of me, so I was quite surprised at the police.

**Q29 Chairman:** Sarcasm is a very dangerous weapon.

*Damian Green:* That was why I did not use it in that period but I feel now reasonably able to do so. It was not a triumph. That is why they did not arrest me at nine in the morning.

**Q30 Ann Coffey:** It was a week after they had arrested Mr Galley?

*Damian Green:* Yes, sorry, that was the original point. I diverted myself. The significance of that was two-fold: the point you make that that was the first day Parliament was in recess, which has always struck me as significant in that they would not want to do it while the House would be here to protest, as it were; but secondly, of course, and again as made very clear by the Johnston report, it completely blows apart any suggestion that security was at risk. If national security had been at risk - the police had arrested Galley, Galley had told them that he had given the information to me and it took them another week to arrest me -

then they were being appallingly negligent. From that fact alone it seems to me that the police knew there were no security implications in anything that I had done.

**Q31 Ann Coffey:** Why do you think they timed the arrest in that way?

**Damian Green:** The only conclusion I can come to is that was the first day Parliament was in recess.

**Q32 Ann Coffey:** Do you see a connection in that? It was not that it took them a week to get their evidence together or were perhaps being a little bit sensitive how they did it in terms of your family, you definitely saw that was a connection?

**Damian Green:** Nothing else changed in that week. They arrested Galley on the previous Thursday and interviewed him all day so they could have arrested me the previous Friday morning.

**Q33 Chairman:** You were not away, for example? You were at home?

**Damian Green:** I was at home and here during the day when Parliament was sitting. As I say, I can see no reason other than the fact that Parliament had gone into recess.

**Q34 Ann Coffey:** What do you think they were concerned about if they had arrested you during Parliament sitting?

**Damian Green:** Parliament collectively was quite angry when I was arrested and I suspect had it happened while Parliament was sitting then that anger would have been much more palpable. I suppose physically they might have thought there would have been something even more difficult to sell, that they would presumably have had to arrest me when I was leaving home on my way into Parliament or do it inside the Parliamentary Estate, either of which I think would have been quite sensitive.

**Q35 Ann Coffey:** Do you think the police could justifiably argue that the reason they did it was to save you that high profile embarrassment, that they just came and arrested you quietly the next day when everybody had gone home to avoid scenes of you being arrested outside your House or dragged from this place your career in ruins?

**Damian Green:** It is possible, but since they could not find my home it is all slightly irrelevant. To be honest, I am not the person to answer what was in the police's mind at the time. All I can say with certainty is they clearly were not taking any considerations of national security in mind by leaving it a week to do so.

**Q36 Ann Coffey:** Were you present when your London home was searched?

**Damian Green:** No. My wife was very unusually at home that day.

**Q37 Ann Coffey:** Was she the only person who was present?

**Damian Green:** She was for the first few hours and then one of my daughters came home from school.

**Q38 Ann Coffey:** You talked about the week after Christopher Galley was arrested but were you aware of any surveillance during that week by the police?

**Damian Green:** No.

**Q39 Ann Coffey:** Have you ever been aware of any surveillance by the police?

**Damian Green:** Subsequently or during?

**Q40 Ann Coffey:** During or after your arrest?

**Damian Green:** No. The only surveillance we later became aware of was that during the time they arrested me until the time I arrived at the police station they were bugging me. They were recording everything, which is illegal except in terrorist cases I subsequently

learnt. They are permitted to do so by a senior police officer in terrorist cases, but, for obvious reasons, since it makes reading you your rights and telling you everything you say may be taken down and all that kind of thing, that is irrelevant if they have been recording everything you have said in the previous, in my case, three hours without telling you, which was what they did to me.

**Q41 Ann Coffey:** Was that during the time they were questioning you?

*Damian Green:* It was before I was formally questioned. As I say, I took them back to my home and when eventually they all arrived they told me that it would take about five hours to search and I could either wait and watch them do that and then be taken to a police station in London or I could leave them there and go to the police station, and I decided rather than delay everything for another five hours I would go straight away.

**Q42 Chairman:** So you left your home and went to the police station while the search was continuing?

*Damian Green:* Yes which I subsequently regretted when I discovered exactly what they had taken away, which included not just my computer but also all my phones and indeed my Internet connection, the hub, so they left the house without any electronic communication of any kind.

**Q43 Chairman:** Did that include land lines?

*Damian Green:* Yes, they took away both phones and faxes, the printer, the home computer hub, and obviously they had taken my mobile and my BlackBerry as well. I eventually got back there on the Saturday and it was unliveable in because they had taken away all means of communication with the outside world.



**Q44 Ann Coffey:** Why did they take away all that equipment? Was it because they thought there was something on it that they could look at that was involved? I can understand taking away a BlackBerry because it might have email messages on it and I can understand a mobile but it is difficult to understand taking away a land line.

**Damian Green:** Or indeed in particular an Internet hub which is just a transmission mechanism. I do not know. It was unnecessarily heavy-handed.

**Q45 Ann Coffey:** Did they ever give you any explanation for that?

**Damian Green:** No, indeed several items came back smashed. The hard drive on my House of Commons laptop was broken when I got it back so I had to get another one.

**Q46 Ann Coffey:** Remind me, how long were you interviewed by the police?

**Damian Green:** About nine hours altogether I was inside the police station. There were two interviews.

**Q47 Ann Coffey:** It would have been a bit of an unusual situation for the police to be interviewing quite a senior politician. Did you get any sense that that influenced the way they interviewed you or treated you?

**Damian Green:** They did not treat me badly. I would not say that at all. I was not put in a cell. I was put in a room and I was not handcuffed or anything like that, but, no, the interview struck me as the sort of interview they would give anyone.

**Q48 Ann Coffey:** The police agreed on 19 August to remove your DNA from the national database. Why do you think they agreed to do that, because actually there are lots of people who have not subsequently been charged whose DNA is on the national database?

**Damian Green:** Indeed, and they gave no explanation. My lawyer argued the case that I was entirely innocent and therefore, as with everyone who has their DNA taken, there are practical

disadvantages. I now forever need a visa to go into the United States for instance, having been arrested. That is one of the other side effects of being arrested. We simply argued there was absolutely no need to keep my DNA and they agreed that it was an exceptional circumstance. I do not agree that it is an exceptional circumstance. I think everyone who is entirely innocent who is in the same position as me should have their DNA taken off the database and I hope that one of the good things that can come out of this is that the police having agreed to do that with me that eventually we can agree that everyone should be treated the same way I have been treated.

**Q49 Ann Coffey:** You have a view about the principles but I was just interested in why they agreed to treat you as an exception because it is nothing to do with guilt or innocence, it is just that if you are arrested by the police that can happen, so why did they make an exception?

**Damian Green:** They did not say why. They agreed it was an exceptional case so they would do it but they did not give an explanation.

**Q50 Sir Malcolm Rifkind:** You have said that when Mr Galley was arrested you assumed the police would want to interview you. If they had made such a request would you have agreed to be interviewed by them?

**Damian Green:** Yes.

**Q51 Sir Malcolm Rifkind:** Did you ever ask them after you had been arrested why they had not simply asked to see you?

**Damian Green:** Certainly my solicitor would have made that point in various exchanges while we were discussing not least the whole matter of parliamentary privilege and the way the whole thing was done.

**Q52 Sir Malcolm Rifkind:** You have not yourself been given an explanation as to why they chose to act that way?

**Damian Green:** No, I have had no formal correspondence from the police subsequently.

**Q53 Sir Malcolm Rifkind:** You said that when you were expecting to be interviewed you put together what you described as various bits and pieces which I think you subsequently said was the correspondence you had had with Mr Galley that you assumed would have been of interest to the police. Did you think you were putting together everything that might be relevant to the kind of enquiry they might wish to put to you?

**Damian Green:** I put together everything that we could find in my office because I do not file everything, Commons offices are too small, so a lot of it would have been shredded anyway but everything I could find that I knew was related to Mr Galley I put in a file.

**Q54 Sir Malcolm Rifkind:** And that included copies of emails that you had received?

**Damian Green:** It did not include copies of emails. It was all hard copy stuff. I did not print off emails specifically.

**Q55 Sir Malcolm Rifkind:** Was there any material you held back in terms of what you would have been happy to show to the police that could be said to be relevant to their enquiries?

**Damian Green:** As I say, I did not print off the emails so they would not have been in that file.

**Q56 Sir Malcolm Rifkind:** Perhaps I can help by saying was there anything you deliberately held back because you thought it might be embarrassing to yourself or fall into that category?

**Damian Green:** No.

**Q57 Sir Malcolm Rifkind:** When you decided what information to put aside that might be of interest to the police, did you give any consideration to whether any of that material might be subject to parliamentary privilege?

*Damian Green:* Not specifically because it was letters between us really, and that was mostly what was there and that would be file correspondence, but the other things that would conceivably have attracted parliamentary privilege, which would have been documents that we used in parliamentary proceedings, I did not have any more because I had not kept copies of those.

**Q58 Sir Malcolm Rifkind:** So far as you were aware you did not have in your possession any documents or materials which would be likely to be subject to parliamentary privilege?

*Damian Green:* I think that is right. To be honest, I cannot be absolutely sure without looking at the full range of documents they took away, but I cannot remember off the top my head anything that would fall into that category.

**Q59 Chairman:** Self-evidently you could have destroyed all of these documents that you collected up?

*Damian Green:* Absolutely, I could have destroyed them, I could have given them to al-Qaeda. I had a week to do what I wanted to do with them if I was a threat to national security.

**Q60 Chairman:** What on earth were they asking you for nine hours?

*Damian Green:* Most of the time they were just sitting there. They got me there at about 4 o'clock in the afternoon. They did not let my solicitor in until about six. They kept him waiting for an hour. They were taking my DNA and fingerprints. It is a long process when you get arrested. Then we had an interview and then they let me sit in there for three hours and then they did another interview.

**Q61 Chairman:** They left you on your own for three hours?

**Damian Green:** No, they left me with my solicitor.

**Q62 Mr Howard:** Was that because you needed a three-hour break or because they needed a three-hour break?

**Damian Green:** I was not going to answer any detailed questions so I assume they went away to take instructions from their superiors as to what they should do next.

**Q63 Ann Coffey:** You said that if the police had asked you to come along for an interview you would have agreed. If they had asked if they could search your parliamentary or constituency office, would you have agreed to that?

**Damian Green:** No because both offices are full of private correspondence. I think my constituents are entitled to expect that when they write to or indeed email their MP that that is private correspondence. I think that is one of the more interesting aspects of modern privilege as to what privilege can adhere to electronic communications which may be opened anywhere in the world. I would have said no. That is why they apply for search warrants so that they can explain to a judge why they can override anyone's normal desire that their correspondence should be kept private.

**Q64 Sir Alan Beith:** It would have been possible theoretically, would it not, for there to have been amongst your papers correspondence relating to parliamentary proceedings that you intended to initiate about some misbehaviour by police officers in relation to a demonstration or something like that? I am not saying there was but that is the kind of material which a general fishing expedition could have exposed to officers who might even have been the subject of an inquiry?

**Damian Green:** It is absolutely the case, as I am sure it is with many colleagues, that anyone with access to all my emails and correspondence going back a number of years will find letters complaining about the police. I have a regular trickle of them as I am sure we all do.

**Q65 Sir Alan Beith:** When you told the police, as the Johnston report indicates, that the files they were looking for were in your desk at Parliament, did you do so believing that that meant that they would not be able to gain access to them or were you directing them to where they should go and find them?

**Damian Green:** I was directing them. I had nine policeman about to tear my home apart and although I did not know it at the time also doing the same with our house in London. Partly because I was still thinking okay, let us have a conversation about this, and that this was not going to go as far as it did, if I told them where what they were looking for was then I could save all of us a lot of time and grief.

**Q66 Sir Alan Beith:** The district judge granted warrants for your arrest and the search of your homes in Kent and London and your constituency office. Was there really ever any doubt therefore that the district judge would have granted a warrant to search your office in the House of Commons?

**Damian Green:** I think that is an extremely good question which I simply do not know the answer to. I assume the sensitivity will be precisely that it was the House of Commons and policemen coming into the House of Commons are more sensitive than police going into houses or other offices.

**Q67 Sir Alan Beith:** Are you are assuming that the district judge would have not only been aware of the sensitivity of that but would have had an opinion that he could not grant a warrant in those circumstances?

**Damian Green:** I just do not know. There are distinguished lawyers on this Committee and I am not one of them.

**Q68 Sir Alan Beith:** If the warrant had been sought and granted would it have been lawful for the parliamentary authorities then to refuse to allow the police to exercise it?

**Damian Green:** I do not know.

**Q69 Sir Alan Beith:** And you obviously did not know at the time?

**Damian Green:** No.

**Q70 Sir Alan Beith:** Is it your belief that asking the Serjeant at Arms for consent was simply the police trying to be sensitive or were they trying to bypass a warrant altogether?

**Damian Green:** I suppose the suspicious circumstance is that the police, according to the Johnston report, did not tell the Serjeant at Arms that she need not grant consent, they slid round that particular rock without informing her. What I hope the proceedings of this Committee can discover is what happened next. That is what I do not know. We know now the police approached the Serjeant, the Serjeant apparently went to consult the Clerk and said she was going to consult the Speaker, and at that point I assume all those discussions were had within the parliamentary authorities. What we do not know, other than what the Speaker told the House on 3 December, is what happened at those meetings and what decisions were taken and who took them. I think that is central.

**Q71 Sir Alan Beith:** The Johnston report concludes that the manner of your arrest was not proportionate because it could all have been done on an appointment basis by prior agreement. Would you have co-operated with such a request?

**Damian Green:** Yes, absolutely.

**Q72 Sir Alan Beith:** Should the Speaker or the Serjeant ever be allowed to consent to the search of a Member's personal office on the Parliamentary Estate without the Member's agreement?

**Damian Green:** If there is evidence of genuine criminal activity, if somebody was running a drugs ring using their parliamentary email and phone, I can envisage circumstances where a crime could take place based in this building where that would be acceptable. The previous Speaker made a Protocol saying there has to be a warrant and, indeed, I discover for the first time from the evidence given to this Committee, that there was in existence a Protocol from the year 2000 of what should happen in precisely these circumstances and that was not followed in these circumstance, which I find completely extraordinary.

**Q73 Sir Alan Beith:** I conclude from some of the things that you have said in your paper and in answer to questions that you envisaged the House coming to a decision collectively about whether permission should be granted to gain access.

**Damian Green:** It is not so much that. What I wanted to happen and, remember, a lot of this was happening in the period between my arrest and my being cleared by the DPP, so the bulk of the correspondence I have given to the Committee has to be seen in that context, I was still at the point of having to potentially argue a case in court and what I was seeking to do was to get a definitive account of which of the various myriad documents the police had taken attracted privilege and therefore might not be admissible in court. There are legal arguments about everything I have just said which I am not competent to decide on. What was particularly frustrating during that period was that every attempt my legal advisers and I made to get some kind of ruling on privilege by the Standards and Privileges Committee, and through them the House, was blocked. The Speaker refused to refer it. Some version of this Committee was set up but then instantly adjourned until after the criminal investigations. The Attorney General was giving advice that it was for the courts to decide and Parliament cannot



decide, so there appeared to be no route forward. Eventually what happened is that officials of this House decided what they thought clearly attracted privilege, which my legal advisers and I disagreed with, and the police took that as the definitive ruling of Parliament, so without any committee of this House let alone the House itself deciding on matters of privilege, the police opened everything and looked at everything. In a sense, that means nobody can ever argue that I got off because some of the evidence was not presented. All the evidence was presented and we will never know what was privileged and what was not privileged. It seems to me what is most useful now is that this Committee can hopefully decide how to have a proceeding in future where Parliament can actually decide what is privileged and what is not privileged in a way that was prevented in my case.

**Q74 Sir Alan Beith:** For Parliament to decide should it be for the House collectively to decide given that there might be circumstances in which to disclose all the material to all Members, as it would have to be if all Members were called upon to make a decision to vote as to whether to exercise privilege, would not be practical? It would be against either the prospects of conducting a court case satisfactorily from everyone's point of view or indeed against national security interests and therefore there have to be circumstances where officials of the House are entrusted with looking at material and deciding whether to put it under this heading.

**Damian Green:** I quite take the point about publicity. It seems to me that the relevant body here is the Standards and Privileges Committee which could clearly be entrusted to take a private look and perhaps put a motion to the House. Again it is not necessarily for me to dictate what happens then but it seems to me quite important for the House, having set up a Privileges Committee, that that Privileges Committee is allowed to meet when an issue of privilege as sensitive as this comes up. What happened in my case was it simply never met. It was simply never called into operation for this.

**Q75 Mr Howard:** Can I just take you back to the search of your house in Kent and ask a point of detail. Can you remind us were the nine police Metropolitan Police officers or Kent Police officers?

**Damian Green:** Metropolitan police officers. I understand that Kent Police were not informed that this was happening until after it was happening.

**Q76 Chairman:** I know it may be difficult to think back to your state of mind over the course of this period, Mr Green, but supposing those documents which you had collected together after the civil servant's arrest had been in your home and not in a drawer in your office in the House of Commons, would you have handed them over then?

**Damian Green:** I would not have had any choice because they had warrants to search my home.

**Q77 Chairman:** Because what I derived from your previous evidence was a willingness to co-operate and I just wondered whether that was just a general willingness or whether you had given any thought - and you have partly answered this in response to Sir Malcolm Rifkind but I just want to get it clear in my own mind - to holding any of these documents back because it was privileged?

**Damian Green:** I did not think the documents I had when I looked at them were privileged. As I say, I am almost sure, but I will go away and check to help the Committee, that such documents as I still had were all just correspondence between me and Christopher Galley. The basic thing is that I would have been willing to co-operate. I am a law-abiding person, I co-operate with the police, so I would have done that.

**Q78 Sir Malcolm Rifkind:** Can I clarify on this particular point, you said earlier that you had put aside the bits and pieces, as you described them, or the documents that you thought

might be relevant to the inquiry. You said a few moments ago that you were however extremely concerned with a whole myriad of papers, I think was the phrase you used, that the police had taken away. When you sought to have these matters referred to the Standards and Privileges Committee or looked at at an early stage was that because you believed or feared or were concerned that some of these papers might be relevant to the inquiry that the police were carrying out, in which case why had you not yourself made them available to be handed to the police, or were you more concerned about the wider issue of principle regardless of whether it was relevant to the inquiry into this particular affair as to how these matters should be dealt with?

**Damian Green:** Certainly the latter given the amount. When I say myriad this is the list of pages each of which have 18 or so documents listed on them so the police took dozens of documents as well of course as all my electronic records. As I say, that was every email I had written and received for however long I had owned the computers I had, so the police had access to more or less everything, both professional and private, that I had done through my parliamentary work for three or four years, so essentially the latter, I was sure what they had given themselves access to would include some things that, by my slightly simple understanding of parliamentary privilege, would attract privilege because they were central to activities that took place in Parliament.

**Q79 Sir Malcolm Rifkind:** Just to be clear about this, your primary concern was the issue of principle as to what documents the police should be allowed to see and what you were not so concerned with (because you did not believe there would be any such documents) was whether any of these documents the police had taken away would be relevant to whether a prosecution should be brought against you?

**Damian Green:** That was quite a significant concern as well as to what would be admissible in evidence. It is quite difficult to think back, but I imagine that idea clearly would have been

uppermost in the minds of my solicitors. Until all this happened I had not particularly bent my mind to the criminal law to any great degree.

**Q80 Ms Hewitt:** You indicated that if the matter had proceeded you would have handed over to the police the bits and pieces, the correspondence between yourself and Mr Galley that you put aside after Mr Galley was arrested. Would you have taken a different view if Mr Galley had been your constituent?

**Damian Green:** I think I would have taken the view on the individual documents in that if it had been a sensitive or even a non-sensitive constituency case, I would have wanted some kind of definitive ruling about where does privilege adhere to normal correspondence between a constituent and an MP. My instinct would be no, that is private and you need to jump several hurdles before you can look at that, one of which I would think would be the judgment of at least the Standards and Privileges Committee of this House or a definitive ruling as to what is privileged or not. At the time I had not addressed that issue because (a) he was not a constituent and (b) I had not thought through what ought to be privileged. It is a subject that has exercised me more since last November than it had done before, I confess.

**Q81 Chairman:** With a constituent the data protection legislation might possibly have arisen too?

**Damian Green:** Does that apply to the police?

**Chairman:** Perhaps it is something we can explore.

**Q82 Ann Coffey:** I am just interested because obviously defining a constituent is easy in terms of the relationship because they reside within a particular geographical area but in a sense the relationship between you and Christopher Galley was a private relationship. In

what way did you not think that was protected? Why did you not think that was protected in the same way as one of your constituents?

**Damian Green:** There was one very significant difference in that he had given two interviews to the police lasting many, many hours and the police had access to all his records so, as it happened, the police need not have looked at anything I had. He had two or three letters from me. They had access to his computer and indeed servers so far as I could see because they had the full email exchanges between us, which again were not very extensive at all. He told me that he had told them everything he knew so I had no fear of breaching his privacy, as it were, because he had breached it himself. Indeed, I think I am right in saying he told me that he had given his first interview to the police without even a solicitor present, so it was clear that there was nothing I could do that would breach his privacy.

**Q83 Sir Malcolm Rifkind:** On one or two occasions you have used the term “private correspondence” and “privileged material” as if there is not much difference between the two but we are advised, and it seems to be well established, that private correspondence between an MP and his constituent is not privileged in the sense of inadmissible in court and has never been considered to be privileged. Do you accept that distinction?

**Damian Green:** Absolutely and I apologise if I have been misleading the Committee.

**Q84 Sir Malcolm Rifkind:** No, it is just for clarity.

**Damian Green:** Indeed I accept that distinction that privilege does not just adhere to anything that an MP has got hold of.

**Q85 Sir Malcolm Rifkind:** In the opening statement which you prepared for us and which indeed you read out today, one of your main concerns appears to have been that because of the procedure that was adopted and the preliminary view that the Clerk came to, material in

due course was handed over to the police and they were allowed to look at it before there was an opportunity given to the Standards and Privileges Committee to consider whether it might be privileged or not. Do you accept that if any alternative procedure had been adopted, and if for example the Standards and Privileges Committee had come to the view that some of this material was privileged, then that would have been excluded from any investigation or any even preliminary judgment by the Crown Prosecution Service as to whether there was sufficient material to justify a prosecution being brought in your case?

**Damian Green:** That is certainly what Professor Bradley argues. I am conscious I am being led into territory where I simply do not have an authoritative view. I am not a constitutional lawyer but Professor Bradley is and I have read what he has to say. That is clearly one of the implications of what he says.

**Q86 Sir Malcolm Rifkind:** Because the advice that we have been given, and I can only give my own understanding of the advice that we have been given, is that it is accepted practice - this is the view of the Attorney General - that Parliament does not seek to interfere with the investigation of a possible criminal offence and therefore it allows the Prosecution Service to look at wide ranges of material. If they wish to use such material in an actual prosecution then the person accused or Parliament can bring forward the argument that this is privileged and if the court decides that it is privileged then it cannot be included in evidence. That would have been prevented if the process you were recommending had been adopted.

**Damian Green:** I have read the Attorney General's opinion as well and Professor Bradley disagrees with her and there appears to be a genuine disagreement between lawyers here. One of the points worth considering is that it is not simply whether the court would consider it. One of the reasons why my legal team and I were so anxious to get this cleared up beforehand was at some stage I was going to have to go through another interview process, we thought, indeed I was bailed originally until 27 February, so we were preparing for the possibility of

my doing another interview then, and before then I needed to know what evidence was going to be admissible or not because if I refused to comment on questions about certain specific material then, as the lawyers on the Committee know, that in itself is admissible in evidence, the prosecution can say I refused to talk about that, and clearly that has implications for a court case. I was very anxious to have the issues cleared up both of what is privileged and also whether privilege means that something is not admissible in evidence before I did the other police interview so that I could, as it were, know what the ground rules were for that police interview. One of the frustrations between December and April was that we could never get to that stage. The actions of the House authorities prevented us even reaching that conclusion, whether Professor Bradley is right or the Attorney General is right.

**Q87 Sir Malcolm Rifkind:** The Clerk of the House has advised us that he wrote to you and I think somewhere in these papers you gave us a copy of that letter in which he says you would have been perfectly free in response to any police questions to deal with matters and to express your own views regardless of whether there was a view as to whether they were subject to privilege or not. You would not have been precluded from any comments you might wish to make in any subsequent interview.

**Damian Green:** That is his view. That was not my lawyer's view.

**Sir Malcolm Rifkind:** Thank you, I understand.

**Q88 Ms Hewitt:** If I can just step back a little bit because I want to explore the issues that Sir Malcolm has just raised. Do you agree that this House should not use parliamentary privilege to obstruct the criminal process or make Parliament a "haven from the law" in the words of the Select Committee on this some years ago?

**Damian Green:** I think Parliament as a haven from the law is a slightly odd formulation. Clearly individual politicians cannot be given a haven from the law. We are all subject to the

law of the land. As I say, my main frustration through the early months of this year was that Parliament did not appear to have a mechanism for deciding on these rather important matters.

**Q89 Ms Hewitt:** Given the view that Parliament traditionally has not obstructed the criminal investigation process as distinct from intervening on a question of privilege in a court case should a case arise, presumably when the Speaker decided not to accept your request to refer the matter to the Committee of Privileges what he was effectively doing was endorsing the view that the House officials had taken on which documents were privileged and which documents were not. That is why the police in their letter to you said this matter is being determined because a decision has been made by House officials and the Speaker (at least implicitly) has upheld that decision?

**Damian Green:** That is certainly the effect of the Speaker's decision and, as I said before in a previous answer, that meant that officials of the House were taking decisions which I felt quite strongly Members should take through whatever mechanism we devised, not least because the practical effect was they had hundreds of records to go through, and they never went through the electronic records, but they had hundreds of documents to go through and it was clearly pretty unsatisfactory. To give one example of an exhibit that was not regarded as privileged. It is described here as a fax message from me. I remember this because I remember having an argument with the police about it when they removed it from my briefcase at Belgravia Police Station. It was actually three pieces of paper: the front page was indeed a fax cover sheet from me to a journalist; the second page was a parliamentary answer to me from a Minister; and the third page was a newspaper cutting. This was a standard story of the type that everyone around this Committee will recognise where there was a quote from a minister in a newspaper cutting and a parliamentary answer that appeared to contradict it, so I thought it might be of interest to a journalist. All the other parliamentary answers that were



at the top of the piles were regarded as privileged and were taken out. That one because it was lying behind a fax cover sheet was not, so it seemed to me that the sift of what was privileged and what was not was in practical terms pretty unsatisfactory.

**Q90 Ms Hewitt:** Am I right that your solicitors agreed to the sift taking place and observed it?

**Damian Green:** Yes.

**Q91 Ms Hewitt:** And as a result of that some 20 documents were removed from police custody as being the subject of privilege?

**Damian Green:** That is right. 21 documents were deemed privileged most of which are written answers and, as I say, I know that hidden behind other things were other written answers which makes me slightly doubt the efficacy of the sift.

**Q92 Ms Hewitt:** As I understand your position, you are saying that the claim of privilege for documents should be determined before any charge is brought or any trial undertaken, in other words during the police investigation? That was in fact done in this case but in this rather limited procedure which only exempted things like written answers and only on the say-so of an officer of the House. You are saying, as I understand it, that that claim of privilege should be determined by the House itself, probably through the Committee on Privileges? Am I correct in reflecting your view on that?

**Damian Green:** That is part of it certainly.

**Q93 Ms Hewitt:** What I wondered was how you would reconcile that proposal with the general proposition that Parliament should not be using privilege to interfere with the process of the police investigation before a decision is made as to whether or not to bring a charge?

**Damian Green:** I agree that is a central issue for this Committee to investigate and, as I say, Professor Bradley, who I am told is the leading authority on this, takes one view and the Attorney General takes another view. I would not dream of taking sides between two such august legal brains. I would simply point out that in the Duncan Sandys case, which is one of the cases always quoted as precedent, it was pretty well agreed that what he was doing broke the Official Secrets Act at the time and yet Parliament decided that he could not be prosecuted very directly so in that very famous controversial case Parliament did precisely what the Attorney General is arguing Parliament cannot do.

**Q94 Ms Hewitt:** As you say, that is an absolutely central issue for this Committee, which is one reason why I wanted to explore your own views on it. So that I am absolutely clear about this, is it your view that when Parliament does come to determine its view on a question of privilege, whether that is during an investigation or once a case is in front of the courts, should the Speaker be entitled to make that decision on the basis of the advice he gets from House officials or should that be a matter for the House on the basis of a recommendation or report from the Committee on Privileges?

**Damian Green:** I think the lesson I would draw from what happened to me is that there is a danger of putting too much power in the hands of the Clerk and the Speaker because inevitably any Speaker is going to rely very heavily on the Clerk, and it may be that this Committee can devise protocols, rules, guidelines, whatever, that mean that the Speaker/Clerk does not have to take such controversial decisions early on in the process that everything they do after that may well be seen to be tainted, which I believe is what happened in this case, in which case it would be reasonable perhaps to ask the Speaker, but even then - and this is pure opinion - it seems to me safer for the reputation of the House that something like the Standards and Privileges Committee, which is cross-party and will be occupied by

distinguished senior Members and all of that, is probably a safer repository of what will be hugely sensitive and potentially case-deciding decisions than the individual Speaker.

**Q95 Ms Hewitt:** Just a final question if I may Chairman, you referred to the 21 documents which were almost entirely written answers that were agreed to be covered by privilege and were therefore withdrawn from the police. From the point of view of the police that did not really have any practical effect because those are, by definition, in the public domain, they can get them through a Hansard search. You also referred to a written answer and the press cutting which sat behind a fax cover sheet and were left with the police even though clearly they should not have you been, or at least the answer should not have been. Can you give us some idea of what other kinds of documents were left with the police during the course of the investigation but which in your view or your lawyer's view should have been excluded on the grounds that they were privileged? Have you got other examples?

**Damian Green:** I suppose I could read out a long list of slightly dull pieces of paper. The essential argument would be around the actual documents themselves because inevitably the central documents, which were the things that were the basis of the newspaper stories, were used as the basis for asking parliamentary questions or indeed making speeches in debates and so on and I and indeed others would have used them for parliamentary proceedings.

**Q96 Ms Hewitt:** Sorry, you are referring to the documents that Christopher Galley gave you?

**Damian Green:** Yes. Again a central issue is what does the use of a background document in a parliamentary proceeding mean in the case of privilege? Does that attract privilege or not? Again Professor Bradley argues that yes, it does and indeed that is what the tradition has been. We all agree if you say something on the floor of the House of Commons then clearly it attracts some type of privilege. There is something faintly perverse about saying that the

document that inspired you to ask that question or make that speech does not attract privilege, so one can see the force of the argument, and that would have been the central point we were trying to argue.

**Q97 Ms Hewitt:** Were the documents that Christopher Galley gave you included in the bundle of material that you put aside after Mr Galley was arrested in anticipation that the police would come knocking on your door asking for an interview?

**Damian Green:** I do not think so because I do not think I would have kept them. That is why I am genuinely uncertain, I cannot remember what was in that and they are not recorded on the list I have in front of me in any kind of detail. In a sense it did not matter because ---

**Q98 Ms Hewitt:** They had got them from him?

**Damian Green:** They had got them from him. I am not sure, he may have kept copies, I just do not know but, either way, they knew perfectly well what they were because they read them in the newspapers by definition. There was no secret about what those documents were.

**Q99 Chairman:** You were at some pains to tell us helpfully what your view was of the thinking of the DPP in relation to whether the activities that were under review by the police did indeed constitute such seriousness that they could ever have supported a charge of committing misconduct in public office and I do not think we need to explore that any further with you, but you will also be aware that an essential element is that of reasonable excuse or justification. In this matter did you consider at the time or do you now with the benefit of hindsight consider that any of your actions could be covered by reasonable excuse or justification?

**Damian Green:** I think all the material I put in the public domain was certainly justifiable to put in the public domain.

**Q100 Chairman:** What criteria would you use to reach that conclusion?

**Damian Green:** I think it is a matter of public interest which exposes something which reveals incompetence or worse inside the government machine. To be practical, one of the examples was the revelation that 5,000 security guards were employed with national insurance numbers and security clearance who were illegal immigrants one of whom was guarding the Prime Minister's car. I think making that public rather helps national security because I assume that person is no longer guarding the Prime Minister's car and I think that is a good thing. What I did is nothing new. Throughout the ages people have revealed and we all know that under all governments there are things that governments would prefer to keep secret that perhaps should not be kept secret because they are bad things happening.

**Q101 Chairman:** In this context reasonable excuse, which is an expression which has presence in other areas of the law, and justification, inevitably carry some kind of political damage, do they not?

**Damian Green:** Well, in this context they would do.

**Q102 Chairman:** Politicians do not reveal information they have received unless they believe there is a political dimension to it.

**Damian Green:** It is not just a political dimension. I think in most if not all of the cases that I revealed as it happened there was a security dimension. One of the others was of someone who was employed as a cleaner in the House of Lords who was an illegal immigrant and therefore should not have passed through security clearances. It is not just political; it is also administrative.

**Q103 Chairman:** I suppose this case of yours really will have established if not a principle at least a practice that unless it is a breach of the Official Secrets Act misconduct in a public office is not going to be apt to deal with leaks of the kind we have been discussing?

**Damian Green:** Unless it is a breach of the Official Secrets Act. If it is a breach of the Official Secrets Act then a statute law has been broken. In this case this is a common law offence and therefore that is why it attracts allegedly life imprisonment and so on.

**Q104 Chairman:** It is not unknown to charge statute and common law together.

**Damian Green:** Yes and my understanding is that the specific intent of Parliament in 1989 was to take this kind of thing out of the Official Secrets Act.

**Q105 Mr Howard:** To take it out of the Official Secrets Act and to inhibit prosecution of any kind for that kind of activity?

**Damian Green:** Indeed, for that very reason. It is ironic but I have investigated misconduct in public office as an offence and it has been reinvented in the last few years because it was a 19th century offence, and it appears that the only time it has been used successfully has been against corrupt police officers and indeed they have tried to use it against journalists. There was a case in Milton Keynes of a local journalist who, frankly, suffered a lot more harassment than I did. I think the case was thrown out on the first day as soon as it got in front of a judge. One of the things that I have learnt from this event is that the use of the common law can be fairly onerous on individuals and perhaps Parliament should take a long look at that.

**Q106 Mr Howard:** So far as the procedures for searches within the precincts of the House are concerned you have no doubt paid careful attention to the former Speaker's statement which he set out on 8 December. To what extent did you think that if they were followed the difficulties in your case would have been avoided?

*Damian Green:* I think if the police had been required to get a warrant and to talk to the Speaker before they got the warrant and explain what they were looking for, then that would have been a significant step forward in that somebody could presumably have asked them with a degree of authority, "What are you actually looking for?" and indeed asked the question which extraordinarily no-one appears to have asked inside the government machine or the official machine which is, "If you got this evidence from Galley, why don't you just ask the Member because he will co-operate, he is not going to skip bail." They sent four people to arrest me. I was not going to put up a fight or anything like that. At no stage did anyone ask that simple but intelligent question and hopefully any Speaker would.

**Q107 Mr Howard:** The police have suggested some kind of protocol which would govern these matters. Do you think that would be helpful?

*Damian Green:* I think the recommendations of Denis O'Connor in his report are sensible. Of course what the bulk of that is about is relations between the official machine, if you like, and the police and he is trying to limit and draw much clearer lines around when it will be appropriate to bring in the police and when not and clearly the experience of my case would make that sensible. To some extent the issue of privilege is not particularly touched by that.

**Q108 Mr Howard:** On the issue of privilege you have drawn attention more than once in your evidence to the contrast between the view of the Attorney General and the view of Professor Bradley and you have said that it is not for you to adjudicate between these two eminent legal figures. One suggestion that has been made is that some attempt should be made to deal with the matter by statute and have a Parliamentary Privileges Act, as indeed was suggested by the Joint Committee on Parliamentary Privilege some ten years ago. Do you think that would have merit or do you think that it ought to be possible to devise a solution to this dilemma without recourse to statute?

*Damian Green:* My instinct is that it ought to be because we all know what happens with statutes. In this case it probably would not be used very much. It would sit there for 30 years and the next time something like this happens it will prove to be out-of-date and inappropriate whereas it seems to me that the House ought to have the capacity to devise its own guidelines and its own mechanism for assessing any individual case against those guidelines. That would be my instinct, but I say that with no more authority than as a Member of Parliament who has thought about these things. I should say in this context that I was genuinely interested to read about the 2000 guidelines that the then Clerk wrote which seemed to me to be a sensible basis for that type of thing. I find it completely extraordinary they were sitting in a drawer somewhere and were not employed in this case.

**Chairman:** You were not alone in that same sense of surprise, Mr Green, I can tell you.

**Q109 Sir Malcolm Rifkind:** Just one small point, you mentioned at the very beginning of your evidence a statement from someone in the Cabinet Office that said there was no doubt that national security aspects were in danger. Can you give us the reference to that and is it mentioned who the individual was?

*Damian Green:* It is Mr Chris Wright who was the Director of Security and Intelligence.

**Q110 Chairman:** It is in the report of the Public Administration Select Committee.

*Damian Green:* It is a letter dated 8 September quoted in annex A, page 31.

**Sir Malcolm Rifkind:** Thank you very much.

**Q111 Chairman:** "... the potential for future damage is significant." It is not just actual but prospective as well.

*Damian Green:* Then read on.



**Q112 Chairman:** We are to note that the date has been mistyped on the original letter and it should read 8 October 2008 for some reason but that is not any responsibility of anyone in this room. Mr Green, is there anything that you would like to add?

**Damian Green:** No, I think in a sense it is fairly clear what the issues are that the Committee has to address and good luck.

**Q113 Sir Malcolm Rifkind:** And we have taken less than nine hours you will notice!

**Damian Green:** Quite, on the other hand, I have been more co-operative!

**Q114 Chairman:** You are the first witness for the inquiry and it may be that other questions arise but I have no doubt you will be very happy to answer any written questions we may send.

**Damian Green:** Of course, absolutely.

**Chairman:** We are most grateful. Thank you very much for your attendance and for your evidence.