

IN THE CROWN COURT

AT TEESSIDE

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DAY 1

Before:

HIS HON. JUDGE R. A. R. STROYAN, Q.C.

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Held at: Teesside Law Courts,
Victoria Square,
Middlesbrough,
Cleveland.

Monday, 2nd March, 1981

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R E G I N A

v

E

JOHN ALEXANDER SYMONDS

F

Administration matters and applications
Arraignment
Evidence of Detective Sergeant Osborne

G

(Transcript of the Shorthand Notes of HUMPHREYS BARNETT AND CO., Official
Shorthandwriters, 19 Queen Victoria Street, LEEDS, LS1 6BD Tel. 455082)

MR. G. RIVLIN, Q.C. assisted by MR. RATCLIFFE appeared as Counsel on behalf
of the Crown.

MR. J. A. SYMONDS (THE DEFENDANT) appeared In Person.

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THE CLERK: Is your name John Alexander Symonds?

THE PRISONER SYMONDS: It is My Lord.

A THE CLERK: You may sit down.

HIS HON. JUDGE STROYAN: Mr. Symonds, I have had put before me two letters which appear to be from you, in which you ask to raise some preliminary matters before the trial starts.

MR. SYMONDS: That is correct My Lord.

B HIS HON. JUDGE STROYAN: Now do you mind if I have a copy handed to Mr. Rivlin so that he can see what we are dealing with?

MR. SYMONDS: No not at all My Lord. Can I ask, My Lord, which two letters they are I have written?

C HIS HON. JUDGE STROYAN: Yes, one is dated ... well it was received at all events on the 1st of March which says "I am due to stand trial today before the Honourable Mr. Justice Stroyan on Monday, 2nd March at your Court. I appeared before the Trial Judge for a practice direction on Friday, 13th February and certain matters were left unresolved - pending further enquiries etc."

MR. SYMONDS: Yes.

D HIS HON. JUDGE STROYAN: The second one begins: "Further to my previous...."

MR. SYMONDS: I now understand My Lord.

HIS HON. JUDGE STROYAN: Have a copy yourself?

MR. SYMONDS: No My Lord.

HIS HON. JUDGE STROYAN: I will read out what it says.

E THE CLERK: I have copies here Your Honour.

HIS HON. JUDGE STROYAN: Well you can be handed a copy. I am looking at the one which is dated the 26th of February.

MR. SYMONDS: Yes My Lord.

F HIS HON. JUDGE STROYAN: I will deal with those points. First of all the witness Woore: "To date the Prosecution have failed to produce the original statement for the Defence and I wish to renew my application." Now I was under the impression that that was going to be done if it had not been done already. Do you know about that Mr. Rivlin?

MR. RIVLIN: It has been done Your Honour.

G MR. SYMONDS: The Prosecution have sent me another copy of a witness statement made by Miss Woore. This is not, in my contention, the original statement. My Lord I still seek the original statement.

MR. RIVLIN: My Lord, we went last week, or the week before last, to the Old Bailey where these papers have been held, and took a photo-copy of the original ...

H HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: Because the Old Bailey at that time would not release to us the original.

HIS HON. JUDGE STROYAN: Yes.

A MR. RIVLIN: We immediately forwarded a photo-copy of the original to the Defence. We have now brought with us the original.

HIS HON. JUDGE STROYAN: Yes.

B MR. RIVLIN: But I think that the defendant will find that it tells him no more than that photo-copy. We do now have the original which is available for inspection.

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: He has seen everything that the original contains.

HIS HON. JUDGE STROYAN: Yes.

C MR. SYMONDS: My Lord, continuing on from that I still apply that the Prosecution bring Miss Woore to the Court My Lord.

HIS HON. JUDGE STROYAN: What is she going to prove?

MR. SYMONDS: My Lord

D HIS HON. JUDGE STROYAN: Her evidence, as I recollect it, was that she took certain tape recordings to some recording establishment and waited while they were copied and then took them back to the witness who originally produced them.

E MR. SYMONDS: Yes My Lord that statement deals with those events, but there are other events relative to Miss Woore which are very important to the Defence My Lord, the part she played in the transcribing of the copies particularly. This statement does not refer in any way to the part she played in the transcribing of the copies, and if you refer to the statements of Lloyd and Mounter, and I believe Dippey, they all refer to the part she played in the transcribing. Her importance is quite obvious My Lord, and it is unbelievable that when Miss Woore was first interviewed by the Enquiry officers that she was not asked about the matter of the transcribing and made a statement on this. In fact the two originally appointed investigating officers (Detective Chief Inspector Lambert and Detective Chief Inspector Moody) who will be appearing to give evidence for the Defence My Lord and they have made witness statements to my Solicitors - one of which I showed you on the 13th of February - which shows quite clearly her importance My Lord. I will produce these witnesses statements made to my Solicitors once again if you desire. This is not the original statement My Lord. In fact I understood during the last practice direction that the Prosecution had agreed to produce the original statement.

G HIS HON. JUDGE STROYAN: Well they have and they sent you a copy.

H MR. SYMONDS: They produced a statement they say is the original, and I will be producing in Court two ex Detective Chief Superintendents that say they know of the existence of another statement and they told my Solicitors what is on that statement, and that is the fact Miss Woore was doing the transcribing of the originals and left the originals on her desk overnight in one of the Times offices, and many other important points, but the Defence basically ask for production of her original

statement because it would be very damaging to my case My Lord if it wasn't, and the only way to solve this is to get Miss Woore here herself and ask her.

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HIS HON. JUDGE STROYAN: Now the statement that I have got from Miss Woore is dated as long ago as the 13th of September, 1971, that is the only copy I have got. It is served under Section 9 of the Criminal Justice Act and I think that requires notice of her attendance to be given within 7 days of the 13th of September of 1971. Was that done?

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MR. SYMONDS: My Lord, as soon as we received a copy of Miss Woore's further evidence my solicitors informed the Director of Public Prosecutions that she was required not to attend and I have realised now for 10 or 11 years her importance My Lord and this has been a continuing matter and a continuing source of letters between my solicitors and the Director of Public Prosecutions which I have here My Lord.

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HIS HON. JUDGE STROYAN: Can I see a copy of the statement? Or perhaps I had better see the original. Do you mind me looking at the original?

MR. SYMONDS: Not at all My Lord. My Lord, if you compare that original against ...

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HIS HON. JUDGE STROYAN: Just give me a moment to let me have a look at it. Well the statement I have got seems to be a copy of the handwritten document of which you have got a photostat.

MR. SYMONDS: My Lord, this is a copy of a handwritten document called by the Police a 'witness statement' My Lord ...

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HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: In which the officers preparing the case take witness statements in which the witness details evidence that it would prove to bring before the Court.

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HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: The original investigatory statements, My Lord, is another matter altogether, it is a statement made by the investigating officers at the time and shortly after the allegations, and if you compare this statement, for instance, against that of Miss Dippey you will see that this is not an enquiry into Miss Woore's knowledge of the tape recordings, the transcribing process, and the Prosecution have in their possession a statement Miss Woore made to the Times detailing her part in making these transcripts which they have so far refused to produce and which I intend to seek the production of during the trial My Lord. This statement in the possession of the Prosecution, a statement to the Times, made by Miss Dippey I believe on the 27th of November, 1969 refers entirely to her part in the transcribing of the tapes. May be if you saw and looked at that statement, My Lord, you would see that her part was not just copying the tapes on one occasion on the afternoon of the 25th of November she played a leading part in the transcribing of these tapes and if you look at the statement to the Times, made by the Times reporters, from the ... about the time they were engaged on the enquiry, My Lord, you will see in the body of their statements they say: "These tapes have not been interfered with in any way and have been in the custody of Mr. Mounter and Miss Woore ..." and Mr. Mounter makes a statement in a similar effect saying they are in the custody of Miss Woore.

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HIS HON. JUDGE STROYAN: There is no evidence as far as I can see in the statement of additional evidence of Miss Dippey that

MR. SYMONDS: It is in the full bundle My Lord. I can give you the page number.

HIS HON. JUDGE STROYAN: It doesn't appear to be in my bundle. At least it is not in the index.

A MR. SYMONDS: My Lord, this was one of the statements supplied by the Prosecution on request from the part bundle they gave us My Lord. It is ...

HIS HON. JUDGE STROYAN: What I have got is a copy of the statements of the witnesses who are to be called or whose evidence is to be read. I have not got any others.

B MR. SYMONDS: If I can pass this up to you, it is a copy of the statement made to the Police by Miss Ann Dippey . Now if you read - it is a small statement Sir - if you read through it quickly you will see this is the sort of statement that Miss Woore would have made and which is now in the possession of the Prosecution. That is an investigatory statement. Notice My Lord, in that statement Miss Woore admits

C HIS HON. JUDGE STROYAN: Just a moment. Let me have time to read it. Yes, well I have read that, it doesn't mention Miss Woore at all. There is no word about her in this. I am afraid I don't see how it helps.

MR. SYMONDS: My Lord, if you look at

D HIS HON. JUDGE STROYAN: Just reading from the bottom of the second page it says: "The original tape I transcribed I know now to be of a meeting (read from the witness statement) on the 31st of October, 1969. This tape recording is exhibit number (blank)"..... I do not really see that that has got much to do with it at the moment.

MR. SYMONDS: Well there were two secretaries mainly employed on transcribing the tapes, My Lord, Miss Dippey and Miss Woore, and if you look at statement number 4 by Julian Mounter made to the Times on October the 31st - page 2 My Lord - may I read it to you?

E HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: "The secretaries who took the transcript - Miss Leonora Dippey and Miss Prudence Woore - have neither added to them or altered them in any way and their testimony to this effect is attached." There were several other references to the fact in the evidence, My Lord, that Miss Woore was actively concerned in transcribing these tape recordings.

F HIS HON. JUDGE STROYAN: I think the first thing we need to know is whether the appropriate notice under Section 9 was served. Do you know Mr. Rivlin?

MR. RIVLIN: May I help?

HIS HON. JUDGE STROYAN: Yes.

G MR. RIVLIN: Your Honour, the position is this, that notice under Section 9 was served ...

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: This is a very long time ago.

HIS HON. JUDGE STROYAN: Yes.

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A MR. RIVLIN: And I have in front of me now a letter dated the 26th of November, 1971 which we wrote to the defendants' solicitors which reads as follows: "Dear Sirs, Re - John Alexander Symonds. I enclose for your information, and for the convenience of everyone concerned, a paraphrased version of that part of Miss Woore's statement which relates to your client. You will remember that you have already accepted Miss Woore's agreed statement under Section 9 of the Criminal Justice Act of 1967 ..." and Your Honour perhaps you will take it from me, I have got a very considerable bundle of correspondence

HIS H ON. JUDGE STROYAN: Yes.

B MR. RIVLIN: That there is no further reference to that matter until we come to the 13th of August of last year. So many years go by before this letter comes from Messrs. Birnberg and Company, and I will read it to you: "Thank you for your letter of the 1st of August. We confirm that we definitely require the attendance of all the conditional .. all Section 9 witnesses and would be grateful if you would make necessary arrangements." So we have had notice that the Defence require the Section 9 witnesses to attend.

C HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: But that was given, as I say, many years after we had been led to believe that her complete statement was admitted under Section 9.

HIS HON. JUDGE STROYAN: Yes.

D MR. RIVLIN: Now, Your Honour, may I take the matter from there?

HIS HON. JUDGE STROYAN: Yes.

E MR. RIVLIN: Because I think I ought to explain to Your Honour what the position is as regards this lady. We are unaware of the presence of any other statement that this lady has made. I cannot categorically say that she has never made another statement but if she has we are unaware of its existence and we have made stupendous attempts to ascertain whether she has made any other statement.

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: She is not one of the witnesses who appears - if I may use the phrase - on the back of the indictment ...

F HIS HON. JUDGE STROYAN: No.

G MR. RIVLIN: In this case, she deals so far as we are concerned with the 25th of November of 1969 when it is said that she actually transported certain tapes - not all of them by any means - to the recording studio from the Times. Now, Your Honour, the position that the Prosecution is in is as follows; we have got Mr. Mounter to give evidence to say he handed the tapes to this lady and that she returned the tapes to him that evening. We have got Mr. Hawkey who was at the recording studio and who received the tapes into his possession and in whose presence Miss Woore was when the tapes were transcribed, so that so far as the Crown is concerned, all that we have to cover is the distance, as it were, between the Times and the recording studios.

HIS HON. JUDGE STROYAN: Yes.

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A MR. RIVLIN: Now this lady lives in Australia. We have managed to contact her. She has expressed her willingness to attend providing that her husband also is brought, and our present inclination is to say this, that there cannot conceivably be any justification in the public being put to the expense of bringing this lady and her husband from Australia - or New Zealand I think where they are presently holidaying - in order to prove what happened to the tapes during a period of about half an hour between the time that they left the Times and the time that they arrived at the recording studio, and a similar sort of period in the evening when they were brought back. The defendant says that all this is terribly important and that her evidence is very important; as I have indicated, at the present time our inclination is to say that her evidence is not important and if necessary we are prepared to leave those two half hours or hour gaps to the Jury's consideration because we would submit that it is an absurdity to imagine that she could have doctored and tampered with these tapes during that short period of time.

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C Your Honour, the defendant is anxious because he says that she was involved in transcribing the tapes, well I don't know if she was, may be she was, but so were two police officers in 1969 and so have been two experts in 1980 and 1981, and with great respect to the defendant I cannot see for the life of me how anyone can be justified in calling that lady from Australia, but if he insists that she should be called we would say that that is his responsibility not ours, and Your Honour, finally, in relation to this ... in relation to Miss Woore's evidence, may I make this comment - and I don't make it officiously in any way - we are led to believe that the defendant himself has been a large part of the time that he was on the run in Australia, if you are so concerned about your position and about her evidence and about how vital it was to establish that he was not ... that the tapes had been tampered with or there was opportunity to tamper with them, then we wonder why he hasn't bothered to contact her himself when he was in Australia, asit were, on the doorstep.

D HIS HON. JUDGE STROYAN: Yes.

E MR. RIVLIN: Your Honour, we have been of as much assistance as we possibly can be so far as Miss Woore is concerned. Unless something crops up in this case which makes it imperative for her to be brought here, at the moment our view is that it is not imperative and we shall take no steps to bring her here at the public expense.

HIS HON. JUDGE STROYAN: Can she be compelled to come from Australia?

F MR. RIVLIN: No.

HIS HON. JUDGE STROYAN: No I thought not. So if she says she is not coming that is an end of it?

MR. RIVLIN: She has said that she is willing to come providing her husband comes with her.

G HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: The public expense of bringing her and her husband here in order to speak about this very short period of time in our view simply is not and cannot be justified.

H HIS HON. JUDGE STROYAN: I think what the defendant wants to do is to cross-examine her about other matters.

A MR. RIVLIN: Well, Your Honour, may be he does. He has indicated what those other matters are and they relate to the transcribing of the tapes as I understand it. He has said that they might relate to the possibility - and I don't know if it can be put any higher than this - that she may have left the tapes on her desk overnight and we have nothing to suggest that any such thing happened, and indeed Your Honour all of our evidence indicates no such thing happened because we have the evidence of Mr. Mounter into whose custody these tapes were placed who said that he kept them under lock and key or ...

HIS HON. JUDGE STROYAN: Yes.

B MR. RIVLIN: In effect under lock and key, apart from the time he gave them to Miss Woore to take to Location Sound Facilities.

HIS HON. JUDGE STROYAN: Yes. How long is it going to take to get her here if necessary?

MR. RIVLIN: Your Honour if Necessary ...

C HIS HON. JUDGE STROYAN: What sort of notice would be necessary to give?

MR. RIVLIN: I don't think a great deal of notice Your Honour. Can I just take instructions on that?

D HIS HON. JUDGE STROYAN: Yes. Mr. Symonds, it appears on what has just been said that your solicitors said they didn't want this lady in November of 1971, and since then we have here her original statement which for the present purposes is material only on items 4 and 5 which are the conversations which are alleged to have taken place between you and Perry on the 21st of November. It is a limited part of this case and certainly from the Crown's point of view all that her evidence could do would be to cover the period of time between leaving the Times offices and arriving at the sound recording offices.

E MR. SYMONDS: My Lord, to the first point about the alleged notice delivered under Section 9 ...

HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: I understand that there is nothing in that Act about replying within 7 days in the first ...

F HIS HON. JUDGE STROYAN: Well I don't think you need bother with that.

MR. SYMONDS: The second point is, My Lord, I wonder if I could see that letter or a copy of it? It was the letter sent to my solicitors, because there is one part I thought there that might be of interest where it is referring to "we have already served you with that part of Miss Woore's statement." Now surely My Lord that implies that there is just ...

G HIS HON. JUDGE STROYAN: Just read it before you start talking about it.

H MR. SYMONDS: "I enclose for your information and for the convenience of everybody concerned a paraphrased version of that part of Miss Woore's statement which relates to your client." In other words, My Lord, just the bit about going to the Location Sound Facilities recording studio. My Lord, I know there is an original statement which is in existence, I am afraid the two originally appointed investigating officers have told me about the original statement, My Lord, and I suggest that if you ask the Prosecution to produce the Action Book and the Exhibit Book - which must be in their possession, regarding that part of the enquiry where Miss

Woore was originally interviewed and made her statement, My Lord, I feel convinced that you will find in the Action Book and in the Exhibit Book reference to Miss Woore's original statement.

A My Lord, with reference to the - not allegation - but the implied fact that I may have been in Australia and therefore may have had the chance to see Miss Woore and therefore I may have approached her and interfered with what she might say, My Lord, I was in Australia and I did not see Miss Woore. Now I know, My Lord, that no-one can be compelled to come from Australia to give evidence if they don't want to, but the Prosecution say that Miss Woore is quite willing to come and give evidence, My Lord, but surely if I had attempted in Australia to contact Miss Woore I would sit back confident in the expectation that she would refuse absolutely to come here to give evidence.

B My Lord, I want to question Miss Woore about the continuity of handling. I will also ask her questions about her copying I agree. I will also ask her questions about the transcripts made but I agree My Lord they are not so important. I am intent on having her here to ask her questions relative to the alleged continuity of handling, My Lord, on which the tapes

C HIS HON. JUDGE STROYAN: Could you just tell me what part of the alleged continuity of handling?

MR. SYMONDS: My Lord their safety and ... their safety and their security. The reporters are going to say that every time they took

D HIS HON. JUDGE STROYAN: Mr. Symonds, do me the courtesy of listening to me for the moment.

MR. SYMONDS: Yes.

HIS HON. JUDGE STROYAN: The evidence as I understand it is that the tapes were kept in custody

E MR. SYMONDS: Yes My Lord.

HIS HON. JUDGE STROYAN: Whether it was safe or not you can cross-examine other witnesses about, and the tapes - and there are only two of them which are relevant - with regard to the 21st of November were taken by Miss Woore from the Times to the sound recording studios and back again - half an hour each way or thereabouts - the time when they were at the recording studio is covered by another witness who I understand to be Mr. Hawkey. Now the only times when those tape recordings were in her possession and her possession alone were those two journeys from the Times offices to the recording studios. Now what is it, apart from that, that you say is relevant on the continuity point?

F MR. SYMONDS: Well, My Lord, going back to that first point about the copying procedure ...

G HIS HON. JUDGE STROYAN: You see there are other witnesses who deal with that.

H MR. SYMONDS: Yes My Lord, but I wish to ask Miss Woore questions about alleged markings on the tapes. I think the tapes she took to be copied, some of the tapes, are alleged to have been marked by Miss Woore at the time of her copying and her handwriting has been identified that Miss Woore marked this box and other boxes which went with Miss Woore alone allegedly to the Location Sound Facilities. The handwriting has been identified as that of Lloyd, now Lloyd wasn't supposed to have been there.

HIS HON. JUDGE STROYAN: You need not worry about that for the moment because Mr. Lloyd, as I understand it, will be called to give evidence.

A MR. RIVLIN: My Lord may I intervene hopefully to be of real assistance? We know how to contact this lady.

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: We can give her telephone number, hopefully, to the solicitors for the defendant ...

HIS HON. JUDGE STROYAN: Yes.

B MR. RIVLIN: They can speak to her over the telephone, they can ascertain whether there is anything in these suggestions that are being put on behalf of the defendant ...

HIS HON. JUDGE STROYAN: Yes.

C MR. RIVLIN: If there is, then we would be the first to say that she should give evidence and indeed we might even be able to agree what she has to say.

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: But the only point that I make is that at the moment we don't think we could be justified in bringing this lady and her husband from Australia.

D HIS HON. JUDGE STROYAN: Well it will cost the public thousands of pounds.

MR. SYMONDS: My Lord ...

MR. RIVLIN: I wonder whether ... I am sorry to interrupt.

MR. SYMONDS: My Lord, the return fare is £300.

E MR. RIVLIN: I am sorry to interrupt the defendant, I don't want to cut him off, but I wonder whether he might be considering thinking if we grant the Defence that facility to speak to this lady and give them her telephone number to speak to her.

F HIS HON. JUDGE STROYAN: Yes. Well what I will do, I will take it no further at the moment than Mr. Symonds. What I will do is to ask the Crown to give Miss Woore's telephone number to your solicitors. I shall say that they may have the expense on the Legal Aid fund of making a telephone call to her and when they have done that we can consider the matter afresh. So we will pass on to the next point. Now the next point you say is: "The Prosecution have failed to supply requested written undertaking to withdraw at end of trial (win or lose) and in view of their quite conflicting 'statements of intent' at previous Practice Directions before Judge Lawson and Judge Miskin - I wish to review that application."

G MR. SYMONDS: My Lord, I did write to my solicitors ...

HIS HON. JUDGE STROYAN: Yes.

H MR. SYMONDS: Asking them to ask the Prosecution to supply me with a written undertaking of their intention to withdraw counts 4 - 8 at the end of this case whether I am convicted or acquitted. The reason I did that, My Lord, is because I have twice opposed the severance of those counts, the original count of 8 charges. I explained to you at the last practice direction

My Lord, that my defence has always been - for over 10 years - that a number of South London criminals got together and concocted allegations against me. My Lord, these other allegations that the Prosecution have decided not to proceed on are in the main very petty and very weak

A HIS HON. JUDGE STROYAN: Well I am not going to waste time on them because you are not being tried on them.

MR. SYMONDS: My Lord, the Crown have said on one occasion before Judge Lawson that they would not proceed on counts 4 - 8 if I was acquitted and then later they said ...

B HIS HON. JUDGE STROYAN: Just a moment, just a moment, just a moment. I have got a letter here if I can find it, which says that the Crown will proceed on counts 1 - 3 and not on the others and that is what is going to happen.

MR. SYMONDS: My Lord, at a later practice direction before Judge Miskin the Crown said that they would not proceed on counts 4 - 8 if I was convicted. Now that is two conflicting statements of intention.

C HIS HON. JUDGE STROYAN: Well I heard Mr. Rivlin deal with this last time we were here and he told you as the letter says, that the Crown will not proceed on counts 4 - 8 on the indictment. That is the Crown will not proceed win or lose.

D MR. SYMONDS: My Lord, my application is if the Crown will not proceed on these counts that they should withdraw them so the matter is finished with because at the moment, My Lord, these counts are being held over my head and they are being held over my head in respect of my behaviour and it is also affecting the way I can run my defence, and My Lord, because I have received a letter from the Director of Public Prosecutions dated the 18th of February in which it is said that Leading Counsel does not intend to refer to any of the following matters and will not seek to adduce them in evidence (1) counts 4 - 8 and the circumstances thereof, and then two more points there, and then following on from that it says: "It must, however, be appreciated that if the defendant refers to any of these matters or elicits them in evidence, he does so at his peril. Leading Counsel reserves the right to deal with any points which the defendant makes." Now on the 13th of February, My Lord, I told you that I wished to call some of these criminals as part of my defence and I wish to refer to the fact that I had been set up by a group of criminals that I was actively pursuing at that time, My Lord, and if you read the statement of Kirton which is amongst the full bundle of statements made by Kirton to the then Chief Inspector Duffy, you will see, My Lord, that that is an admission of an on-going conspiracy to fit me up at about the time that these tape recordings were made where Kirton says he was approached by Perry, Williams and Brooks and offered £500 to have me tape recorded up. This statement is in the possession of the Prosecution, My Lord, and I ask them to produce it now.

E HIS HON. JUDGE STROYAN: What we are dealing with at the moment is the position in relation to counts 4 - 8 and as I understand the matter the Crown are not going to proceed on those counts whatever happens in this trial.

F MR. SYMONDS: But, My Lord, if I refer to them in any way the implication from this letter is the Prosecution will then feel entitled to tell the Jury "eh but you should know that Mr. Symonds is presently facing a further 5 counts of corruption" that is what I am trying to avoid My Lord.

G HIS HON. JUDGE STROYAN: That is not going to happen.

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MR. SYMONDS: The Prosecution have said they will withdraw ...

A HIS HON. JUDGE STROYAN: That is not going to happen. What the Prosecution are entitled to do - if it is right in my view that they should do so - is to call evidence in rebuttal of any allegation you make, if it is an allegation which is a fresh one which they couldn't have dealt with in their original opening. Now what is not going to happen is that the Crown are going to refer to the fact that there are or were other counts in the indictment. That is what it is, isn't it Mr. Rivlin?

B MR. RIVLIN: Absolutely. We have two letters on the file making that clear, three now, and Your Honour the - I say this for the assistance of the defendant - one would have thought it would help to assist his case if he wishes to draw to the attention of the Jury that he has at one stage been charged with other offences of corruption, but if he chooses to make mention of those matters well then obviously he does so at his peril.

HIS HON. JUDGE STROYAN: Well that is his decision.

C MR. RIVLIN: That is his decision. We, the Crown, will not proceed on those charges 'win or lose' as Your Honour says.

HIS HON. JUDGE STROYAN: So what are you going to ask? Would they ... will they lie on the file?

MR. RIVLIN: No, at the end of the day I shall offer no evidence on them.

D HIS HON. JUDGE STROYAN: You cannot have it better than that. At the end of the day, win or lose, no evidence will be offered on the other counts.

MR. SYMONDS: Very good My Lord, thank you.

HIS HON. JUDGE STROYAN: Well then the next point relates to counts 1 - 3 which you say should only be one count and I have I think already dealt with that.

E MR. SYMONDS: No, My Lord, I raised it and you told me ... I think you mentioned it should be brought up again at the trial My Lord.

HIS HON. JUDGE STROYAN: Yes.

F MR. SYMONDS: And I think I should bring that up now of course as this is a point which may be brought up before the Jury is sworn or before I am arraigned. My Lord, I bring this matter under Section 5 sub-section 1 of the Indictment Act, 1915 to amend the indictment to have one substantive count rather than three counts.

HIS HON. JUDGE STROYAN: Well the only person who can apply to amend the indictment is the Crown, you cannot apply to amend the indictment. You can criticise it if you like but you cannot amend it.

G MR. SYMONDS: Well in that case, My Lord, I criticise it. My Lord, what is being alleged against me on Perry's evidence is that I demanded £200 from Perry. My Lord, these three payments of £50 are simply instalments and are part of one continuing offence. My Lord, it is not such as a situation where protection money is being paid every week ...

H HIS HON. JUDGE STROYAN: Mr. Symonds, just listen, what is said in each of those counts is that on a different date, namely the 28th of October, the 31st of October and the 21st of November, that is on three separate days, three separate payments were made to you. Now that is what is being alleged there.

MR. SYMONDS: Yes, My Lord, but there is no distinction in the indictment between what the sums are for, each indictment is exactly the ~~same~~

HIS HON. JUDGE STROYAN: Just listen.

A MR. SYMONDS: In as much as I did a favour to Perry on the 24th of September and thereafter demanded money.

B HIS HON. JUDGE STROYAN: Mr. Symonds, if the Crown had tried to call evidence of three different payments made on three different dates and there was only one charge in the indictment I would not have been able to let them do so as the law says where there are separate payments they must be charged separately. Now that is the law. You may not like it, I may not like it, but that is the law and that is the end of the matter. What is the next point?

MR. SYMONDS: My Lord, I have some more things I would like to say to you about that My Lord, and one of them is, for instance, about the Robson and Harris trial. Robson and Harris were originally charged with three separate counts of accepting £50 ...

C HIS HON. JUDGE STROYAN: Just listen to me. All I can decide at the moment is not whether there is anything wrong with the counts on the face of them, do you understand? Is there anything wrong in law on the face of these counts, and I can tell you that in law there is not. They may fail on the evidence, I don't know what is going to happen, but as things stand at the moment there is nothing wrong with the counts in law.

D MR. SYMONDS: My Lord, in the trial of Robson and Harris the counts were rolled into one and probably the Judge had been affected by the statement of Mr. Hawkey, page 6 My Lord.....

E HIS HON. JUDGE STROYAN: Mr. Symonds, I don't know what happened in another trial, all I can tell you is that I have to decide here and today on your application and all I can decide is really that there is nothing wrong in law with these counts and all I can tell you is that there is - it may very well be that the Crown will fail to prove them in which case you are acquitted - but there is nothing wrong in law with these counts and whatever happened in any other case is of no concern to me. At the moment all I have to decide at the moment is whether on the face of that document there is anything wrong in law with that document and there is not, so go on to the next point. Your next point is one about the Jury.

F MR. SYMONDS: Yes My Lord. Before I make that I should ask is it ... em ... have you decided My Lord to hold a trial within a trial?

HIS HON. JUDGE STROYAN: We will deal with that when it arises, let us deal with these first.

G MR. SYMONDS: Because this application wouldn't apply in respect of one because really if there is a trial within a trial I suggest the Jury be impanelled at the end of that trial within a trial rather than before. I understand there is a precedent for this, My Lord, and I base this understanding on the discussion which was held before Judge Miskin at the Central Criminal Court two months ago.

H HIS HON. JUDGE STROYAN: Well it doesn't really make any difference, does it, the Jury - and if there is a trial within a trial - the Jury are not going to hear it anyhow and the ordinary practice is that the Jury are sworn so you are in their charge.

MR. SYMONDS: Very well My Lord.

A HIS HON. JUDGE STROYAN: I don't think it makes any difference. Do you have any views on that Mr. Rivlin? The ordinary practice is to swear the Jury first.

MR. RIVLIN: This is the ordinary practice. I think for practical reasons I can see the Jury being sworn afterwards because they wouldn't be hanging around but subject to that the ordinary and normal practice is for the Jury to be sworn at the outset.

B HIS HON. JUDGE STROYAN: Yes. Well I don't think it matters very much Mr. Symonds. We will deal with that in a short time, I have no particularly strong views one way or the other.

C MR. SYMONDS: Very well My Lord. Well continuing I will make this application now in case the Jury are sworn today My Lord, I would ask for an all male Jury. For the reasons, one, is because of the foul language on the tapes. My Lord, this application was made at the Robson and Harris case and was acceded to. I think it is wrong for ladies to be forced to sit and listen to ...

HIS HON. JUDGE STROYAN: Well I will have you know, Mr. Symonds, that there is ladies who have to sit in that Jury box and listen to unpleasant things and language.

D MR. SYMONDS: Well from your point of view and from mine My Lord I think that all of the males would more readily understand that men do sometimes speak in that fashion when they are alone together. Ladies I should imagine, perhaps not, perhaps they would be shocked by it and perhaps I would be prejudiced in some way in their opinion of me having listened to it.

HIS HON. JUDGE STROYAN: I don't think, Mr. Symonds, that a Teesside jury, even if they were all ladies, would keel over when they heard the language.

E MR. SYMONDS: Very good My Lord.

HIS HON. JUDGE STROYAN: I don't think you need bother about that. In any event I don't think I have got any power to order an all male Jury. If I were to make such an order you can imagine the fuss some people would make. Anyhow I don't think I have any power to do it. I don't think you need bother with that one.

F MR. SYMONDS: The next point is about documents.

HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: Going back to the full bundle if I may My Lord.

HIS HON. JUDGE STROYAN: Yes.

G MR. SYMONDS: I asked that the remainder of the full bundle should be given to us at the last practice direction and Prosecuting Counsel did say he would read the ones being withheld - by my count 58 - and that he may well decide to give us some more material. Well to this moment we have not received any more although I have been informed that one or two statements may well be in the post somewhere. My Lord, in that case I would like to ask

H HIS HON. JUDGE STROYAN: Well I am not sure

MR. SYMONDS: We were served with a list of witnesses and at the head of the list is "List of Witnesses relative to counts 1 - 3."

HIS HON. JUDGE STROYAN: Yes.

A MR. SYMONDS: My Lord, now this must mean surely that they can give material evidence in this matter?

HIS HON. JUDGE STROYAN: Well I wouldn't allow them to come to give evidence which wasn't material.

B MR. SYMONDS: Exactly My Lord, and therefore I ask if the Prosecution will not give us the witness statements that they should provide the witnesses.

HIS HON. JUDGE STROYAN: Well you have got them.

MR. SYMONDS: Because under R v Brian Dixon, 1948 where the Prosecution have taken a statement from a person who they know can give material evidence but decide not to call them as a witness, they are under a duty to make that person available as a witness for the defence.

C HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: Well, My Lord, I would like a large number of people from that list who are not ... whose statements are being withheld to be produced at this Court by the Prosecution, basing my application on that stated case My Lord.

D HIS HON. JUDGE STROYAN: Well I think you have probably got the statements. I have got a document which is called an "Order of Witnesses" and I have got a bundle of witness statements which extend to rather more than 300 pages. It appears to be enough to be going on with. What other witnesses are we concerned with?

MR. SYMONDS: Well we have given the Prosecution this morning a list of missing statements ... I have given the solicitors a list of.....

E HIS HON. JUDGE STROYAN: Well I think last time you were here it was made clear that any witness who might be able to give material evidence would have their names and addresses supplied to you. I imagine that has been done?

MR. SYMONDS: I have been supplied with the names and addresses My Lord ...

F HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: But we have had great difficulty after all this time of contacting them, in fact we had great difficulty at the time because a number of these names refer to criminals who move frequently and refuse to answer our letters ...

G HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: And most of these names we are not in a position to trace My Lord ourselves.

HIS HON. JUDGE STROYAN: Well it is all very well to say that Mr. Symonds, but if you had attended your trial in 1972 it might have been rather easier.

H MR. SYMONDS: My Lord, in 1972 we did write to all or a number of witnesses on this list I think. I think the list is over 100, My Lord, and I think we had three or four replies. Since that time my attention has come to

the importance of the witnesses, of some of the witnesses, has come to our notice

HIS HON. JUDGE STROYAN: Yes.

A MR. SYMONDS: Which we didn't realise at that time. For example, the evidence of Kirton and the evidence, for example, My Lord, of O'Rourke that I spoke to you about on the 13th of February. We have been trying to trace him through a private detective and as far as I am aware have not been able to do so. I understand his evidence is of vital importance.

B HIS HON. JUDGE STROYAN: I am afraid there is nothing I can do about that. Whatever he may say I cannot waive a wand and produce him.

MR. SYMONDS: Well, My Lord, I base my application on R. v Bryant and Dixon, 1946

HIS HON. JUDGE STROYAN: What is it that you want me to do now? I cannot waive a wand and produce witnesses who have disappeared.

C MR. SYMONDS: My Lord, when I appeared before Judge Miskin all this was thrashed out before ...

HIS HON. JUDGE STROYAN: Yes.

D MR. SYMONDS: Judge Miskin said to the Prosecution go on produce those statements and his exact words were "I want to see them on this table now." Now, My Lord, I have here a number of letters written weekly to the Prosecution from that date requesting that the Prosecution comply with the Recorder of London's directions to produce the original statements because I pointed out at that time, My Lord, it was much more sense for them to produce the statements to me then I could see that may be some were not relevant, than to produce all of these witnesses. Now the Prosecution absolutely refused to produce these statements as directed by the Recorder of London, Judge Miskin, and therefore we applied several times for a practice direction to be held before Judge Miskin to request him to enforce his direction, the Prosecution to comply with his direction. Now, My Lord, the trial was moved up to here and the practice direction was in fact held here before you ...

E HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: And you reversed the Recorder's direction. My Lord, you said the Prosecution didn't have to produce

F HIS HON. JUDGE STROYAN: What I said, what I said Mr. Symonds was simply this, that the duty on the Prosecution in this and as in any other criminal case is to supply the names and addresses to the defence of any witnesses who in the view of the Prosecution may be able to give material evidence. That I think has been done, is that right Mr. Rivlin?

G MR. RIVLIN: Yes.

H MR. SYMONDS: Yes I have the names and addresses My Lord, but my application is where the Prosecution have taken a statement from a person they know can give material evidence but decide not to call him as a witness, they are under a duty to make that person available as a witness for the defence. That is what I am asking, My Lord, but they are not under the further duty of supplying the defence with a copy of the statement they have taken.

HIS HON. JUDGE STROYAN: Well that is just it.

MR. SYMONDS: Yes. So, therefore, they must produce the witnesses My Lord. There are further cases here where the Prosecution must call

A HIS HON. JUDGE STROYAN: Mr. Symonds, that doesn't mean that they have got to produce the witnesses in Court, that means that they have got to give you the names and addresses or the last known names and addresses of the witnesses so that you can call them.

MR. SYMONDS: My Lord, it says here "to make that person available as a witness for the defence."

B MR. RIVLIN: Can I assist

MR. SYMONDS: I am referring particularly to O'Rourke, My Lord, who is a known Police informant and in contact with Nuneaton Police, and the Prosecution I am sure can quite easily find him My Lord.

HIS HON. JUDGE STROYAN: Well just listen to Mr. Rivlin for a moment.

C MR. RIVLIN: Can I please assist Your Honour?

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: Would you please have a look at this letter which is dated the 25th of February, that is last Wednesday.

HIS HON. JUDGE STROYAN: Indeed.

D MR. RIVLIN: It was sent by Recorded Delivery to the Defendant's solicitors and Your Honour would you look about halfway down the page please?

HIS HON. JUDGE STROYAN: Yes.

E MR. RIVLIN: "As you are aware, Leading Counsel for the Crown undertook at the recent pre-trial review at Teesside Crown Court to examine all non-tendered material to decide whether anything further should be disclosed. In pursuance of that examination I enclose two copy statements of Clarkson and Cook ." Those are the two that the defendant particularly asked for last time.

HIS HON. JUDGE STROYAN: Yes.

F MR. RIVLIN: "Leading Counsel for the Crown is, however, experiencing difficulty in identifying those statements described as "the 53 missing statements" which it was alleged not to have disclosed. He wishes to put it on record that because of the letter of the 24th of February - that is last Tuesday ...

HIS HON. JUDGE STROYAN: Yes.

G MR. RIVLIN: - and the later enquiry by telephone, requests you to identify the missing 53 statements and offer Mr. Green of your office the opportunity to examine all non-tendered material at Leading Counsel's Chambers at 11 KBW in the Temple." In fact the situation was this, Your Honour, we were in consultation and we felt that the only way to clear this matter up was to invite the Defence Solicitors to come along and we would help them as much as we could to find the missing statements. The missing statements have not been identified by them and the offer to examine the non-tendered material was not accepted. I enclosed a statement of the non-tendered witness Kirton for information. Now, Your Honour, it is -
H I am sorry to say this - it is really monstrous to suggest that we have

been deliberately refusing to co-operate. The situation is this, that we have got reams of paper in this case affecting not merely this defendant and not merely these charges, but many other people who were investigated a long, long time ago ...

A HIS HON. JUDGE STROYAN: Yes.

B MR. RIVLIN: And a vast majority of that material is not material to this case, it simply doesn't have any bearing upon this case whatsoever. I have just now - this very minute - been supplied with a list of witnesses whose statements the defendant says he hasn't received and which he would like to have. I shall go through this list although I think that I am right in saying having regard to some of the names that appear on it, that the majority of them are ... have nothing whatsoever to do with this case and couldn't possibly assist the defence. Indeed all witness statements, all names and addresses have been supplied to the defence as is our duty. We have undertaken to have the witnesses present in Court whose statements appear on the back of the indictment but who are not being used by us, as is our duty and we have written to the effect that we are undertaking to do that and will co-operate to the very best of our ability, but there are limits and we are under no duty to supply statements which are not relevant to this case and may I say, Your Honour, and I hope that you will accept this, in recent times we have really fallen over backwards to give every possible assistance that we can.

C HIS HON. JUDGE STROYAN: Yes.

D MR. RIVLIN: Your Honour, I will have a look at this list that has just been handed to me during the course of the day and see what can be done to assist further, but we have already done our utmost as you can see from this letter.

HIS HON. JUDGE STROYAN: Yes. Well, Mr. Symonds, you have got copies of the statements of all the witnesses on the back of the indictment and you have got the names and addresses of the other witnesses and there is no other duty on the Crown and I cannot impose one.

E MR. SYMONDS: Thank you My Lord. My Lord, my next application is regarding the handwritten original statements which I have applied to see on several occasions. My Lord, I understand the Prosecution have agreed that I may examine these statements at the trial. My Lord, these statements total several hundred pages and I am examining ... I need to examine these statements quite closely because I am looking for certain forgeries. My Lord, I have also asked the Prosecution to produce all 19 tapes and both sets of copies for my examination re the markings. Now I understand that the Times refuse to produce to this trial their set of the copies and I must, therefore, apply to you for a subpoena to subpoena the Times to bring their set of these tape recording copies to Court.

F MR. RIVLIN: Can I deal with those matters now Your Honour?

HIS HON. JUDGE STROYAN: Yes.

G MR. RIVLIN: To get them out of the way?

HIS HON. JUDGE STROYAN: Yes.

H MR. RIVLIN: First the handwritten statements. We said the last time we appeared before Your Honour that all the originals were available as from that moment and able to be examined by the defence solicitor. We told Mr. Green where to go for them, if he hasn't had a look at them that is the Defence affair not ours.

HIS HON. JUDGE STROYAN: Yes.

A MR. RIVLIN: Second the Times has refused to produce their copy tapes - complete -ly wrong. Not merely have they been produced but they have been examined on behalf of the Defence and if the defendant doesn't know about this, if he is unaware of the fact that an expert on his behalf has actually examined these copy tapes that he is talking about, there has been a certain failure of communication. All this has been done.

B MR. SYMONDS: My Lord, taking the second point about the examination of the tape recordings of the Times, I do know about that My Lord, I was told this morning and having read the expert's report it is even more important that they should be brought to the Court. My application to you, My Lord, was - unless I have made a mistake - the Times refuses to bring the tape recordings to this Court and I ask for a subpoena to bring them to this Court.

MR. RIVLIN: They are here Your Honour.

C MR. SYMONDS: I was told then completely wrongly ...

HIS HON. JUDGE STROYAN: Just listen Mr. Symonds.

MR. RIVLIN: They are here Your Honour.

HIS HON. JUDGE STROYAN: They are behind Mr. Rivlin Mr. Symonds.

D MR. SYMONDS: Well I am going on information that I received one hour ago.

HIS HON. JUDGE STROYAN: Well you need not bother with that.

MR. SYMONDS: My Lord, in view of that I ask that before the trial starts that I may have an opportunity to examine these exhibits, particularly the tapes My Lord, I am thinking all this will be a total of over 60 tapes. I am thinking of the convenience of the Court with the Usher having to bring me one

E HIS HON. JUDGE STROYAN: 60 tapes?

F MR. SYMONDS: Yes My Lord, there is 19 original tapes, 19 copies, 19 Times copies and 4 or 5 extra copies of the Grundig made on the 5th of December. I wish to examine all these tape recordings, My Lord, as to the markings because I understand that the Prosecution will attempt to prove continuity of handling by referring to the markings on the boxes. I have never seen these tapes and I would like to see them myself, the markings.

HIS HON. JUDGE STROYAN: Well I think they have already been examined by an expert on your behalf.

G MR. SYMONDS: The expert, My Lord, would examine the tapes scientifically with various scientific machines, My Lord I would like to be in a position to ask the witness questions about the writing on the tapes, the cassettes and the boxes My Lord, and I would like to have the opportunity to check all that writing in the presence of the Prosecution witnesses, of course, to make my own notes so that I can know what questions I can ask the witnesses about. Obviously, My Lord, I am not going to be able to have the 60 tapes spread out to compare one against another. I will need to compare one signature against another because they are in a terrible muddle for a start; Mounter identified it as Lloyd's and Lloyd identified it as Mounter's and Hawkey identified it as Miss Woore's and so on. All these things must be sorted out My Lord.

H

HIS HON. JUDGE STROYAN: Well if there is to be a trial within a trial I would have thought what I had to consider was the originals not the copies.

A MR. SYMONDS: No, My Lord, because the whole case of the defence is that they are not the originals, they are copies, and the importance of the copies, My Lord, comes in the continuity of the handling and the marking of the tapes.

HIS HON. JUDGE STROYAN: What the Crown have got to do is to prove that what they say are the original tapes are indeed the original tapes.

MR. SYMONDS: Yes My Lord.

B HIS HON. JUDGE STROYAN: Well that is the central issue as I understand it on the tapes.

MR. SYMONDS: My Lord, there is a joint issue, in my submission, that is the continuity of the handling of the tapes, My Lord, their history from the time of copying them ...

C MR. RIVLIN: Can I help again, Your Honour, because it might save time? Of course if the defendant wishes to examine the tapes, the boxes and the tapes we would be only too happy to let him.

HIS HON. JUDGE STROYAN: Yes.

D MR. RIVLIN: Your Honour, but it isn't the first time that this matter has come before the Court. I imagine that examination was made last time, obviously this will have to be done in the presence of Detective Sergeant Stone who is the Exhibits Officer.

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: But save and subject to that we will grant him every facility that he desires.

E HIS HON. JUDGE STROYAN: Yes, well there you are.

MR. SYMONDS: Thank you My Lord. My Lord, may I ask if that facility also applies to the handwritten original statements of the Prosecution witnesses My Lord and any further ... and if I may be supplied with any further documents from the full bundle, perhaps copies of the ones which are now lost in the post. I understand they are copies of statements by three police officers - Clarkson, Cook and Harley.

F Going back to the business of the full bundle. I have been told by my solicitor just now that after our last practice direction there has been frequent telephone contact between him and a Mr. Saunders or Sanders of the D.P.P.'s office and in the first instance Mr. Saunders agreed to send these full 53 copies to my solicitors. My Lord, they didn't arrive and I understand Mr. Saunders was not quite sure which 53 statements we were referring to ...

G HIS HON. JUDGE STROYAN: We have already dealt with this point I think, have we not?

H MR. SYMONDS: Well, My Lord, what I am saying is why I went back to that is because my solicitors have been informed that we are allowed to see the statements and they have in fact been sent but they are lost in the post, and I am asking that when I examine the tape recordings and the original handwritten statements, I may be allowed to examine further copies of the statements that we have been allowed to see. That is why I went back to it My Lord.

HIS HON. JUDGE STROYAN: Well your solicitors have had a full opportunity of looking at the documents, you are going to be given the full opportunity of looking at the tapes and I really don't see what more there is I can do?

A MR. SYMONDS: My Lord, if you recall I did make application on the 13th of February for Legal Aid for the services of a handwriting expert because I am going to make certain serious allegations against certain police officers My Lord, including forgery. My Lord, you refused this application and therefore I am now left in the position of trying to be my own handwriting expert and therefore I must myself examine these voluminous documents closely My Lord, and I must have an opportunity to do this.

B HIS HON. JUDGE STROYAN: What this trial is going to turn on is not what may or may not have been in various handwritten statements, what it is going to turn on is the evidence of the witnesses in the witness box and whether the Jury believe them or don't believe them. The documents, the original statements are not the evidence on which the Jury try the case, the Jury try the case on what they hear in the witness box, do you see?

C MR. SYMONDS: Very good My Lord, but my point is that when this evidence has been challenged we should be in a position to put to the witness but did you not say something different or did you not write something different on some previous occasion.

HIS HON. JUDGE STROYAN: Well you have got that.

MR. SYMONDS: Pardon My Lord?

D HIS HON. JUDGE STROYAN: You have got that statement. You will have that statement on which they are being examined and if they say something different from the witness box to what you have in the statement you can ask questions about it.

MR. SYMONDS: My Lord, I have been served with typed copies of the original statements.

E HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: My Lord, I am saying that those typed copies are in some cases not true copies of the original statements My Lord. I can show you two statements now.

HIS HON. JUDGE STROYAN: Well I don't want to see them now.

F MR. SYMONDS: Where there is a difference with a later addition in handwriting of a vital word, My Lord, because the typed statements which were being used by this enquiry, for a tip off I am alleged to have said to Perry: "They have a fingerprint of yours so plead guilty to Section 1." It was decided this wasn't very good evidence of being a present, a favour to who is supposed to be unknown, so it was decided to change Perry's allegation from "they have a fingerprint of yours" but unfortunately for them it had already been typed on to the typed statement.

G HIS HON. JUDGE STROYAN: Mr. Symonds, you are going to be able to ask Mr. Perry about that, there is no need to ask me about it.

H MR. SYMONDS: I would like to be on firm ground when I ask such questions, My Lord, I would like to see the statement otherwise I will be accused of making wild allegations out of the air. I want to be able to say "is that Your statement? did you put in that word 'if'? Did you see it being put in?" and so on.

HIS HON. JUDGE STROYAN: Well as I understand it, your solicitors have had an opportunity of looking at the original statement. That is right is it?

A MR. SYMONDS: My Lord, my solicitors asked the Prosecution to bring them to the prison and the Prosecution refused. My Lord, this was at ...

HIS HON. JUDGE STROYAN: I don't think that is right Mr. Symonds.

MR. SYMONDS: I am quite sure of my facts, My Lord, because I was there at the time.

B MR. RIVLIN: ~~My~~ I be of assistance Your Honour if the defendant would be so kind just for a moment. These documents are in the custody of the Court. In fairness to the defendant's solicitors they could hardly be expected to be allowed to take them away ...

HIS HON. JUDGE STROYAN: No.

MR. RIVLIN: They could have examined them but they couldn't ~~have~~ taken them away....

C HIS HON. JUDGE STROYAN: No.

MR. RIVLIN: For examination by the defendant. They are here, the defendant is here, so far as we are concerned of course any time that he wishes to look at any particular original statement he may.

HIS HON. JUDGE STROYAN: Yes, thank you. Well there you are.

D MR. SYMONDS: My Lord, my application is that I may have an opportunity to look at the statements before the trial within a trial starts rather than be confronted with hundreds of pages of handwriting.

HIS HON. JUDGE STROYAN: Well you are not going to be confronted with hundreds of pages, you are going to be confronted with

E MR. SYMONDS: My Lord, if I succeed in examining the original statements during the cross-examination I am going to be in a difficult position, My Lord, because the only other way I can get the statement is when the question is about the statement and say: "Did you give a handwritten statement about this?"

HIS HON. JUDGE STROYAN: Your solicitors will be in a position to look at these statements at the moment the Court rises and they can I am sure cope with that as we go along.

F MR. SYMONDS: Very good My Lord. My Lord, there are some points not in my letter to the Clerk of the Court.

HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: I think I did say these are some of the points.

G HIS HON. JUDGE STROYAN: Yes.

H MR. SYMONDS: My Lord, I would like to apply for this Court to appoint a Barrister but purely to assist me on points of law and procedure, rules of procedure. The reason for this, My Lord, is that my solicitor can only stay here for a few days, unfortunately, and I am not having a Q.C. and Junior Counsel, an extra burden on the Legal Aid, ~~they~~ will in fact be very much better off ...

HIS HON. JUDGE STROYAN: Mr. Symonds, I tried to persuade you last time you were here to have a Barrister to fight your case for you, I gave you every opportunity.

A MR. SYMONDS: I'm not applying for that My Lord.

HIS HON. JUDGE STROYAN: And I told you exactly the way in which it may be of help. Either you have a Barrister to represent you or you represent yourself, I don't think I can ... I don't think there is jurisdiction to appoint somebody to advise you on the law but not on anything else.

MR. SYMONDS: Very good My Lord, thank you.

B MR. RIVLIN: Your Honour, he has got a solicitor ...

HIS HON. JUDGE STROYAN: You have got a very able solicitor to help you.

MR. RIVLIN: And his solicitor will have to stay here during the course of the trial.

C HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: If he has got a firm of solicitors who are acting for him then they continue to act for him ...

HIS HON. JUDGE STROYAN: Yes.

D MR. RIVLIN: And until they - as I understand it - obtain the leave of the Court to cease acting for him.

HIS HON. JUDGE STROYAN: Yes. You see, Mr. Symonds, you really cannot have it both ways. I have done my very best to persuade you last time you were here to have Counsel and I offered you Leading Counsel and you said you didn't want them and you have got a solicitor of great experience to advise you and there is really, I am afraid, no halfway house. I don't think I can .. I have never heard of a case in which Counsel have been available to advise you on the law and not anything else for one reason - just listen to me for a moment - for one reason, it is quite impossible to give legal advice in the air so to speak. Any legal advice you are given has got to be based on the facts as well, so it is quite impossible to appoint anybody to do what you ask and you might as well have a law lecturer, but I am not going to, I have no jurisdiction to appoint a law lecturer to lecture you about the law. All I can do is to give you leading Counsel and you would have to come back. You have got an experienced and able solicitor to help you, I don't think I can do anything more than that at this stage, and if you were to ask for Leading Counsel then that would be another matter, but

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MR. SYMONDS: No, My Lord, I had in mind a Court Barrister from this Court to whom I could go for advice on perhaps technical legal points which may arise during

G HIS HON. JUDGE STROYAN: Mr. Symonds, that is the whole point of having a Barrister, to seek advice, ...

MR. SYMONDS: I am seeking one for advice only.

MR. RIVLIN: I am sorry to say this to Your Honour, I am sorry, but the defendant if he is in difficulty does have Your Honour to turn to if he has any particular problem as to admissibility and the like and he can always - in the absence of the Jury - ask Your Honour to rule one way or

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the other, and may I say that it goes without saying that we will give any proper assistance that we can.

- A** HIS HON. JUDGE STROYAN: Yes. Mr. Symonds, I mean I will do the best I can on your behalf on the law if you want to ask me any questions about it. I will try and help. I may not be as good as a Court Barrister but I will try and help.
- MR. BIRNBERG: Your Honour ...
- HIS HON. JUDGE STROYAN: Mr. Birnberg.
- B** MR. BIRNBERG: I am much obliged Your Honour. My personal position is that I can only afford one week's personal attendance at this Court. I have an extremely busy practise and indeed one week out of my practise is in the nature of a big inroad.
- HIS HON. JUDGE STROYAN: Well I follow that.
- C** MR. BIRNBERG: And so that I would be asking Your Honour's permission at the end of the week - if this trial should continue beyond the week - for permission in fact to leave, leaving at this Court an extremely capable Articled Clerk who is due to be admitted as a solicitor in a few months time and who has very considerable personal experience of criminal work and indeed as I indicated to your Learned Chief Clerk he has been more in the throw of criminal matters in the last few years than I have.
- HIS HON. JUDGE STROYAN: Yes.
- D** MR. BIRNBERG: And so I thought it would be helpful to the Court to indicate my personal position ...
- HIS HON. JUDGE STROYAN: Yes.
- MR. BIRNBERG: At this stage.
- E** HIS HON. JUDGE STROYAN: I appreciate that Mr. Birnberg. We will have to see how things go but do you think in fact that most of the important decisions on the evidence will have been taken by the end of this week?
- MR. BIRNBERG: I would expect so, yes.
- HIS HON. JUDGE STROYAN: I am grateful. Yes, is that all?
- F** MR. SYMONDS: My Lord, during the trial I would ask that the original tapes are played and not copies.
- HIS HON. JUDGE STROYAN: Well that is what we were going to have anyhow.
- MR. SYMONDS: My Lord, at the previous hearing copies were played.
- HIS HON. JUDGE STROYAN: Well we will see what happens this time. Yes.
- G** MR. SYMONDS: My Lord, on Friday the 13th I raised the matter of quite a substantial list of subpoenas I requested My Lord.
- HIS HON. JUDGE STROYAN: You indicated 147 last time and it has grown by 3 apparently.
- H** MR. SYMONDS: Yes My Lord it has. You allowed me to subpoena two people from each group of witnesses listed.

HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: My Lord, and you said that I should speak to you again about this

A HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: And produce to you statements so that you could see they had relevant evidence to give.

HIS HON. JUDGE STROYAN: Yes.

B MR. SYMONDS: My Lord, I do have these statements and the position now is that I would like to do something about getting permission for a subpoena for a number of these people, particularly for the trial within a trial. For instance I wish to subpoena more than 2 people from the Times and more than 2 people from Location Sound Facilities. The bulk of the subpoenas, My Lord, refer to what will be the main trial, the Nuneaton aspect; the Police work generally. Camberwell and Peckham aspects. If there is not to be a trial within a trial, My Lord, I would like to bring all these matters up now so that my solicitors have at least a few days to start tracing these witnesses and subpoenaing them if there.

C HIS HON. JUDGE STROYAN: So far as these witnesses are concerned, I am certainly not going to let you have 145 subpoenas at public expense without knowing that there is some point in doing it. I cannot at the moment judge whether there will be any point in doing it until I see how the case is going. You have got the names and addresses of all the witnesses that the Crown are going to call and the material witness statements. It may or may not be material, that is going to depend on how the trial develops, but I am certainly not going to grant you 153 subpoenas today. We will see how it goes.

D MR. SYMONDS: Very good My Lord.

E HIS HON. JUDGE STROYAN: If it seems to me that any particular witness is going to be helpful to you you will have a subpoena for them, but I am not putting the public to the expense of getting 153 witnesses here.

F MR. SYMONDS: My Lord, one further point from that; with regard to the question of experts, My Lord, at the trial of Robson and Harris there were in fact 4 experts who gave evidence - that was Mr. Taylor who was the original expert (the Police one) and who found them to be interfered with and then 2 independent experts approached by the Crown, Mr. Killick and Mr. Ford and an authentic expert My Lord.

HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: You have allowed me to call as experts, 2 experts and one authentic expert.

HIS HON. JUDGE STROYAN: Yes.

G MR. SYMONDS: I would like to call Mr. Taylor as an expert. I have this morning been served with two notices of further evidence whereby the Prosecution are calling two further experts, a Mr. Eley and a Mr. Penna.

HIS HON. JUDGE STROYAN: I thought they were in the original bundle aren't they?

H MR. SYMONDS: Well they have given ... well the original bundle, My Lord, their statements refer to how they made transcripts.

HIS HON. JUDGE STROYAN: Yes.

A MR. SYMONDS: They have now been ... they are now appearing to give expert opinions, My Lord, according to the statements I got this morning, thereby - in their expert opinions - the tapes haven't been interfered with.

HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: So, therefore, My Lord, I would like to call Mr. Taylor as an expert who the man it was who originally examined all these tapes on behalf of the Police in 1970.

B HIS HON. JUDGE STROYAN: What about that Mr. Rivlin?

MR. RIVLIN: With respect, that appears reasonable to me Your Honour.

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: I think if the defendant wishes to call Mr. Taylor he should be permitted to do so if I may say so.

C HIS HON. JUDGE STROYAN: Yes I think that is right. Yes you will have leave to call Mr. Taylor. Anything else?

MR. SYMONDS: My Lord, the Prosecution - after you rose on the 13th - the Prosecution indicated that they would be supplying us with the ruling and an Appeal Court Judgment in the case of Robson and Harris ...

D HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: And we have in fact received these documents My Lord.

HIS HON. JUDGE STROYAN: Yes.

E MR. SYMONDS: I would ask the Prosecution to have available a transcript of the evidence given by their main witnesses (Lloyd, Mounter and Hawkey) at the trial of Robson and Harris My Lord.

HIS HON. JUDGE STROYAN: What for? What is the point of that?

F MR. SYMONDS: Well because, My Lord, this whole taping exercise was done as one continuous exercise. In the earlier stages, My Lord, the reporters did not consider them to be separate in any way so therefore they made their notes and they marked their tapes and they made their statements continuously in chronological order. The evidence, therefore, My Lord, is intertwined in both cases. For example, My Lord, the case of Robson and Harris went first at Wells Street committal and as Mr. Comyn and Mr. Thomas cross-examined these witnesses on certain points it was considered unnecessary by my Counsel to repeat the exact same cross-examination on the same points two weeks later.

G HIS HON. JUDGE STROYAN: That sounds right to me.

H MR. SYMONDS: Quite, yes, and I would like to refer to some of the answers made by Mounter and Lloyd in answer to questions put to them by Mr. Comyn and Mr. Thomas and later Mr. Frisby at the committal hearing particularly. I have a copy of this, of their depositions, but I understood that the Police obviously had copies My Lord, unfortunately my copy is marked and annotated and not fit

A HIS HON. JUDGE STROYAN: Mr. Symonds, that is another case. What I am being asked to do now is - or I think I am about to be asked to do now - is to look at the ruling of Mr. Justice Shaw and the Court of Appeal and perhaps some other case as well, and on a point of law when I come to decide about the trial within a trial. That is a question of law and all I am allowed to do is to look at the ruling of Mr. Justice Shaw and the Court of Appeal. I am not allowed to go again into the evidence of what happened before that. I didn't hear the evidence, I don't know what impression it would have made on my mind, it has nothing to do with me. What I have got to consider is the question of law raised by that ruling.

B MR. SYMONDS: My Lord, the Prosecuting Counsel will be obviously raising certain points to you taken from the rulings and the Judgment in the Robson and Harris case ...

HIS HON. JUDGE STROYAN: Yes.

C MR. SYMONDS: Now, My Lord, this was a different case and the rulings were made after Judge Shaw had heard evidence about a different case and different people. If I can give you an example, My Lord, the matter of transcripts. There was an argument about whether transcripts should be allowed and it was argued that they shouldn't be allowed because they were hearsay evidence. The person who made the transcript was writing down hearsay evidence, he didn't hear the conversation. The Prosecution then quoted the case of R. v Hope and said well they should be allowed because in this case in Scotland the Judge allowed transcripts to be read to the Jury and they quashed the objection on the point of hearsay evidence by saying well yes it is hearsay evidence we agree, but in this case the statements are in the nature of a confession and they, therefore, then pointed to parts of the statements in the Robson and Harris case and said listen, Robson is saying "you have paid your money now and now you're finished with us and we'll (inaudible) get them off your back." But listening to this tape Robson: "I thought when I put that gelignite in your hand you would have stood there and sworn your life away." The Prosecution argued this was in fact a confession and the hearsay law of evidence should not apply. In my case, My Lord, there are no such confessions. In my case, My Lord, tape recordings are going in as statements which are part of the evidence itself, My Lord, and therefore if you are going to listen to rulings and judgements in the case of Robson and Harris, My Lord, for this reason and for many other reasons I wish ...

F HIS HON. JUDGE STROYAN: Mr. Symonds, I am not deciding any questions of fact, I cannot decide any questions of fact which arose in the case of Robson and Harris, all I can do - whatever my views or your views or anybody else's views may be - all I can do is to look at the ruling of Mr. Justice Shaw and the Court of Appeal to see if there is any direction there on the law which helps me in this case. I am not allowed to go in again to the facts on which they made their ruling. I am afraid it is no good you asking me to do so because I am not allowed to, all I can do is to look at those rulings and those judgments to see whether there are any principles of law there which enable me to get some assistance in this case. I cannot go again into the facts of this other case. All I am entitled to do - and it is the same with the Court of Appeal - is to look at the rulings in law and see if it helps, it may or may not, I will see when we come to it.

G H MR. SYMONDS: I accept that, My Lord, but I would like to fall back on the fact that tape recordings are common. For example in one tape recording are conversations recorded - one with Robson and Harris and one with me - and during the trial, for example, of Robson and Harris many, many questions were put regarding tape 1 which was in fact a tape in my case, and so, therefore, during the trial of Robson and Harris evidence from my case was used and included.

A HIS HON. JUDGE STROYAN: Well I dare say it was, but what I am considering is the assistance I can get on the law, not on the facts, do you see? There is a difference between the law and the facts. I am not concerned with the facts of the other case, what I am concerned with is whether what Mr. Justice Shaw said and what the Court of Appeal said helps me on the law, do you see the difference?

MR. SYMONDS: Yes My Lord I do.

HIS HON. JUDGE STROYAN: Well I am afraid I cannot do anything more for you than that.

B MR. SYMONDS: Thank you.

HIS HON. JUDGE STROYAN: Very well, I think ...

MR. SYMONDS: My Lord, there is just the question of the subpoenas My Lord.

C HIS HON. JUDGE STROYAN: Well I have dealt with that, I have said we will see how we go during the case. I am certainly not going to grant you 153 subpoenas at public expense now, but at any stage during the trial if there is someone you want to call and I feel it appears his evidence may assist you then you will have a subpoena.

MR. SYMONDS: My Lord, I ask specifically for 6 now or I may have difficulties in how I can bring out this evidence. For example

D HIS HON. JUDGE STROYAN: At the moment Mr. Symonds we don't know what the issues on the trial are going to be. Until we know what is going to be material and what is not material it is no good getting along a lot of witnesses who won't be able to say anything relevant, any more than it is deciding not to call people who might be relevant. We cannot see at this stage what the position is going to be. When we see what direction the trial is heading then ...

MR. SYMONDS: Very good My Lord.

E HIS HON. JUDGE STROYAN: I am not saying that you cannot have any witnesses, what I am saying is that I am not now - without knowing more about it - going to give you 153 subpoenas.

MR. SYMONDS: The very last point is if the Prosecution could supply me with a list of witnesses that they intend to call during the trial within a trial, if there is to be a trial within a trial.

F MR. RIVLIN: Yes certainly.

HIS HON. JUDGE STROYAN: That brings us to the question of whether there is to be a trial within a trial. As I understand it - and I have had an opportunity of looking at the ruling of Mr. Justice Shaw and the Court of Appeal - if there is to be such a trial, my task is to decide simply whether there is a prima facie case for authenticity.

G MR. RIVLIN: On the balance of probability.

HIS HON. JUDGE STROYAN: On the balance of probabilities.

MR. RIVLIN: Whether the tapes are the original tapes and authentic.

H HIS HON. JUDGE STROYAN: Yes. That is all I have to decide?

MR. RIVLIN: In my submission, yes.

A HIS HON. JUDGE STROYAN: Yes. Well if there is - at the end of the case for the Crown - a prima facie case to that effect, on the one view of what Mr. Justice Shaw said - and it appears not to have been challenged in the Court of Appeal - there is no reason for me to hear any other evidence because in any event all I can decide is whether there is, on the balance of probabilities, a prima facie case, and if I were to decide as between one set of argument and another, where the truth lay, I would be taking upon myself the Jury's task.

MR. RIVLIN: Your Honour yes.

B HIS HON. JUDGE STROYAN: Now does ... that appears to be the law about it, and with respect I think Mr. Justice Shaw has put it quite succinctly, the alternative view of the matter is that I should hear, if necessary, both the evidence for the Crown on this matter and the evidence for the Defence. If I do that I am not sure what advantage I shall derive from the evidence for the Defence because if I did at once decide that there was on the balance of probabilities a prima facie case for the Crown - whatever view I took of the evidence from the Defence - I would still have to leave the matter to the Jury, is that right?

C MR. RIVLIN: Your Honour, it is save for this, that your decision - I am sure the defendant would submit - your decision as to whether there is a prima facie case on the balance of probabilities

HIS HON. JUDGE STROYAN: Yes.

D MR. RIVLIN: Can only be reached after you have heard all the relevant evidence on the topic which

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: Which is what happened in the case of Robson and Harris.

E HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: And what happened in the case last year - that is this case - which didn't reach its conclusion. Your Honour, obviously that - I would have to concede - that if the defendant had relevant evidence to put before Your Honour which might affect your mind as to whether you were to decide on a balance of probability whether these tapes are genuine and authentic, that he should be permitted to call such evidence.

F HIS HON. JUDGE STROYAN: Yes, I follow that, but I am not sure whether that is exactly what Mr. Justice Shaw was saying.

MR. RIVLIN: Well I think it is. May I tell Your Honour that Mr. Justice Shaw heard, over a period of a week and a half, a mass of evidence about these tapes - when I say these tapes I mean the tapes particularly concerned in the Robson and Harris case - ...

G HIS HON. JUDGE STROYAN: Yes, the tapes before him, yes.

MR. RIVLIN: And I do know he heard inter alia evidence of experts called on behalf of the Defence.

HIS HON. JUDGE STROYAN: Yes.

H MR. RIVLIN: He heard the evidence of Mr. Killick and Mr. Ford.

HIS HON. JUDGE STROYAN: Yes. The Court of Appeal has apparently said in Magsid Ali.

A MR. RIVLIN: Your Honour, yes.

HIS HON. JUDGE STROYAN: And if one looks at page 5 of the transcript it says this: "The case of Stephenson, nevertheless, as a general rule it seems to me to be highly undesirable, and indeed wrong, for such an investigation to take place before the Judge. If it were to be regarded as a general practice it would lead to the ludicrous situation that in every case where an accused person said that the evidence for the Prosecution was fabricated, the Judge would be called upon to usurp the functions of the Jury."

B MR. RIVLIN: Your Honour yes.

HIS HON. JUDGE STROYAN: And I am not sure in those circumstances what weight I could give the evidence called by the Defence assuming for the moment that I thought on the balance of probabilities there was a prima facie case before me at that stage.

C MR. RIVLIN: Your Honour, with respect I think the way it would be put by the defendant was this, if he was able to call expert evidence which gave you strong grounds for believing that these tapes had been tampered with and that they weren't authentic or that they weren't originals

HIS HON. JUDGE STROYAN: Yes.

D MR. RIVLIN: Then you would not then be able to say on the balance of probabilities that these tapes are genuine and authentic.

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: Your Honour, in the case of Ali - and I do have a photo-copy of the judgment - the Learned Judge in that case did hear witnesses on both sides.

E HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: The Learned Judge in another case - the case of Stephenson and others - Mr. Justice Kilner-Brown heard evidence on both sides, again in a case in which the authenticity of tapes was challenged ...

HIS HON. JUDGE STROYAN: Yes.

F MR. RIVLIN: And in that case it so happened that he ruled in favour of the Defence. In the case of Robson and Harris Mr. Justice Shaw - as he then was - heard evidence on both sides and I don't really see how I could properly argue before you now that you shouldn't hear evidence on both sides.

G HIS HON. JUDGE STROYAN: Yes. Of course the difficulty is what weight I am entitled to give to any evidence.

MR. RIVLIN: Well, Your Honour, yes.

HIS HON. JUDGE STROYAN: Called by the Defence.

MR. RIVLIN: Your Honour yes.

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A HIS HON. JUDGE STROYAN: The other matter is this - and this is really not so much a question of law but a question of fact - is whether it is at the end of the day thought to be in the best interests of the defendant - in the light of the principle of law that I have not got to be satisfied beyond reasonable doubt but only on the balance of probabilities - whether it is in his best interests that all the evidence should be given a full airing twice thus losing the benefit of any element of any surprise, and one knows from experience with hearing cases, I fear it is not by any means to the advantage of the defendant ...

MR. RIVLIN: No.

B HIS HON. JUDGE STROYAN: That the evidence should be run through twice.

MR. RIVLIN: Well, Your Honour, I think that the simple answer to that is that there is very little element of surprise left in this case ...

HISHON. JUDGE STROYAN: Yes.

C MR. RIVLIN: Because the Learned Recorder of London in November of last year heard a trial within a trial in this case

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN; The evidence of both sides.

D HIS HON. JUDGE STROYAN: Yes, and did he get so far as on ruling that the evidence was admissible?

MR. RIVLIN: Well he did, yes.

HIS HON. JUDGE STROYAN: He ruled that the evidence was admissible?

E MR. RIVLIN: It was at that point, Your Honour, that the Counsel for the defendant disappeared from the case, and I hear it was at this stage - immediately after Mr. Comyn had opened the case to the Jury - that that happened.

HIS HON. JUDGE STROYAN: Yes.

F MR. RIVLIN: But I cannot pray and aid the doctrine of *res judicata* that you are bound by the Recorder's ruling, you are not. Mr. Symonds correctly said before Your Honour on the 13th of last month "I get two bites at a cherry here" and he does.

HIS HON. JUDGE STROYAN: Yes. Yes I think I have got to decide it for myself.

MR. RIVLIN: You have, yes.

G HIS HON. JUDGE STROYAN: But if I am going to hear much the same as the Recorder of London heard it is perhaps on the facts it is less likely than I would form a different view, I don't know, it depends on how the evidence comes out.

MR. RIVLIN: Well, Your Honour, with great respect you must just hear the case which unfolds

HIS HON. JUDGE STROYAN: I must, yes.

H MR. RIVLIN: AND if new evidence is put before you now or if anything influences you now that didn't influence the Learned Recorder so be it.

HIS HON. JUDGE STROYAN: Yes, I shall have to decide it for myself, but if the evidence is the same - I don't know without hearing it - if the evidence were to turn out the same ...

A MR. RIVLIN: Well I cannot say.

HIS HON. JUDGE STROYAN: It would perhaps be surprising if we reached different views about it, I don't know, it depends on how it turns out. What I am wondering is whether on the circumstances of the case at present it is going to serve the defendant best if we do have a trial within a trial because the burden at the moment in so far as I am concerned is only a burden on the balance of probability.

B MR. RIVLIN: Your Honour yes.

HIS HON. JUDGE STROYAN: I have to decide whether, on this balance, there is a prima facie case on authenticity.

MR. RIVLIN: Well, Your Honour, that must be for him to decide.

C HIS HON. JUDGE STROYAN: Oh yes it must.

MR. RIVLIN: Your Honour, I don't wish to say any more than this, that if he was successful here before Your Honour in a trial within a trial, he would have excluded very vital evidence from the Jury's consideration.

HIS HON. JUDGE STROYAN: Yes.

D MR. RIVLIN: And, Your Honour moreover it may be said that the appropriate course - given that he is going to object to the admissibility of evidence on these grounds - is to make the application that he is.

HIS HON. JUDGE STROYAN: Yes.

E MR. RIVLIN: But there it is. Your Honour, there is another subsidiary point that arises here and that is this, that if Your Honour decides having heard the defendant a trial within a trial must be held, may I tell you what the situation is?

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: We are forewarned of the fact that experts will be called on behalf of the defendant who may suggest to Your Honour that these tapes are either not real or not authentic ...

F HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: And being forewarned is being forearmed and we have experts here. What happened on the two previous occasions with trials within a trial were held was this, that the Learned Judge in each case thought it right to hear the primary evidence as to authenticity and originality from the Times reporters then to let the Defence call their witnesses ...

G HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: And then to allow the Crown call their experts in rebuttal because in a sense it is only by knowing precisely what the Defence experts are going to say that the Crown know what to deal with.

H HIS HON. JUDGE STROYAN: Yes.

A MR. RIVLIN: And that seemed to be the logical way of dealing with it, and indeed the way in which it was best calculated to save time, and indeed that is the way, with respect, that I recommend in this case what should happen; is we should call our primary witnesses and then Mr. Symonds should call his experts and if there was anything to meet at that point we would call our witnesses in rebuttal.

HIS HON. JUDGE STROYAN: Yes.

B MR. RIVLIN: It has been thought in the past - in those two instances - that time would be saved by taking that course and may I say that I feel that a great deal of time would be saved by taking that course, but I cannot urge upon Your Honour that as a matter of law we are entitled to ask Your Honour to deal with it in that way ...

HIS HON. JUDGE STROYAN: No.

MR. RIVLIN: That is really a matter for Your Honour to decide how best you would be assisted in a trial within a trial.

C HIS HON. JUDGE STROYAN: Yes. Yes, I see Mr. Rivlin, thank you. Mr. Symonds, this is not entirely a straightforward matter, there are considerations which go both ways, in deciding whether a trial within a trial is going to be in your best interests or not. You have indicated to me that that is what you thought would be right, I don't know if you have fully understood what has been said?

D MR. SYMONDS: I do My Lord.

HIS HON. JUDGE STROYAN: What I think I ought to do now - it is near the time of the adjournment - is to give you the opportunity of consulting with your solicitor who will be able to advise you about the legal implications arising and I will hear you about this topic when you have had an opportunity of talking to Mr. Birnberg about it after the adjournment, and by that time you will have had an opportunity of being properly advised about it and there are a number of considerations which I am sure Mr. Birnberg will put to you.

E MR. RIVLIN: Your Honour, may I make two points here?

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: If there is to be a trial within a trial I am satisfied the Jury would have to be sworn first

F HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: And I think the other point is at the last trial within a trial there was no issue as to the identity of the voices on the tapes; in other words it was admitted that the voices that appeared on the tapes - whether the tapes are genuine or not - are the voices of Mr. Perry and the defendant ...

G HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: I would like to think that there will be no issue now about that matter, but if there is to be any issue we have got to call further witnesses and so I would like to know from the Defence whether there is to be an issue as to the identity of the voices.

H HIS HON. JUDGE STROYAN: Yes. Well I don't expect there is but no doubt that can be something which can be discovered over the adjournment.

MR. SYMONDS: My Lord, I ask if I could take advice from my Counsel between 2.00 p.m. and 2.30 as I understand ...

HIS HON. JUDGE STROYAN: You can start doing so now.

A MR. SYMONDS: My Lord, it was thought it might be better if I have extra time My Lord.

HIS HON. JUDGE STROYAN: Well I am certainly not going to rush you at this stage of the proceedings.

MR. SYMONDS: Thank you My Lord.

B HIS HON. JUDGE STROYAN: I was just wondering whether it would be helpful if while you are talking to Mr. Birnberg you should be allowed to remain in the Court. You have got your documents on the table there have you?

MR. SYMONDS: My Lord, yes.

C HIS HON. JUDGE STROYAN: It might be more beneficial if he could deal with it in Court rather than going downstairs, would that help? Any objection to that?

MR. RIVLIN: Of course not Your Honour, no.

HIS HON. JUDGE STROYAN: As far as the adjournment is concerned, if the Prisoner is not going downstairs for another purpose he can consult with his advisors in Court.

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(LUNCH)

HIS HON. JUDGE STROYAN: Now, Mr. Symonds, you have no doubt had an opportunity of consulting with Mr. Birnberg?

E MR. SYMONDS: Yes My Lord I have and I would say that I agree with the proposition made by the Prosecuting Counsel, My Lord, that there should be a trial within a trial.

HIS HON. JUDGE STROYAN: I don't think that was the proposition which Mr. Rivlin made, he didn't suggest that.

MR. SYMONDS: My Lord, it was first suggested on the 13th of February.

F HIS HON. JUDGE STROYAN: It was talked about, I don't think it was suggested by anybody, except by yourself, but if that is ... it is you, you see, who has got to decide about this.

MR. SYMONDS: My Lord, I ask for a trial within a trial.

HIS HON. JUDGE STROYAN: Very well.

G MR. SYMONDS: The Defence take strong objection to the alleged originality and the alleged continuity of handling of these tape recordings. We say that they are false.

HIS HON. JUDGE STROYAN: Yes, very well.

H MR. SYMONDS: And have been edited and are not original copies.

HIS HON. JUDGE STROYAN: Yes, so long as you understand, Mr. Symonds, that the decision is yours and yours alone to ask for a trial on the voire dire.

MR. SYMONDS: Yes.

A

HIS HON. JUDGE STROYAN: What do you say about that Mr. Rivlin?

MR. RIVLIN: Well of course it is his application not mine.

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: I mean we don't want one. It is going to take a lot of time.

B

HIS HON. JUDGE STROYAN: It is going to take a lot of time, yes.

MR. RIVLIN: But the only point that I was making to Your Honour was I was discussing the law.

HIS HON. JUDGE STROYAN: Yes.

C

MR. SYMONDS: My Lord, sorry, My Lord in respect of the law, My Lord, I would refer you to the case of R. v Stevenson where in fact there was a trial within a trial and it was Mr. Justice Kilner-Brown. There was in that case a trial within a trial and a point arose there, My Lord, in paragraph 7 on page 3 of the Weekly Law Reports referring to that case, His Lordship said

D

HIS HON. JUDGE STROYAN: Did you have a trial within a trial when the matter was dealt with by the Recorder of London?

MR. SYMONDS: Yes My Lord.

HIS HON. JUDGE STROYAN: Very well then we will have one now.

MR. SYMONDS: Thank you My Lord.

E

HIS HON. JUDGE STROYAN: You don't object to that Mr. Rivlin?

MR. RIVLIN: Your Honour no.

HIS HON. JUDGE STROYAN: Yes very well.

F

MR. SYMONDS: In connection with the point raised by Prosecuting Counsel as to the suggested conduct of this trial, My Lord, the Prosecuting Counsel - I understand - said that they would seek to prove the originality and the authenticity of the tapes.

HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: And before the Court of Appeal Criminal Division in the case of

G

HIS HON. JUDGE STROYAN: You are going to have your trial within a trial now.

MR. SYMONDS: Yes My Lord. I am now making submissions as to how it should be conducted My Lord.

HIS HON. JUDGE STROYAN: I think I can make my own mind up about that, it will be conducted in the ordinary way.

H

MR. SYMONDS: My Lord

HIS HON. JUDGE STROYAN: The Crown will call evidence as to authenticity, you will have an opportunity of cross-examining. If you wish you can then call evidence on those issues and if necessary the Crown can apply to call evidence in rebuttal.

A MR. SYMONDS: My Lord, the Prosecuting Counsel has addressed you on the law of this matter and I take exception to two points he raised and I also take exception to a point he suggested, a course he suggested you should follow as to how the trial within a trial should be run. My Lord, the Prosecuting Counsel suggested that their task is to show that the tapes are original and authentic My Lord.

B HIS HON. JUDGE STROYAN: That is right.

C MR. SYMONDS: I suggest, My Lord, that the task of the Prosecuting Counsel is to show that the tapes are original and to prove their continuity of handling from the time they were made until the time of their production to this Court My Lord, and from that I take my authority from that from the appeal in the case of Robson and Harris on page 10 My Lord, paragraph 'H' where the Appeal Judges say: "Mr. Comyn accepted that tape recordings are unobjectionable as evidence provided that they are shown to be both original and authentic ...

HIS HON. JUDGE STROYAN: Yes.

D MR. SYMONDS: "He rightly submitted that copies of recordings are inadmissible in the absence of the proper explanation of why the originals are not available or proof of the accuracy of the copies" My Lord.

HIS HON. JUDGE STROYAN: Well I am going to have to decide whether the tapes are original and authentic or whether they have been tampered with or not.

E MR. SYMONDS: My Lord, I also apply to the "admissibility of tapes" matter which is paragraph 5 of R. v Ali and Hussain, Criminal Law Reports 373 where they discuss 6 points that should be taken into consideration in the matter of the admissibility of tapes My Lord; one is the accuracy of the recording and its authenticity, the custody of the recording and the fact that it had not been touched. So the custody and recording is described as important there My Lord.

HIS HON. JUDGE STROYAN: Well that is what, as I understand it, the Crown are going to do. That is right Mr. Rivlin, is it?

F MR. RIVLIN: Your Honour yes.

MR. SYMONDS: Yes, My Lord, and I should also refer you to the case of R. v Stevenson on page 3, paragraph 'F' the Judgment My Lord. Just as in the case of ~~photographs~~ in a criminal trial the original untouched copies have to be retained and in strict custody and so in my view should original tape recordings.

G HIS HON. JUDGE STROYAN: Mr. Symonds, you are pushing at an open door.

MR. SYMONDS: Thank you My Lord. My Lord, with regard to the previous trial within a trial at the Old Bailey twomonths ago, My Lord, it was brought to your notice by the Prosecuting Counsel that in that trial - and in the Robson and Harris trial - a procedure that had been followed was for the Defence to call their experts and then for the Prosecution to call their experts afterwards.

H HIS HON. JUDGE STROYAN: No it wasn't. What took place there I am told is that the Crown called evidence to show the authenticity of the tapes and

that they had not been tampered with, then the Defence called their experts' evidence to show that the tapes had been tampered with and if that was then a live issue the Crown were able to apply for leave to call evidence in rebuttal. That, as I understand it, is how it was dealt with last time.

A MR. SYMONDS: My Lord, prior to the previous trial within a trial the Defence took exception to the proposition that at the end of the Prosecution case they should not call their experts but to keep their expert Hyde to call in rebuttal to the Defence experts My Lord. Mr. Hyde is listed on the list of Prosecution witnesses and he gave material evidence on this very issue My Lord and I

B HIS HON. JUDGE STROYAN: Well we will deal with it when we get to it Mr. Symonds.

MR. SYMONDS: Very good My Lord, thank you.

HIS HON. JUDGE STROYAN: And I shall now proceed to decide on the balance of probabilities whether there is a prima facie case that the tape recordings are originals and authentic, and I think that before that happens we have to swear in the Jury, do we not?

C MR. SYMONDS: My Lord, there is one point that I forgot to mention and I was advised to bring up by my solicitors, and that was to take objection to the proposition .. to the proposed method of calling witnesses in this trial within a trial, in effect calling the last witnesses chronologically first. My Lord, in this case

D HIS HON. JUDGE STROYAN: I don't understand what you are talking about.

MR. SYMONDS: My Lord, in chronological order. The Prosecution should call the original complainant first (Perry) to produce the tapes, the one who made the tape recordings and then in the course of time they should call Lloyd, Mounter and Hawkey to give evidence as to the safe custody of the tapes from the time they were taken from the

E HIS HON. JUDGE STROYAN: Mr. Symonds, neither you nor I can dictate to the Crown about what order they call their witnesses, as the Crown cannot dictate to you how you call your witnesses.

MR. SYMONDS: I suggest, My Lord, if the Prosecution call their case back to front. I take objection to the fact that they proposed previously to introduce second best evidence first when they have original evidence available to them; the evidence of Perry to identify the tape recordings. My Lord, by this method they will be able to play the tape recordings over and over again, literally, to brainwash the Court with them. They should be played

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HIS HON. JUDGE STROYAN: Mr. Symonds, you can rest assured I have no intention of being brainwashed by anybody in this Court.

MR. SYMONDS: Very good.

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THE CLERK: John Alexander Symonds you stand charged on an indictment containing 8 counts. On the first count you are charged with corruption contrary to Section 1 (1) of the Prevention of Corruption Act, 1906. The particulars being that you on the 28th day of October, 1969 within the jurisdiction of the Central Criminal Court, being an officer in the Metropolitan Police corruptly accepted or obtained for yourself the sum of £50 from Michael Roy Perry as a reward for showing favour to the said Michael Roy Perry in relation to your principal's affairs, namely in connection with the arrest of the said Michael Roy Perry on the 24th day of September,

H

1969. It is recorded you pleaded not guilty to that charge, is that correct?

THE PRISONER SYMONDS: I pleaded not guilty to that charge.

A THE CLERK: On the second count of the indictment you are charged with a similar offence. The Particulars being that you on the 31st day of October, 1969 within the jurisdiction of the Central Criminal Court, being an officer in the Metropolitan Police, corruptly accepted or obtained for yourself the sum of £50 from Michael Roy Perry as a reward for showing favour to the said Michael Roy Perry in relation to your principal's affairs, namely in connection with the arrest of the said Michael Roy Perry on the 24th day of September, 1969. Now again it is recorded you

B pleaded not guilty to the charge, is that correct?

THE PRISONER SYMONDS: That is correct and on this occasion I refuse to plead to that charge having just previously pleaded to it in my opinion.

HIS HON. JUDGE STROYAN: Well I shall direct the plea of not guilty to be entered.

C THE CLERK: On the third count of this indictment you are charged with a similar offence. The particulars being that you on the 21st day of November, 1969 within the jurisdiction of the Central Criminal Court, being an officer in the Metropolitan Police, corruptly accepted or obtained for yourself the sum of £50 from Michael Roy Perry as a reward for showing favour to the said Michael Roy Perry in relation to your principal's affairs, namely in connection with the arrest of the said Michael Roy Perry on the 24th day of September, 1969. It is recorded

D that you pleaded not guilty to that charge, is that correct?

THE PRISONER SYMONDS: That is correct. On this occasion I once again refuse to plead not guilty to this charge.

HIS HON. JUDGE STROYAN: Very well, a plea of not guilty will be entered.

THE CLERK: You stand to be charged on this

E THE PRISONER SYMONDS: I do My Lord, I protest any attempt to be tried on the full indictment. When I returned to this country to this trial I

HIS HON. JUDGE STROYAN: I shall proceed on those three counts.

MR. RIVLIN: Your Honour, your Clerk said that the indictment contained 8 counts which of course it does, but it has been severed.

F HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: This indictment contains 3 counts.

HIS HON. JUDGE STROYAN: Yes.

G MR. RIVLIN: And I would respectfully invite Your Honour to inform the gentlemen of the Press that there should be no reference to 8 counts only 3.

HIS HON. JUDGE STROYAN: Yes, I think that must be right. It may be doing a great injustice if any reference were made to the remaining counts. This is an indictment on which the defendant stands charged and it contains those 3 counts which have been put to him.

H THE CLERK: Bring the Jurors in please.

A MR. RIVLIN: Your Honour, I am told that it is thought best - on behalf of the defendant - that the Jury ought not to be sworn in the presence of all of this tape recording equipment. Your Honour, the position is that there is to be a trial within a trial and if Your Honour was to rule that all of this evidence was out then the Jury wouldn't hear about it at all. I bring that matter to your notice.

HIS HON. JUDGE STROYAN: Well I dare say that if I were to come to that conclusion the defendant may want to draw it to the attention of the Jury, the fact that that conclusion had been reached, I don't know. I don't know whether he intends to do that or not.

B MR. RIVLIN: Well I don't know. Would you allow me a moment? Your Honour, I think that there is another Court which is vacant where we could swear the Jury in, if Your Honour thought it right? It might be ultra cautious but it might be the safest from the defendant's point of view.

HIS HON. JUDGE STROYAN: It may not be so easy. I believe it is possible that the other Court may be occupied. We will find that out.

C MR. RIVLIN: As Your Honour pleases. Your Honour, I think we might be able to put the main body of the equipment on the floor and all of these earphones.

HIS HON. JUDGE STROYAN: Do you really mind about this Mr. Symonds? Do you want us to go next door to swear in the Jury? If you take those micro-phones down off your rail.

D MR. SYMONDS: Yes My Lord, I would prefer that the Jury were sworn elsewhere.

HIS HON. JUDGE STROYAN: Well I am afraid there is nowhere else to swear them at the moment. If you would like to take down that instrument from your rail I will deal similarly with the one that is on my desk and I don't think the Jury are going to know whether it is a device for treating the air or a nuclear weapon or whatever. Is that right Mr. Symonds?

E MR. SYMONDS: Yes My Lord.

HIS HON. JUDGE STROYAN: Very well, you put yours away and I will put mine away.

MR. RIVLIN: We are, Your Honour, able to cover these up if it is thought to be necessary.

F HIS HON. JUDGE STROYAN: Yes, would you like a blanket put over them Mr. Symonds? Would you feel happier if a blanket was put over these instruments?

MR. SYMONDS: I think we might just as well continue Your Honour.

HIS HON. JUDGE STROYAN: Well I think so too. Yes.

G (Jury brought into Court)

H THE CLERK: John Alexander Symonds, the names I am about to call are the names of the Jurors who are to pass between you and Our Sovereign Lady the Queen and yourself upon your trial. If, therefore, you wish to object to them or to any of them, you must make your objections as they come to the Book to be sworn and before they are sworn and you shall be heard.

JURY (Sworn)

A THE CLERK: Members of the Jury are you all sworn? Members of the Jury, the
defendant stands charged in the name of John Alexander Symonds and is
charged on this indictment on three counts. On the first count he is
charged with corruption and the particulars are that he on the 28th day
of October, 1969 within the jurisdiction of the Central Criminal Court,
being an officer in the Metropolitan Police, corruptly accepted or
obtained for himself the sum of £50 from Michael Roy Perry as a reward for
showing favour to the said Michael Roy Perry in relation to his principal's
B affairs, namely in connection with the arrest of the said Michael Roy
Perry on the 24th day of September, 1969. On the second count of the
indictment he is charged with a similar offence. The particulars being
that he on the 31st day of October, 1969 within the jurisdiction of the
Central Criminal Court, being an officer in the Metropolitan Police,
corruptly accepted or obtained for himself the sum of £50 from Michael Roy
Perry as a reward for showing favour to the said Michael Roy Perry in rela-
C tion to his principal's affairs, namely in connection with the arrest of
the said Michael Roy Perry on the 24th day of September, 1969. On the
last count of the indictment he is charged with a similar offence. The
particulars being that he on the 21st day of November, 1969 within the
jurisdiction of the Central Criminal Court, being an officer in the
Metropolitan Police, corruptly accepted or obtained for himself the sum
of £50 from Michael Roy Perry as a reward for showing favour to the said
Michael Roy Perry in relation to his principal's affairs, namely in
D connection with the arrest of the said Michael Roy Perry on the 24th day
of September, 1969. Now to this indictment Symonds has pleaded that he
is not guilty. Your charge, therefore, having heard the evidence is to
say, with regard to each count, whether he is guilty or not guilty. Yes,
you may sit down.

HIS HON. JUDGE STROYAN: Yes Mr. Rivlin.

E MR. RIVLIN: May it please Your Honour, I understand that the defendant wishes
to take certain points of law before Your Honour which will have to be
taken I think in the absence of the Jury.

F HIS HON. JUDGE STROYAN: Yes. Well, Members of the Jury, there are a number
of matters which I have to decide as questions of law before we approach
your task which will be deciding about questions of fact. So I am going
to ask you to leave the Court while I do that and you will be asked to
come back into Court in due course and then you will then proceed with
the trial after I have decided the questions of law. How long are we
likely to take to do this?

MR. RIVLIN: Well, Your Honour, there are varying estimates.

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: But the Jury I am sure will not be required in this Court for at
least 3 days.

G HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: The defendant's estimate is rather longer than that.

H HIS HON. JUDGE STROYAN: Yes. Well it looks as though you can have a holiday
Members of the Jury. Members of the Jury, you won't be needed therefore
until Thursday at the very earliest and perhaps not then. If you would
be kind enough to leave with the Court particulars of how you can be get
hold of. The information will be got now so that you can be asked to be

here when you will be needed but it won't be in fact before Thursday. That is all we need to do, is it, before the Jury depart?

A MR. RIVLIN: Your Honour, perhaps the Jury can be informed that they may be here for quite some time and make arrangements accordingly?

HIS HON. JUDGE STROYAN: I think they have been told that already. I am not in a position to tell you how long it will be Members of the Jury, it will depend how we go, but it will certainly be likely to be a matter of weeks. Well perhaps you would like to leave Court now and you will be asked to come back but not before Thursday, and please leave particulars of how you can be got hold of.

B (Jury leave the Court)

C MR. RIVLIN: Your Honour, both you and may I say the defendant, have been supplied with copies of my proposed opening in this case, and I don't intend - unless Your Honour thinks it is necessary - to open the trial within a trial and I can in a few moments time proceed to call my evidence about that.

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: Your Honour, further, it may be of some assistance to you and the defendant if I tell you what the Crown's case is in relation to continuity

D HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: And give you a little list which I hope will enable you to fit the various witnesses into place when they are called to give evidence.

HIS HON. JUDGE STROYAN: Yes, thank you.

E MR. RIVLIN: Your Honour, the first three witnesses whom we must call are Mr. Lloyd, Mr. Mounter and Mr. Hawkey because they were the witnesses who set up the tape recorder and cassette on which tape recordings and cassette recordings were taken. The situation is this, Your Honour, that Mr. Lloyd and Mr. Mounter - in particular Mr. Mounter - will give evidence that they retained custody of the tapes, the original tapes at the Times until I think the 5th of December of 1969 when they were handed over to Detective Sergeant Osborne of the Metropolitan Police. Within that period of time there is the one day (the 25th of November) and we already know what the Crown's case is about that, namely that Miss Woore handled those tapes for a short while taking them along to Mr. Hawkey. So we have Sergeant Osborne in possession of the tapes on the 5th of December, 1969. He then handed them over to Detective Sergeant Collins ...

F HIS HON. JUDGE STROYAN: On what date?

G MR. RIVLIN: We don't know the date, and Detective Sergeant Collins handed them over to Detective Chief Inspector Vernol on some day in 1970, and Detective Chief Inspector Vernol had custody and control of the tapes until the 5th of June of 1980. They were put into cold storage as Your Honour might imagine. On the 5th of June of 1980 Detective Sergeant Stone who is the Exhibits Officer in this case came into possession of the tapes ...

H HIS HON. JUDGE STROYAN: Detective Sergeant?

MR. RIVLIN: Stone.

HIS HON. JUDGE STROYAN: Stainer?

A MR. RIVLIN: Stone.

HIS HON. JUDGE STROYAN: Thank you, yes.

B MR. RIVLIN: And he retained possession of them until the 25th of July of 1980 when they were left in the custody of Mr. Penna and Mr. Eley of the Police Tapes Laboratory for them to transcribe the tapes and to inspect them and that they did, and they have retained custody of the tapes ever since. So that will be the evidence that we will call on continuity. Your Honour, I have heard what you had to say to the defendant and may I say that I propose - unless Your Honour directs otherwise - not to call expert evidence about the tapes during the course of my case but to prove authenticity and originality through these various witnesses to whom I have referred. I have also been told that the identities of the voices is now in issue and so I will have to call Mr. Perry later to prove the voices.

C HIS HON. JUDGE STROYAN: Yes.

D MR. RIVLIN: Your Honour, there is one further problem and that problem is as follows, that when Mr. Penna and Mr. Eley came into the possession of these tapes - that is the alleged original tapes - they immediately copied them and they copied them for this very good reason, that they realised that when transcribing the tapes they were going to have to hear them over and over again and indeed when Your Honour comes to hear them you will sometimes find that the voices are so quick that it is impossible to hear at first playing precisely what is said and in fact one realises from experience that the more you hear these things the more you hear. Now Mr. Penna and Mr. Eley, therefore, made copies and it was on the basis of their copies that they prepared their written transcriptions because they wished to protect the originals, and the last thing that anyone wanted to happen was that parts of the originals should be rubbed out, as it were, during the course of transcribing. Your Honour, there are two sets of transcripts in this case, two sets of tape transcripts. There is the taped transcripts prepared by Mr. Penna and Mr. Eley and they are very helpful because they have got certain annotations supplied, time annotations which enable one, as it were, to go straight to any particular questions.

E HIS HON. JUDGE STROYAN: I don't think I have got those.

F MR. RIVLIN: Your Honour ...

HIS HON. JUDGE STROYAN: Is it a bundle marked 'V'?

G MR. RIVLIN: They are in a bundle marked 'G' I think they should be in a bundle such as I have here and they are copies of tapes numbers 1, 2, 3 and 5.

HIS HON. JUDGE STROYAN: I have got a bundle marked 'V'

H MR. RIVLIN: Well, Your Honour, there is another bundle of transcripts which was prepared by the Police at an early stage in this case, that is the one in which each and every question is numbered. Is that the one Your Honour has got?

HIS HON. JUDGE STROYAN: I have also got another one called 'F'.

MR. RIVLIN: Your Honour, the one that is being handed to you now is the transcript made by the Police a very long time ago, and the other one, Your Honour, if I can take you to the first page of it ...

A HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: It ought to begin the 28th of October '69 transcript side 1 - telephone call to Eamberwell Police Station.

HIS HON. JUDGE STROYAN: No, the one I have got in front of me at the moment simply says 28th October and 1 which is a telephone call.

B MR. RIVLIN: Your Honour, can I have a look at that one please?

HIS HON. JUDGE STROYAN: Yes.

C MR. RIVLIN: Oh yes Your Honour. Your Honour these ... Your Honour need not be troubled with those, these are the originals done by the Police, these are just an extra copy. The ones I have in mind are the 'Revised Tape Transcripts.' May I hand a little bundle to Your Honour? Your Honour, the figures which appear in the left hand columns there are times, that is one minute past, four minutes after the tape first starts.

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: Four minutes 26 seconds and these transcriptions which will be proved by Mr. Penna and Mr. Eley are based upon their listening to the copies that they took from the originals.

D HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: Now the defendant this morning requested that during the course of the trial within a trial we should only listen to the originals, which if I may say so on the face of it, is a fair request.

HIS HON. JUDGE STROYAN: Yes.

E MR. RIVLIN: The problems with that are two fold. In the first place if we do that all the time then we are going to lose the benefit of being able to get to the right spot on the tapes straight away ...

HIS HON. JUDGE STROYAN: Yes.

F MR. RIVLIN: And the second problem which we regard as a more substantial one or just as substantial, is this, that the more frequently the originals are played the greater the damage.

HIS HON. JUDGE STROYAN: The fainter they get.

MR. RIVLIN: Yes, and so what we would like to do is this, I would like to prove the copies from Mr. Penna and Mr. Eley at some stage ...

G HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: And work from those. Undoubtedly, Your Honour, when Mr. Perry gives evidence as he will I think tomorrow ...

HIS HON. JUDGE STROYAN: Yes.

H MR. RIVLIN: He will be asked if he can identify the voices ...

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: And for that purpose we shall play to him the original tapes.

HIS HON. JUDGE STROYAN: Yes.

A MR. RIVLIN: So that there can be no questions about it ...

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: But for the purpose of all the rest of the evidence, if possible, what we would like to do is to play through Mr. Penna's copy and Mr. Eley's copies.

B HIS HON. JUDGE STROYAN: Yes. Well that sounds sensible.

MR. RIVLIN: I await the reaction of the defendant.

MR. SYMONDS: My Lord, I do ask that the originals are played during the course of this trial, My Lord.

C HIS HON. JUDGE STROYAN: They are going to be. The originals will be played.

MR. SYMONDS: Yes.

HIS HON. JUDGE STROYAN: Not all the time but certainly once to me and once to the Jury, but if we play them all the time it may be that they may become so faint that we cannot hear them.

D MR. SYMONDS: I find that hard to imagine that by playing the tape recording several times that they will become faint.

MR. RIVLIN: I think the worry is with the originals something ~~may~~ go wrong and there may be some rubbing out and that is the last thing that we would wish to happen.

HIS HON. JUDGE STROYAN: You say the more you play them the greater the risk of something going wrong.

E MR. RIVLIN: Yes. I brought this problem to your attention because in our submission it is a significant problem. We obviously accept that Your Honour must hear the originals as important witnesses, but I hope it is not necessary every time a matter is referred to for us to go to the originals.

F HIS HON. JUDGE STROYAN: No I shouldn't think that it would be. I certainly must hear the originals, the Jury certainly must hear the originals, but when we discuss what we have heard I should have thought we could look at the transcript.

MR. RIVLIN: Your Honour yes.

G MR. SYMONDS: My Lord, in connection with that point I would say that the point that the transcripts were taken from copies and not from the originals ...

HIS HON. JUDGE STROYAN: Yes.

H MR. SYMONDS: And therefore copies should be played, I should say if they were true copies they should be the same as the transcripts My Lord. The main point is on the original there will be phenomena which may not have been transferred on to the copies during the course of transference and this is a very, very important point for the Defence My Lord.

A My Lord, also during the course of copying it is an occurrence - particularly when transcripts are being made - very garbled parts of conversation or difficult to hear conversation, it is possible to play the original tape recordings through a machine which cuts down on background noise, hum and such and brings up speech. In this way the speech is artificially made clearer and then the copies of that, My Lord, and I would ask - I cannot insist - but I would say under the best evidence rule and all the rules of evidence and justice, My Lord, we must play the originals and I am not at all happy about playing copies My Lord, not at all.

B HIS HON. JUDGE STROYAN: Well obviously I shall have to start by hearing the originals and I think it would be best to decide what happens next after I have done that and we will take one thing at a time.

MR. SYMONDS: My Lord, as the Prosecution have now said that Perry is going to be called I should also ask that Perry produces these tapes and gives original evidence on the tape recordings My Lord.

C MR. RIVLIN: Yes, thank you. I am sure we will do our best with Mr. Perry Your Honour. Your Honour, the first witness I propose to call is out of order because it is Sergeant Osborne. He has left the Force and we don't wish to keep him here for two or three days.

HIS HON. JUDGE STROYAN: No.

MR. RIVLIN: And so I am going to call him now.

D HIS HON. JUDGE STROYAN: What page is he on?

MR. RIVLIN: He is additional evidence Your Honour. He is additional evidence three, Volume 3 of the additional evidence. Page 4.

HIS HON. JUDGE STROYAN: Page 4.

MR. RIVLIN: Page 4, of the third bundle of additional evidence.

E HIS HON. JUDGE STROYAN: Yes.

DAVID OSBORNE (Detective Sergeant) SWORN

EXAMINED BY MR. RIVLIN

F Q: What is your full name please? - A: David Osborne.

Q: Where do you live Mr. Osborne? - A: 21 Brougham Hayes, Bath sir.

Q: Mr. Osborne, what is the nature of your employment at the present time?
A: I am a Licensed Grocer.

G Q: Were you a serving police officer in the Metropolitan Force? - A: Until January last year sir.

Q: Yes, and when you retired with what rank? - A: Detective Chief Inspector.

Q: In 1969 were you a Detective Sergeant? - A: Yes I was.

H Q: And do you remember the enquiry known as The Times Enquiry? - A: Yes I do.

Q: Did you play any part in that? - A: Yes, from ... em ... from the outset I was employed on it for three months.

Q: In what capacity? - A: Er ... I was in charge of the tapes concerned.

Q: Where did you receive those tapes from? - A: Em ... on two occasions I attended the Times newspaper offices. On the first occasion I was handed 15 tapes by ... em ... two reporters, Mounter and Lloyd.

HIS HON. JUDGE STROYAN: Just a moment. On two occasions you went to the Times offices? - A: Yes Your Honour.

HIS HON. JUDGE STROYAN: And what? - A: On the first occasion the reporters Mounter and Lloyd handed me 15 tapes which I numbered, and a short while later at the same offices I was handed another 4 which again I numbered.

MR. RIVLIN: So that you numbered the tapes 1 - 19 in all, is that right? - A: Yes sir.

Q: Yes, and were the 4 further tapes that you received magnetic tapes or cassette tapes or what? - A: Cassettes sir.

Q: The first 15 being? - A: Magnetic tapes, reel tapes.

HIS HON. JUDGE STROYAN: Just a moment. The first 15 were magnetic, next 4? A: Were cassettes Your Honour.

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: Can you remember on what date or indeed dates you received these 19 tapes? - A: Er ... it was in November shortly - some 3 or 4 weeks, 3 weeks or so - after the enquiry had started, it was late November. I beg your pardon, in December.

Q: In December? - A: 1969 sir, yes.

Q: Yes in the December of 1969. Now I would like you to have a look please if you would at certain exhibits. In fact you had better have a look at all 19. - A: Yes sir.

Q: Tapes, and I will refer you in particular to the ones which concern us in this case, do you understand? - A: Yes sir.

Q: Mr. Osborne.

HIS HON. JUDGE STROYAN: Have you got a date in December 1969?

MR. RIVLIN: No we haven't. Do you remember the date in December, 1969? - A: I think the first date ... I think the first date was the 19th.

Q: And do you remember how much ... how long after the first date the second date was? - A: It was still in December, something like a week or so sir.

Q: Very well. Now let us have a look at these. Would you look please at exhibit number 1. Your Honour, that is a relevant tape in this case and Your Honour might I hand to you for your information and assistance a schedule of markings on tapes and tape boxes?

MR. SYMONDS: Excuse me, My Lord, I would ask that only one tape at a time is put into the witness box because there is going to be a dispute later on about which are originals and which are masters. My Lord, one of the

originals is marked 'Master' and so is one of the copies.

HIS HON. JUDGE STROYAN: The witness is only going to be asked about one at a time.

A MR. RIVLIN: Yes. Your Honour, the Defence have received a copy of this document.

HIS HON. JUDGE STROYAN: Yes, thank you.

MR. RIVLIN: Your Honour, that document will become of real relevance when I call Mr. Lloyd and Mr. Mounter to give evidence.

B HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: Would you have a look at exhibit number 1 please? - A: Yes Your Honour.

Q: What do you say about that? - A: That is a tape which I numbered number 1. It is in my writing.

C Q: It is in your writing, and can you see that on it? - A: Yes I can sir, yes.

Q: Would you show it to His Honour where you have numbered it? - A: There is a number 1 there which says "Number 1 - phone calls - P to S."

D HIS HON. JUDGE STROYAN: May I see it please? - A: And it's also on the box itself, a stick on label in my writing which says "1 - 28th of October."

HIS HON. JUDGE STROYAN: May I see it please? Yes.

MR. RIVLIN: Would you have a look please at exhibit number 2 which is another relevant tape in this case. What do you say about that? - A: There is a stick on label on the reel itself with a number 2 in red biro which is my writing.

E Q: Are you able to say then whether that was one of the tapes that you received from those gentlemen? - A: Yes it was.

Q: Right. Would you please put that down now and let it be taken away, and have a look at exhibit number 3, and if Your Honour has your schedule you can see that this includes 3B which is part of a ... which is a conversation relevant in this case.

F HIS HON. JUDGE STROYAN: 3A is not?

MR. RIVLIN: 3A is not. 3B is the part that matters and that is ... I am sorry, I said exhibit number 3 didn't I? I apologise. I apologise because we have got 3 and 4 switched the wrong way round. Have a look at exhibit number 3 please, that is tape number 5 isn't it? - A: Yes sir.

G Q: And as regards that, Mr. Osborne, does it bear any markings that you can recognise? - A: There is a stick on label on it with a number 5 written in blue ink, on the reel itself, which is my writing. There is also a stick on label as used as a marker with red biro marks, graduation marks, including the word 'end' which is at the end of one of the graduations which I recognise as my writing.

H Q: What is that about? - A: That would be obviously the end of various conversations or relevant passages on the reels, for my benefit, when I am replaying them rather than having to search through the entire reel for a particular passage.

Q: Oh I see. May I ask you, Mr. Osborne, did you at any time mark any of these tapes? - A: The tapes themselves, no.

Q: The tapes themselves? - A: Stick on labels on the outside, yes.

A Q: And you did play them? - A: Oh yes.

Q: Very well, thank you. Now the next tape I would like you to look at please is our exhibit 4 that is tape 3, 3B.

HIS HON. JUDGE STROYAN: The last one you were looking at was exhibit 3, tape number 5?

B MR. RIVLIN: Your Honour yes.

HIS HON. JUDGE STROYAN: Which is relevant or not?

MR. RIVLIN: Which is relevant. It is the 31st of October, count 2.

HIS HON. JUDGE STROYAN: Yes.

C MR. RIVLIN: And this is the second tape that is relevant to count 2. Would you look at that one please.

HIS HON. JUDGE STROYAN: This is exhibit 4?

MR. RIVLIN: Exhibit 4. - A: On the box

D HIS HON. JUDGE STROYAN: Tapenumber?

MR. RIVLIN: Tape number 3B. If you look at your schedule Your Honour that is the one that is relevant. - A: On the box there is a stick on label and written on in ink in my writing the numbers 3 and 3A and 3B. On the reel itself there is a stick on label with similar graduation marks in red as I described on the previous exhibit which also includes on the graduations, my writing, "start 30/10/69" and then another graduation mark "start 31/10/69" and in blue ink in my writing 3A and 3B.

E Q: And so in relation to those two tapes what do you say about them? - A: These are the tapes that I took possession of, the originals.

Q: Very well. Now would you please

HIS HON. JUDGE STROYAN: So that is exhibits 3 and 4?

F MR. RIVLIN: Exhibits 3 and 4 yes. Now Your Honour I am not proposing to deal with the tapes that are not relevant in this case and so I go on now to tape number 13 which is our exhibit, sorry, tape number 14 which is our exhibit 5. Your Honour, we are coming on now ...

HIS HON. JUDGE STROYAN: Exhibit 5 is tape number 14?

G MR. RIVLIN: Tape number 14 and we are coming on to the third count, the 21st of November, count 3.

HIS HON. JUDGE STROYAN: Exhibit 5 tape number 14, October the 31st.

MR. RIVLIN: November the 21st. November the 21st.

H HIS HON. JUDGE STROYAN: Exhibit 5 in my document has got JDM October the 31st.

MR. RIVLIN: I think not Your Honour. If you look down tape 14 ...

HIS HON. JUDGE STROYAN: Yes.

A MR. RIVLIN: "Master" across the page, marking on tape, November the 21st. Your Honour, would it be helpful if I just called out the exhibit numbers so that you can write them down on the left hand side of these boxes?

HIS HON. JUDGE STROYAN: Yes it would be very helpful. JDM 1.

MR. RIVLIN: JDM 3, exhibit 2. JDM 4, exhibit 4. JDM 7, exhibit 3.

B HIS HON. JUDGE STROYAN: Is JDM ...

MR. RIVLIN: JDM 7 ...

HIS HON. JUDGE STROYAN: I am sorry, I have got JDM/3 and in the second box down is exhibit 2, in the next box down there are 3, 3A, 3B JDM/4.

C MR. RIVLIN: They are all JDM/4 is the tape.

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: That is exhibit number 4.

HIS HON. JUDGE STROYAN: That is exhibit 4, yes.

D MR. RIVLIN: The whole thing is exhibit 4.

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: The next one is JDM/7 exhibit 3. These are the wrong way round Your Honour.

HIS HON. JUDGE STROYAN: Yes I have got it now. Yes, what is the number 5 in that box then?

E MR. RIVLIN: That is number 5 in the box is tape number 5 out of the 19.

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: The next one is JDM/17 tape number 13, that is exhibit 6. Then JDM/18 tape number 14, exhibit 5 and

F HIS HON. JUDGE STROYAN: Those are out of order as well.

MR. RIVLIN: They are out of order as well, and Your Honour may I say that if necessary if Your Honour thinks it proper we can put them in order. JDM/16 tape number 15 is exhibit number 7 and so we are on now, aren't we, to exhibit number 5 tape number 14 JDM/18, November the 21st and you are looking at that one now are you? - A: Yes. The box has a stick on label on the side of it with the number 14 in red biro which is my writing.

G HIS HON. JUDGE STROYAN: I am sorry, where is that number? - A: On the side of the box.

HIS HON. JUDGE STROYAN: Yes. - A: That contains the tape, Your Honour,
...

H HIS HON. JUDGE STROYAN: Yes, what number? - A: 14 in red biro and it has a stick on label on the front of the box with a number 15 crossed out and

14 underneath which is my writing.

A HIS HON. JUDGE STROYAN: Yes. - A: There is the word 'master' on the back of the box in print and in blue biro which is my writing. On the reel itself has on it a stick on label with - in blue ink - 15 crossed out and 14 underneath which is my writing, and 3 red graduation marks. That is all I can see on this one Your Honour. There is a ... there is another label opposite with two black graduation marks which I really could not say were mine or not, but they are there and they are a similar sort of fashion to my red biro ones.

B MR. RIVLIN: Where ... somebody has listened to the tape? - A: It could be. It could have been I cannot remember.

Q: Or somebody - whether it is you or someone else? - A: It is a marking to show somewhere a particular spot on the tapes.

Q: Yes, very well. Very well.

C HIS HON. JUDGE STROYAN: May I see it please? On the back it has got 'master' and then "Sergeant Symonds at Grove, November 21st." - A: Yes I cannot be a hundred per cent certain about the rest of the writing you have referred to Your Honour, but the 'master'

HIS HON. JUDGE STROYAN: Yes. - A: Is mine.

HIS HON. JUDGE STROYAN: 'Master' is your word? - A: 'Master' is my terminology and it is my handwriting.

D HIS HON. JUDGE STROYAN: Yes. Yes.

E MR. RIVLIN: Now I would like you to have a look please at exhibit number 6, tape 13, JDM 17. - A: The box has a stick on label on the front with a number 14 in blue ink crossed out and 13 underneath which I think is my writing. I couldn't swear to it but it is similar to the others that I have described already, and crossed out in a similar fashion. On the back the word 'master' again is written at the top left which looks like my writing. On the tape container itself, the reel, there is a stick on label with graduation markings in black and the number 14 crossed out and 13 written underneath. Then another stick on label opposite that with some graduation markings on.

Q: Yes, and finally I would like you to look if you would please

F HIS HON. JUDGE STROYAN: Is that the one you received then? - A: Yes it is Your Honour.

MR. RIVLIN: Yes. I am going to ask him about all three together.

HIS HON. JUDGE STROYAN: Yes.

G MR. RIVLIN: Then would you look finally at exhibit number 7 which is a cassette tape? - A: On the box it has a stick on label with the number 16 crossed out and 15 written underneath in my writing. There is other writing on the box which I couldn't say whether or not it was mine.

Q: No. - A: On the tape cassette itself there is a stick on label and that has got 16 crossed out with 15 written underneath. That is my writing.

H Q: And so let us look at all those three tapes together which we have just been talking about, all I think relevant to the 21st of November of 1969.

What do you say about those Mr. Osborne? -

HIS HON. JUDGE STROYAN: 5, 6 and 7?

A MR. RIVLIN: 5? - A: Those originals are which I collected from Messrs. Lloyd and Mounter.

Q: At the time? - A: Yes in December, yes.

B Q: Yes thank you very much. Now what did you do with these tapes, all 19 of them, when they came into your possession? - A: I kept them ... er ... in my possession in every sense of the word, under lock and key, for purposes of transcription and with regard to these originals in fact for the purposes of examination at the E.M.I. laboratories and they were kept in my possession when not in my physical possession locked in a steel cabinet in the office.

Q: Did you ever let those tapes out of your control, indeed your sight, to anyone else? - A: No.

C Q: Without you being present? - A: No I didn't sir, no.

Q: And how long did you keep them for altogether, approximately? - A: Until a time in March, some three months, nearly four months in fact.

D Q: March '70? - A: March 1970. The examination at E.M.I. took something like three months and I handed over the keys when I left the enquiry to Detective Collins as he was then, who had been engaged with me throughout this period with the tapes.

HIS HON. JUDGE STROYAN: Examination at E.M.I. you said went on for 3 months?
A: Yes sir.

E HIS HON. JUDGE STROYAN: So you didn't have them in your possession then? -
A: I did. I went down there every morning and brought them back every-day Your Honour throughout, and we didn't leave them in the laboratories at lunchtimes, they came in my briefcase with me, they never left my possession.

MR. RIVLIN: During the whole of the time you were in possession of those tapes before they were I think handed over by you to Detective Constable Collins, did anyone tamper with them in any way? - A: No.

Q: Yes, would you please wait there.

F HIS HON. JUDGE STROYAN: Any questions Mr. Symonds?

CROSS-EXAMINED BY MR. SYMONDS

G Q: My Lord, I do have questions but it was a complete surprise when Mr. Osborne took the box now, I had no warning of this whatsoever and I just haven't sorted out my papers, I haven't found my list of questions or Mr. Osborne's questions. I would ask for a short recess of 5 or 10 minutes to find my papers on this matter?

HIS HON. JUDGE STROYAN: Well you have had his statement, presumably, for some time?

H MR. SYMONDS: My Lord, I have my papers in order as according to the list of witnesses as given to us by the Prosecution; their list of witnesses goes

Lloyd, Mounter, Hawkey so on and so on. I haven't got up^{to} Mr. Osborne and until he took the box a few moments ago he ... I was ^{not} imagining he was giving evidence at this time. I imagined he was giving evidence in a few days time.

A HIS HON. JUDGE STROYAN: I will sit here for a moment or two whilst you find your questions. Sit down Mr. Osborne if you wish. - A: I am obliged Your Honour.

MR. SYMONDS: Thank you My Lord.

HIS HON. JUDGE STROYAN: Yes.

B MR. SYMONDS: Mr. Osborne, when were you appointed Exhibits Officer in this case? - A: At the beginning of the enquiry. The date was something like either the 19th or the 29th of November, it was the day that the Times published their article which was a Saturday morning and I was informed that morning that I would be on this enquiry and in fact I was off that weekend and I started on the Monday.

Q: You were informed by? - A: Chief Superintendent Lambert.

C Q: Chief Superintendent Lambert, and so on that date you would have opened an Exhibits Book? - A: On the Monday.

Q: Could this Exhibits Book be produced please? May I see this book please?

HIS HON. JUDGE STROYAN: Not until he has identified it no.

D MR. SYMONDS: Oh. - A: Yes this appears to be the Exhibits Book as I recall it.

Q: You identify that as the Exhibits Book. May I see this book please sir?

HIS HON. JUDGE STROYAN: Yes.

E MR. SYMONDS: How did you identify this book Mr. Osborne, is it by your writing? - A: No. It has got various matters that are pertinent to that particular enquiry and it describes the Times offices and so on. It appears to me to be the Exhibits Book.

Q: And that book has been written in by a large number of different officers?
A: Yes it has.

F Q: As an exhibit was taken hold of the officer brought the exhibit to you or did he enter that himself into the Exhibits Book? - A: No the normal course of events is that the officers don't enter them up themselves in the Exhibits Book, they hand them to the Exhibits Officer or in this case it would have been D.C. Collins, and one of us would have made an entry.

G Q: Will you please find in that book the entry which refers to you receiving the copy tapes originally handed in to the Police at New Scotland Yard by the Times reporters - Mounter and Webb - on the night of the 28th of November? - A: There is no such entry as I can see. It should be in the first few pages and it is not, it starts off in fact with receiving the exhibits quoted this afternoon from the Times offices on the 3rd of December.

H Q: Can you tell me why there is no entry regarding the envelopes handed over by Mr. Mounter containing the copy tape recordings, copy statements and copy transcripts? - A: The only thing that I ... they didn't hand them to me in fact, they had been handed over by the reporters, I think they called at the Yard late Friday night, or if they didn't one way and another it was night time but patently I didn't receive them from the

reporters at all, other officers did.

Q: The reporters handed them to Detective Sergeant Hadrill is that correct?
A: If you tell me so. I don't know.

A HIS HON. JUDGE STROYAN: These are the copy tapes and transcripts which were the basis of the Times article, is that right?

MR. SYMONDS: Yes My Lord.

HIS HON. JUDGE STROYAN: Not handed to this witness. Yes.

B MR. SYMONDS: Can you tell me where these copy tapes are now? The listed copy tapes now in the possession of Scotland Yard? - A: No I can't.

Q: Is it in your experience that such evidence handed in to Scotland Yard should be listed in the Exhibits Book? - A: It is a hypothetical question. They weren't in this case.

C Q: Were the copy tapes handed in to Scotland Yard, did they ever come into your possession Mr. Osborne? - A: Yes they did.

Q: Can you tell me when? - A: It would have been - I am going from memory mind may years ago - it would have been as soon as I joined the enquiry, the week following the publication from the Times because in fact I used them for transcription purposes before I had the originals.

D Q: Are those copy tapes now entered into the official Exhibits Book for this enquiry? - A: Well as I have said before, I have looked in the beginning of the book, if you want me to go through every page, otherwise I cannot specifically say so.

Q: Is there an index? - A: Well I have looked up in here up until halfway through January and there is no mention of them.

E Q: Very good Mr. Osborne. Mr. Osborne, when you went to the Times offices to collect the alleged original tape recordings

HIS HON. JUDGE STROYAN: Just a moment, what has happened to that book? I think the book should be handed in to the Court and make it an exhibit.

MR. SYMONDS: I would like that to be made an exhibit please.

HIS HON. JUDGE STROYAN: What will be the Exhibit number?

F MR. RIVLIN: Your Honour, I will ascertain an exhibit number. I think it will be in the late fifties.

HIS HON. JUDGE STROYAN: Yes, very well, it will be given an exhibit number.

G MR. SYMONDS: Mr. Osborne, can you recall the exact date that you went to the Times offices in Fleet Street and took possession of 15 alleged original tape recordings? - A: Well that would be the date shown in this Exhibits Book.

Q: Will you refer to that date please.

HIS HON. JUDGE STROYAN: I don't think the Times offices ever were in Fleet Street. - A: No they weren't, Your Honour, I think it was Printing House Square.

H HIS HON. JUDGE STROYAN: Yes, that sounds more like it.

MR. SYMONDS: Printing House Square. - A: Yes, the first ... the first entries regarding those tapes were shown as the Times offices on the 3rd of December and received by me.

A Q: Mr. Osborne, do you have a note there of who exactly handed those

HIS HON. JUDGE STROYAN: Just a moment. This entry regarding those tapes is the date of what? - A: 3rd of December Your Honour, the first number of tapes, then there is a subsequent entry on the 5th of December regarding the 4 Grundig cassettes.

HIS HON. JUDGE STROYAN: Yes.

B MR. SYMONDS: Mr. Osborne, what number of tapes is shown? How many? - A: The first entry says 15 original tape recordings on the 3rd of December at the Times offices.

HIS HON. JUDGE STROYAN: It is shown as received by whom? - A: By me sir.

HIS HON. JUDGE STROYAN: You gave us a later date at one stage did you?

C MR. SYMONDS: On this date - the 3rd of December - you had been the Exhibits Officer in this case for several days having been appointed Exhibits Officer on the 29th of November, is that correct? - A: Yes.

Q: So at that time you had in your possession as Exhibits Officer under your care and control the copy tapes which had originally been handed in to Scotland Yard by the reporter Munter? - A: I would have had, yes, I think so.

D HIS HON. JUDGE STROYAN: You were talking about the originals a moment ago.

MR. SYMONDS: My Lord, if I can explain ...

HIS HON. JUDGE STROYAN: No, just a moment ago I understood you to be talking about the ... - A: The last question referred to the original tapes.

E HIS HON. JUDGE STROYAN: That is what I thought. yes. He has now referred to copy tapes. You want to refer now to the copy tapes?

MR. SYMONDS: Yes, My Lord, I wish to refer to the copy tapes which were handed over originally to the Police by the Times newspaper in support of their allegation, but after some days the Times were prevailed upon to hand over the originals as well for scientific examination.

F HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: Mr. Osborne, it is very unfortunate there is no record anywhere of the number of copy tapes handed over by the reporters because according to a statement made to Chief Superintendent Lambert and to Sergeant Hadrill the reporters Munter and Webb in actual fact handed over only 14 tapes on the 28th of November. Can you remember how many copy tapes you had in your possession at the time you went to collect the originals?
G A: No I cannot.

HIS HON. JUDGE STROYAN: Well did you have any copy tapes? - A: Yes I had your Honour, yes.

HIS HON. JUDGE STROYAN: You had? - A: Yes.

H MR. SYMONDS: Mr.

HIS HON. JUDGE STROYAN: Just a moment. Sorry, when I collected the original tapes on the 3rd and 5th of December I had copy tapes in my possession but I don't know how many, is that right? - A: That is so.

A HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: Mr. Osborne, as Exhibits Officer coming into possession of such evidence, tape recordings supplied by the Times in respect of a very serious allegation, you would of course have numbered the tapes and affixed some sort of exhibit label to these tape recordings as you did with the originals?
A: The exhibit label system didn't apply in those days. I would have put a number or some form of identification on them I have no doubt.

B Q: Will you please look at copy tape number 1.

HIS HON. JUDGE STROYAN: Is that a copy tape? - A: No. The copy tape ...

HIS HON. JUDGE STROYAN: Has that got an exhibit number?

C MR. RIVLIN: Your Honour, none of these copy tapes have exhibit numbers and unless it becomes apparent that they ought to be given exhibit numbers I respectfully suggest that they don't receive exhibit tape numbers at the moment. They are copies and we are just going to end up with a vast number of exhibits which aren't going to be strictly in evidence before the Court.

HIS HON. JUDGE STROYAN: No.

D MR. RIVLIN: If it becomes apparent, Your Honour, that they have to be exhibited, so be it, but for the time being might they just be looked at?

HIS HON. JUDGE STROYAN: They can be put aside and kept by themselves.

MR. RIVLIN: Yes.

HIS HON. JUDGE STROYAN: And numbered later if necessary . Copy tape number 1, yes what is the question about that?

E MR. SYMONDS: Do you identify that tape from your writing or identification numbers on it? - A: It has got "tape number 1" on it and so on, but I cannot say that specifically that it is in my writing.

Q: Will you now look inside the box. So you say that there is none of your writing, marking or any form of identification on the box, is that right?

F A: I'm not saying that. I am ^{not} certain it is none of my writing, for example, on the bottom of the box. There is a stick on label with red fibre tip 'copy tape number 1' written on it. There is a similar label with 'copy tape number 1' on the reel itself and quite honestly one way or the other I cannot say whether I wrote that. It is printed which does not help.

HIS HON. JUDGE STROYAN: Yes.

G MR. SYMONDS: If you did write that Mr. Osborne, when would you have written it?

HIS HON. JUDGE STROYAN: I don't see how he could really answer that?

MR. SYMONDS: My Lord, the procedure is known and obvious. It would have been written straight away on receipt on the 28th.

H HIS HON. JUDGE STROYAN: Well you can put that to him.

MR. SYMONDS: If you wrote those words identifying that tape - the words on the label - would you have written those words on the 28th - the 29th of November, 1969? - A: Well I shouldn't have done because I didn't receive any tapes on the 29th of November.

A

Q: The copy tapes were received, were they not, by the Metropolitan Police on the 28th of November? - A: So I believe, yes.

Q: And you are looking now at the first tape of that batch? - A: Yes.

Q: So, therefore, it should have been identified in some way by some officer on that date, the date it was given to the Police? - A: It probably was. In fact it ~~shows~~ both boxes and reel are labelled 'copy tape number 1' in red.

B

Q: But no date? - A: No date that I can see, no.

Q: And no reference in the Exhibits Book? - A: No.

Q: Will you look at the spool please Mr. Osborne? - A: I am looking at it.

C

Q: And apart from the label with 'copy tape 1' written on it, any other writing? - A: Yes there are some ...

Q: That you can identify? - A: There are initials on it. There is - printed on it in ink - is Police label and there are two sets of initials, none of which I readily recognise.

D

Q: Would you now please look at copy tape number 2? - A: Yes.

Q: Can you identify any writing on the box? - A: No. It is similar writing to the last exhibit.

Q: Will you read out what is written on the box in similar writing? - A: On the box again in the same or similar pen (in red) it is 'copy tape number 2' and printed underneath in ink is Police label. Similarly on the label on the reel itself with what appear to be the same two sets of initials.

E

Q: May I please look at copy tapes 1 and 2 My Lord?

HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: I haven't seen them. I look at the box of copy tape number 1 and I see the word 'master' crossed out. Did you see that Mr. Osborne? - A: No.

F

Q: Would you please show that to Mr. Osborne? Right in the top left hand corner. - A: Yes I am looking at it.

Q: Do you recognise the word 'master'? - A: No I don't. I cannot really make it out, but obviously it is a reasonable assumption to say it did say 'master' but it has been, well, scribbled over but without splitting hairs. I don't recognise it.

G

Q: May I see the box again? On the box are stuck two labels; one copy tape number 1 in red ink with a Police label underneath, you identify that? - A: Yes.

Q: There is also another labelled 'transcripts page 1' do you recognise that writing? - A: No that is not my writing.

H

- A**
- Q: But were you not responsible for making the Police transcripts of this tape at the outset? - A: Yes, but that is not my writing.
- Q: Did you notice a note inside the box, Mr. Osborne, which reads "first recording 28/10/69 telephone calls made by Perry from his mother's home"?
A: Yes.
- Q: Do you recognise that writing? - A: No.
- B**
- Q: Would such a note normally be made and placed in the exhibit, within the exhibit box containing the exhibit by the Exhibits Officer? - A: It depends on the individual Exhibits Officer.
- Q: On the spool of this tape the only writing is on a label affixed by the Police, is that correct? - A: It says "Police label" on it.
- Q: There is no other writing? - A: Not that I can see, no.
- C**
- Q: On the spool to say 'copy tape'. So when you received this copy tape from some officer whose name you don't remember in the early days of the enquiry - presumably the 29th - you would have no way of telling what this tape contained, what sort of conversation was on that other than by playing it, is that correct? - A: That was my job, to play it and to find out.
- Q: Mr. Osborne, these labels, stuck on labels, stuck on to the spool and stuck on to the box identify in fact the box and the spool, is that correct, there is no method of identification attached to the tape? -
A: No.
- D**
- Q: On any tape? - A: No.
- Q: Is it to your knowledge that it is normal practice to identify tapes on what is called the 'leader'? - A: It depends on the individual. Normal practice ... it depends where, what situation you are talking about, recording engineers' studios? I have no idea. No way would I write on the actual tape on the leader at either end in connection with an enquiry.
- E**
- Q: Not even to attach a sticky tape such as this to identify the tape recording? - A: There would be no point.
- Q: Mr. Osborne, have you ever played one of these tape recordings? - A: Yes.
- F**
- Q: And was it a machine such as this? - A: Well it would be something similar.
- Q: Same sort of machine? - A: Yes.
- Q: You therefore know that if you put on such a tape recording this is connected to an empty spool? - A: Yes.
- G**
- Q: And then they are both turned? - A: Yes.
- Q: And if they are left to turn eventually this tape comes away from this spool? - A: Yes.
- Q: Entirely, and wraps itself round the other tape? - A: Yes.
- H**
- Q: Right, so if you have identified this spool it means nothing because the tape could easily be transferred from one spool to another? - A: If I allowed the tape to break away from that spool.

Q: Mr. Osborne, did you notice when you had custody of the tapes that all the tapes had white leaders with the exception of one which had a red leader?

A: I can't remember. I didn't notice any particular, no

A Q: Is it to your knowledge that on these tapes the white leader always is in the front or the beginning of the tape and they always finish with what is called a 'red leader' - similar material - but normally red? -

A: As a rule it depends. It depends. If you rewind the tape it would start off from the red side.

B Q: Precisely. If you connected this to another tape and ran it through, this tape would come off and be the same tape as this, the only difference being that this would be red? - A: Yes.

Q: You don't recall a tape amongst these tapes - the originals - with a red leader, a red trailer? - A: No, not particularly, no.

C Q: If you had noticed it would you have come to the conclusion that that tape had in fact left that spool and been put on to another one? -
A: Not necessarily.

Q: May I see copy tape 2 please? On the box of copy tape 2 do you see in the top left hand corner - clearly marked - the word 'copy'? - A: Yes.

Q: Will you again look at copy tape 1 please Mr. Osborne. Apart from the Police label is the word 'copy' written on that box? - A: Yes it is on the top, printed.

D Q: And after the word 'master' crossed out? - A: Yes.

HIS HON. JUDGE STROYAN: Yes.

E MR. SYMONDS: Will you please look at copy tape number 2. Will you look at the spool please Mr. Osborne. Do you see something neatly printed on the spool? - A: Yes there is copy tape 2, number 2, in red and Police label which I have referred to already. There is another stick on label opposite which has got the ...

Q: Yes. Well just next to the neatly printed writing on the spool, well?
A: (No answer.)

Q: Copy tape and a signature? - A: Yes.

F Q: And the place where the tape recording, where the tape allegedly refers to? - A: That is on the label in the centre?

Q: Yes. - A: Which I haven't referred to so far.

Q: Will you carefully look at the label in the centre of the spool? -
A: Yes.

G Q: Will you read out what you see there please in handwriting? - A: Rose public house (hse.) Camberwell. Perry or Perrys. Symonds - D.S. Symonds. Copy October 28th 1969.

Q: Will you again look at copy tape number 1 please. Will you closely examine the label on the spool? - A: Yes.

Q: Do you see any writing there whatsoever? - A: No.

H Q: Thank you. Would you now look at copy tape number 3 please Mr. Osborne.

HIS HON. JUDGE STROYAN: How is this going to decide whether the originals are authentic?

A MR. SYMONDS: My Lord, on the 28th of November at about 10.15 p.m. representatives of The Times newspaper handed over to Detective Chief Superintendent Lambert and Detective Sergeant Hadrill 14 tape recordings My Lord ...

HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: Which they said were copy tape recordings.

B HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: We now have in evidence, My Lord, 15 tape recordings said to be originals.

HIS HON. JUDGE STROYAN: Not yet we haven't.

C MR. SYMONDS: We also have allegedly in this Court Room 15 copy tape recordings. Now, My Lord, I am trying to establish which are the 14 copy tape recordings handed over to the Police by Mr. Webb and Mr. Mounter on the 28th and which is number 15 and where has it come from? How has it come into existence? I think that is an important point My Lord.

HIS HON. JUDGE STROYAN: Well what I have got to decide is not whether the copy tapes are copy tapes, I have got to decide whether the originals are originals, do you see?

D MR. SYMONDS: My Lord, this is all because ... this all goes to continuity of handling which is part of the authenticity which you also have to decide My Lord. The originality and the authenticity; part of the authenticity is the continuity of handling. Originality will be dealt with by the experts My Lord.

E HIS HON. JUDGE STROYAN: What you are asking about now is you are not asking about the original tapes and I don't think we will find it helpful when we are talking about the continuity of handling of the original tapes that which has happened to the continuity of the copy tapes, do you see?

MR. SYMONDS: Well Mr. Osborne has come saying that he was appointed Exhibits Officer on this day, he was given the original tapes on this day, they have been in his custody until he handed them over.

F HIS HON. JUDGE STROYAN: Yes.

G MR. SYMONDS: Now, My Lord, I am trying not to cast any doubts on Mr. Osborne but on the general idea of this alleged continuity. In actual fact, My Lord, the tapes were in a terrible muddle all the way through. They were muddled up by the reporters, tape recordings were lost, both down behind cabinets and one down the back of cabinets, then JDM 14 was changed to 15 and so on as we come to examine the original tapes. I submit there is something very strange My Lord where the two reporters hand over 14 tape recordings to the Police and 15 originals and now we suddenly have 15 copies. I would like to know where ~~this~~ other copy has come from My Lord.

HIS HON. JUDGE STROYAN: Well then you had better ask the witness if he knows and then you will get an answer.

H MR. SYMONDS: Mr. Osborne, when you collected the 15 tapes from the Times offices did you realise that this was a different number of tapes to the number of recordings of copy recordings in your possession? - A: No

I didn't. The number that I expected to collect ...

Q: So we may assume from that that when you were given tape recordings - as appointed Exhibits Officer - you were given 15 copy tape recordings? -
A: Yes.

Q: And that was during the morning of the 29th? - A: Within a day or so, yes.

Q: So you were given 15 copy tape recordings on the morning of the 29th.

HIS HON. JUDGE STROYAN: I think he said he didn't know when he got them. They are not in the Exhibits Book.

MR. SYMONDS: But he said he was appointed Exhibits Officer, My Lord, he would have taken charge of all the exhibits. - A: No I didn't say that.

HIS HON. JUDGE STROYAN: He didn't say that at all.

MR. SYMONDS: He was not the Exhibits Officer?

HIS HON. JUDGE STROYAN: No he didn't say he was given charge of all those exhibits. - A: On the Saturday morning - if that was the 29th it was the Saturday morning - the day of the publication of the Times article, I was told by Chief Superintendent Lambert I would be engaged on the enquiry as Exhibits Officer. As I explained, I was off that weekend and I took up my duties the following week, during the course of which (amongst other things) I took possession from Mr. Lambert or one of the other officers, the copy tapes.

HIS HON. JUDGE STROYAN: Do you or can you recollect how many copy tapes you took possession of? - A: The only reason I can be certain, Your Honour, is that there must have been a similar number to those I collected from the reporters because that was the number I expected to collect and I checked them against the copies that I had already got.

HIS HON. JUDGE STROYAN: "I took possession of a similar number of copy tapes" From whom? - A: From the reporters Webb and Mounter Your Honour.

HIS HON. JUDGE STROYAN: Yes. "...as the number of originals which I collected on the 5th of December." Is that it? - A: I'm sorry My Lord?

HIS HON. JUDGE STROYAN: You have got a similar number of copy tapes? - A: Received from the reporters as against the copies already in my possession Your Honour.

HIS HON. JUDGE STROYAN: Oh let me get that right. Well, may we start with the copies because you had those first. - A: I had a number of copies in my possession.

HIS HON. JUDGE STROYAN: Who did you get those from? - A: From either Mr. Lambert or one of his deputies involved in the enquiry.

HIS HON. JUDGE STROYAN: Yes. - A: Which I used for transcription purposes and I later collected what must have been the same number of originals because that is the number I expected to collect i.e. 15 in the first instance which in fact I checked by playing.

HIS HON. JUDGE STROYAN: Just a moment. "I later collected a number of originals which corresponded with the copies I already had" is that right?
A: Yes Your Honour.

HIS HON. JUDGE STROYAN: You say now that you collected 15? - A: That is so, so the copies I already had must have been 15.

A HIS HON. JUDGE STROYAN: Collected 15 from the reporters so I must have had 15 copy tapes from Mr. Lambert or his staff? - A: Yes Your Honour.

HIS HON. JUDGE STROYAN: Is that right? - A: That is so, Your Honour.

HIS HON. JUDGE STROYAN: Yes.

B MR. SYMONDS: Mr. Osborne, when you took possession of the exhibits in the case either from Mr. Lambert or one of his deputies, did you receive one parcel containing envelopes, one of statements - marked by Mr. Gary Lloyd - marked number 1 - statement of original complainant, marked number 2, statement by Mounter marked number 3 and a list of evidence available marked number 4? - A: No.

Q: Is this shown in the Exhibits Book? - A: No it is not.

C Q: Are the statements made by Mr. Lloyd to the Times and given to the Police as evidence in support of the allegation put in that paper on that morning are these statements shown in that Exhibits Book? - A: Well again I will have to go right through.

Q: Well if you look at 'T' and on the top of the left hand page I think you might see what you are looking for? - A: In the index?

D Q: Look up 'T' and look up at the top of the left hand page. "Statements to the Times." - A: The index says in the top left hand page under 'T' tapes - 15 original exhibit number 1 which we have mentioned earlier.

Q: Does it have recorded there "transcripts of tape recordings"? - A: The next line says: "Tape transcripts by Times - number 2" and there are - I don't know if this is relevant really - it is a cheque book or something entry, number 23, which is a fair jump on a bit. I don't know how far you

E HIS HON. JUDGE STROYAN: Mr. Symonds.

MR. SYMONDS: My Lord, I have made the point here and that is that in the Police Exhibits Book they have made an entry, the first entry under 'T' they have made an entry showing 15 original tape recordings.

F HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: The second entry refers to the transcripts of those tape recordings made by the Times.

HIS HON. JUDGE STROYAN: Yes.

G MR. SYMONDS: Now the transcripts of those tape recordings made by the Times were handed over to the Police on the 28th of November and the tapes were handed over, I believe, on the 2nd of December My Lord.

HIS HON. JUDGE STROYAN: Well the originals - this witness says - on the 5th.

H MR. RIVLIN: The 3rd and the 5th. - A: The 3rd and the 5th. If it would help both the Court and Mr. Symonds, the second entry - number 2 - follows immediately the 15 original tape recordings which I took possession of at the Times offices. The second entry is the same date, time and place, taken possession of by me of transcripts of tapes by the Times. In other

words when I collected the 15 original tapes I was also handed transcripts of those tapes Your Honour.

MR. SYMONDS: On the 3rd of December? - A: Yes.

A Q: But you already had in your possession, transcripts of tape recordings handed to Detective Chief Superintendent Lambert on the 28th of November, do you recall that? - A: No.

Q: Those transcripts of tape recordings were new to you? - A: I cannot remember.

B Q: Thank you. My Lord, I don't know if I should read out this statement but it details the 14 tape recordings handed over by the Times reporters to New Scotland Yard officers? This statement was taken by Sergeant Hadrill in the presence of Detective Chief Superintendent Lambert.

HIS HON. JUDGE STROYAN: Well who is it purported to be made by?

MR. SYMONDS: It is made by Mounter My Lord.

C HIS HON. JUDGE STROYAN: Well then you can use it in cross-examining Mounter.

MR. SYMONDS: Thank you.

HIS HON. JUDGE STROYAN: Any more questions of this witness?

D MR. SYMONDS: Yes I do My Lord. If other tape recordings had been taken off the spools - I correct that - if tape recordings had been taken off the spools and other tapes had been put on to the spools, would you have any way, any means of knowing this? - A: No.

Q: Do you have any knowledge of pencil and chinagraph marks being found on the back of the original tapes? - A: No.

Q: Editing marks? - A: No.

E Q: Is it to your knowledge that such marks were found on the back of the original tapes? - A: No.

Q: On the 5th of December did you go once again to the Times offices? - A: Yes.

F Q: In Printing House Square? - A: Yes.

Q: And on that occasion did you take possession of 4 more recordings, this time in the form of Grundig tape cassettes? - A: Yes.

Q: Did you see any copying process taking place on that occasion? - A: No but I was also handed 4 copies of them.

G HIS HON. JUDGE STROYAN: Four?

MR. SYMONDS: But you did not

HIS HON. JUDGE STROYAN: Just a moment. Four cassette copies or four copies of the conversation in writing? - A: No they were copies of the cassettes Your Honour.

H HIS HON. JUDGE STROYAN: You mean one cassette copying another? - A: Yes.

HIS HON. JUDGE STROYAN: So you were handed the original cassette and copy cassette? - A: Yes.

A HIS HON. JUDGE STROYAN: I see, thank you. "I was handed the original and a copy cassette for each of the 4, is that right? - A: Yes Your Honour.

MR. SYMONDS: Yes, but did this copying process take place in your presence and under your direction? - A: No it didn't.

Q: Were you aware at that time of the existence of further copies of those tape recordings? - A: Yes.

B Q: Did you in fact take a statement about the handing over of these copies and originals? - A: I can only answer that, I probably would have done, I cannot remember specifically.

Q: Will you look at that statement please?

HIS HON. JUDGE STROYAN: He says he cannot remember whether he took it or not.

C MR. SYMONDS: My Lord

HIS HON. JUDGE STROYAN: What statement do you want?

MR. SYMONDS: My Lord, undoubtedly he would have taken the statement and therefore it must be in existence.

HIS HON. JUDGE STROYAN: Have you got one?

D MR. SYMONDS: It has not been served.

HIS HON. JUDGE STROYAN: No, well he cannot look at it then can he?

MR. SYMONDS: Did you take a statement from Mr. Hawkey on the 13th of January 1970? - A: I cannot remember.

E Q: Did you interview Mr. Hawkey on any occasion whatsoever? - A: I spoke to Mr. Hawkey on more than one occasion during the course

Q: Were you in the company of a Detective Chief Inspector Duffy? - A: I doN't know.

Q: Do you have your pocket book for this period? - A: No I haven't.

F Q: Do you know where it is? - A: I didn't have one.

Q: And where did you record your duties and whatever you did at that time? In which book? - A: In the Duty Book in the office.

Q: In the Action Book? - A: The Duty Book.

Q: Not in the Action Book? - A: No.

G Q: Was there an Action Book? - A: Not before I left to my knowledge, if there was.

H Q: Is there not normally an Action Book? - A: In normal enquiries such as serious crime and so on an Action Book, as I said, is started up at once but this wasn't a normal enquiry. This was the sort of enquiry where the persons concerned, the officers concerned, were on a note to note basis and there was no specific Action Book opened in the General Office hence my lack of knowledge of details of the enquiries of other officers. They

did their enquiries and reported to the boss, I did mine and did the same.

Q: Will you look at your official Police diary for the 13th of January, 1970?

A: That has probably been destroyed by now where-ever it could possibly be.

Q: You have no pocket book? - A: No.

Q: No diary, no record in any Action Book for that period of time? -

A: That is so.

Q: Thank you.

HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: Will you please look at tape number 1, exhibit 1? - A: Yes.

Q: Will you look at the box of tape number 1 exhibit 1? - A: Uh huh.

Q: Do you identify your writing on that box? - A: I do.

Q: Do you see the word 'master' on that box? - A: No.

Q: So is the position we now have tape - A: Just a second, sorry, I am looking at the bottom, at the top of the box and I am looking at the reel. The bottom of the box has the word 'master' in print underlined, then a dash or hyphen and it says "telephone call November 28th." It is in my writing.

HIS HON. JUDGE STROYAN: Mr. Symonds, I have seen all these boxes and tapes.

MR. SYMONDS: I haven't My Lord. I have not seen them at all. I would like to see these boxes My Lord.

HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: Because the continuity of handling of those tapes - according to the Prosecution - rests on the markings on the boxes and the reels.

HIS HON. JUDGE STROYAN It doesn't, it rests on the evidence of the witnesses.

MR. SYMONDS: Yes. May I please look at exhibit 1 in this case?

HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: Is it a fact that the lid of this box is in fact - apart from one sticker marked in red ink - is blank? - A: Yes.

Q: You don't recognise the writing on the bottom? - A: No.

Q: Did you notice any writing on the spool of this tape? - A: Well I don't know, I better have another look at it I suppose. I probably ... I am sure I told the Court about the labels that were on it just now.

Q: Yes. Well I will remind you there is no writing at all on the label on the spool of this tape. It is in a box with a blank top. Can I look at exhibit number 2 please?

HIS HON. JUDGE STROYAN: Mr. Symonds, I have seen all these. You need not take me through what is written on them all over again. You can make your submissions about it at the end of this part of the trial. I don't need to hear about it.

MR. SYMONDS: My Lord, I have never seen the exhibits before.

HIS HON. JUDGE STROYAN: You have not seen them at the last trial?

A MR. SYMONDS: My Lord, I have never ever seen those or held them in my hands before.

HIS HON. JUDGE STROYAN: Yes you can have a look at them, Mr. Osborne's evidence is obviously very important.

MR. SYMONDS: My Lord, and I think I shall take this chance of asking questions thoroughly.

B HIS HON. JUDGE STROYAN: Yes, next question.

MR. SYMONDS: Will you please look at the writing on the spool of that tape recording? - A: Yes.

Q: Do you see small neat printing? - A: Yes.

C Q: Identical or very similar to the writing on the spool of the copy tape?
A: Yes.

Q: Thank you. Will you look at exhibit 3 please.

HIS HON. JUDGE STROYAN: That is tape number 5.

MR. SYMONDS: Tape number 5.

D HIS HON. JUDGE STROYAN: Yes.

MR. SYMONDS: Do you see any writing on the spool of exhibit 3? - A: Yes I do.

Q: Similar to the previous exhibit? - A: No I wouldn't say that.

E MR. RIVLIN: Your Honour, we are going to have witnesses who are going to identify the handwritings inside these spools.

HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: And it may assist the defendant to know that. I am sure he does know it because it is in the statements.

F HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: And when he asks this officer if, in his opinion, handwriting is similar to someone else's that is really an inadmissible question.

HIS HON. JUDGE STROYAN: Yes. Well we are going to hear about the handwriting Mr. Symonds.

G MR. SYMONDS: Yes very good My Lord. Will you look at the box of exhibit 5 and the box of exhibit 6? - A: I am looking at 5 at the moment.

Q: 5. Do you identify the word 'master' as being in your handwriting? -
A: As I said, it looks like my handwriting.

Q: Very good. Will you look at exhibit 6? - A: I say writing, it is print.

H

Q: Print I am sorry. Do you recall making that mark on the box? - A: No.

HIS HON. JUDGE STROYAN: Yes.

A MR. SYMONDS: Will you look at the word 'master' on the box of exhibit 6 please? - A: I am almost certain that isn't my writing.

Q: That is not yours? - A: Again it is printed. It depends on how quickly one wants to print. It is normal printed capital letters. It doesn't look like mine but it could well be, I don't know.

B Q: Could you give me your reason why you should write 'master' on the box? Was this for your own ...? - A: I don't know whether I did.

Q: When you took possession of the original tapes and took them back to New Scotland Yard, where did you keep them Mr. Osborne? - A: As I said, in a steel locker in the office. I wasn't actually using them then.

C Q: And were all the other exhibits kept there? - A: In other lockers, yes and different drawers and so on.

Q: And the copy tapes would be in fact kept in that same locker? - A: Yes.

Q: So you had in the one locker 15 copy tapes and 15 originals? - A: In a locker consisting of 4 drawers I think it was.

D Q: You recall there was no writing at all on the box containing exhibit 1 original? - A: Yes there was.

Q: On the lid of the box? - A: There was. I had written number 1 on it.

Q: Apart from the sticker with your writing on it? - A: That's right.

Q: Do you recall that on the lid of the box of copy tape number 1 was at one time written the word 'master' since crossed out? - A: Yes.

E Q: Is it possible that the copy tapes and the original tapes could have become mixed whilst in the custody of the Police? - A: Not whilst they were in my custody they weren't.

HIS HON. JUDGE STROYAN: Yes.

F MR. SYMONDS: Do you recall a statement made by Mr. Hawkey the Sound Engineer to The Times and eventually given by the Times to the enquiry officers?
A: No.

Q: Would this have been entered in your Exhibit Book? - A: I can't recall it at all.

Q: And which refers to the Grundigs being copied?

G HIS HON. JUDGE STROYAN: You can ask Mr. Hawkey about that.

MR. SYMONDS: I beg your pardon My Lord?

HIS HON. JUDGE STROYAN: You can ask Mr. Hawkey about that, this witness says he doesn't remember it.

MR. SYMONDS: Yes My Lord I will ask Mr. Hawkey.

H HIS HON. JUDGE STROYAN: Yes very well. Anything more?

MR. SYMONDS: My Lord, I have perhaps one more question.

HIS HON. JUDGE STROYAN: Yes let us have it.

A MR. SYMONDS: And that will be all for this witness.

HIS HON. JUDGE STROYAN: You seem to have covered the ground very thoroughly.

MR. SYMONDS: Sergeant Osborne, sorry, Mr. Osborne, were you in fact responsible for preparing the original Police transcripts ...? - A: Yes.

B Q: Of the tape recordings? - A: Yes I was.

Q: Did you prepare those by yourself or with other officers? - A: With Detective Collins.

Q: Did you make these transcripts with the aid of any machinery used to amplify sounds and noises not normally heard by the human ear? - A: I used ... I think the best answer is I used an ordinary tape recorder. I played them and then I noted and wrote down with Collins what was said on them.

C Q: Were you very careful about making these Mr. Osborne? - A: As careful as I possibly could be, yes.

D Q: Did you refer - whilst making these transcripts - to the transcripts of the tape recordings prepared by the Times? - A: No. Mine were far more complete than the Times transcripts. They had sort of transcribed what they considered the more salient points fairly thoroughly but I transcribed literally every word on the tapes.

HIS HON. JUDGE STROYAN: That is every word that you could make out? - A: Every word I could make out Your Honour.

HIS HON. JUDGE STROYAN: Yes.

E MR. SYMONDS: Did you compare your transcripts against the Times transcripts at some stage? - A: Very early on I looked at their transcripts, but then I of necessity made my own.

Q: Were there many parts of the tape recordings that you could not understand? - A: Yes.

F Q: Did you describe this as 'garbled'? - A: You have the transcript there, yes.

Q: Did you play these transcripts over many times, the copy tape recordings over many times in order to understand further conversation? - A: Very many times.

Q: Recorded as 'garbled'? - A: Hundreds of times.

G Q: Was D.C. Collins responsible solely for any part of this set of tape recordings? - A: No I was. He was my assistant. He has of course a certain amount of joint responsibility.

Q: Will you please identify a full transcript of the tape recordings you made?

H MR. RIVLIN: I have sent for the original.

HIS HON. JUDGE STROYAN: Yes.

A MR. RIVLIN: If it will save time, Your Honour, I am sure the defendant would agree that we are talking about the full scale size transcript with the numbers on it.

HIS HON. JUDGE STROYAN: Yes.

B MR. SYMONDS: My Lord, I am referring to the full transcript which contains not only the conversations between Perry and another person, but conversations which took place after the alleged recording session, for example, between Mounter and Recording Engineer and Perry, not in the presence of police officers.

HIS HON. JUDGE STROYAN: Well I have been handed a document which I thought was the relevant one headed "Tape of October, 1969" is that the one?

C MR. SYMONDS: My Lord, the one I ask to be produced is written on the front R. v Symonds - Tape Transcripts which is referred to as the full transcripts. It includes the entire conversations on the tapes apart from those alleged to be with police officers and also the times are noted in minutes and seconds.

HIS HON. JUDGE STROYAN: Well is that the one which I have got which has got the times on the left starting with 4.01, is that right?

D MR. SYMONDS: My Lord, on tape 1 it should read "Aye" My Lord it would be better to look at tape 2 on page 6 and after the words "Item 4" at 8 minutes

HIS HON. JUDGE STROYAN: I think you must be looking at a different book.

MR. RIVLIN: Your Honour, you are being handed a copy of that to which the defendant refers.

HIS HON. JUDGE STROYAN: Yes. I have got that.

E MR. SYMONDS: After "Alright, see you later." Then car starts up. "Did ye get it all, did ye?" Do you have that one My Lord?

HIS HON. JUDGE STROYAN: Page 6?

MR. SYMONDS: Page 6.

F HIS HON. JUDGE STROYAN: Starts with the word "garbled" and ends with the word "end."

MR. SYMONDS: Yes, at 9.25.

HIS HON. JUDGE STROYAN: That is right. Yes I have got that. What is the question about that?

G MR. SYMONDS: My Lord, I would like to make this tape transcript an exhibit. This is the transcript made by Detective Sergeant Osborne.

HIS HON. JUDGE STROYAN: Well I don't think we can have the whole of them made an exhibit. You can ask the witness ...

MR. SYMONDS: Well may be ...

H HIS HON. JUDGE STROYAN: Just a moment. You can ask the witness if that is a copy of a transcript which he made.

MR. SYMONDS: Yes.

HIS HON. JUDGE STROYAN: I am not going to decide at this stage whether it should be an exhibit or not.

A MR. SYMONDS: Very good My Lord. Mr. Osborne, is that a true copy of the transcripts you made? - A: It looks like it.

Q: Mr. Osborne, you made these transcripts by listening to an ordinary tape recorder and not using any device to enlarge speech or to cut out background noise etc.? - A: Yes a good quality tape recorder.

B Q: And does this apply to tape 3A? - A: To all of them.

Q: Will you please listen to tape 3A? Is that possible? I would like this witness to listen to tape 3A.

C MR. RIVLIN: I think it is going to be very difficult to do that this evening Your Honour, and whilst not in any way wishing to dissuade the defendant from any of the questions he was wishing to ask but if he is considering asking the witness or suggesting to the witness that the tape transcript we are using is not an original one because if he is, he is not concerned with that at the present time in this trial within a trial.

HIS HON. JUDGE STROYAN: What we are concerned with are the tapes.

D MR. RIVLIN: We are concerned with the provinces of the continuity and the originality of the tapes. It may be that Mr. Symonds will have many points to make, who knows, on the transcripts ...

HIS HON. JUDGE STROYAN: Yes

MR. RIVLIN: But with great respect that is not the nature of the inquiry that we have embarked upon this afternoon.

E MR. SYMONDS: My Lord, in due course I will be making applications to you, My Lord, that these transcripts are not to be allowed during the course of the main trial.

HIS HON. JUDGE STROYAN: Which transcripts?

MR. SYMONDS: The transcripts provided by the Police to you of the tape recordings.

F HIS HON. JUDGE STROYAN: Well that is something which may or may not be likely if and when we get as far as a Jury trial, but it is not going to help me now. What I am trying to decide is whether the tape recordings are original. I am not trying to decide whether the transcripts are word for word right or not. What I have got to decide is whether or not they are prima facie original.

G MR. SYMONDS: My Lord, I have been asking for some time questions about the continuity of handling My Lord. I will eventually wish to raise the question of transcripts. Mr. Osborne is the man who made the original Police transcripts and that is why I made this last question about the transcripts.

H HIS HON. JUDGE STROYAN: Well that may be relevant if and when we get as far as the Jury trial, it is not relevant as far as I am concerned now. Whether he has got the transcripts right or wrong is something which goes to the weight of the evidence. What I have got to decide is whether the tapes are original or not.

MR. SYMONDS: Very good My Lord.

HIS HON. JUDGE STROYAN: Whether the transcripts are right or wrong is something you can deal with if and when we get to the Jury stage.

A MR. SYMONDS: My Lord, I have no other questions.

HIS HON. JUDGE STROYAN: Thank you. Any re-examination?

RE-EXAMINED BY MR. RIVLIN

B Q: I have two matters in re-examination. The first is this - dealing with the question of tape transcripts - was this your best effort? When I say that I don't ask it in any disparaging way but was this the best you could do when you listened to the tapes? - A: Well yes it was.

C Q: And how many times did you listen to the tapes? - A: Many, many times, but like on transcribing the tapes you have one more go and you find you have missed that, in other words it is not a hundred per cent, but it is as near a hundred per cent as I personally with Collins could have got it at that time.

D Q: I thought that. So that we all know the basis upon which these transcripts have been prepared. Now the only other matter is this, and it concerns the question of numbers on what is called the 'copy tapes.' I don't want there to be any doubt about this. I am not going to ask you to go through all of these copy tapes, but I would like to just count the copy tapes. There are 19 original tapes and would you just count the number of copy tapes so His Honour knows how many copy tapes we have got here. I think you can do it in fact quickly please.

HIS HON. JUDGE STROYAN: The 19 original tapes includes the 4 Grundig tapes.

E MR. RIVLIN: Includes the 4 Grundig tapes yes. - A: There are 15, I have counted them.

Q: There are 15 and 3, please count the number of cassette copies. - A: 4.

Q: So there are 4 cassette copies, so that there are 19? - A: 19

F Q: Thank you, so do they tally with the number of? - A: Originals that I took possession of from the reporters sir.

Q: Yes, thank you very much. That is all I have to ask you and I invite His Honour to release the witness at least at this stage for the purposes of the trial within a trial.

HIS HON. JUDGE STROYAN: Yes, thank you. - A: I am obliged, thank you.

G MR. SYMONDS: My Lord, there is one last point.

HIS HON. JUDGE STROYAN: What is it?

MR. SYMONDS: Mr. Osborne, during your custody of the tapes did any senior officers have control of these tapes without your being present? - A: No.

H HIS HON. JUDGE STROYAN: Thank you.

MR. SYMONDS: Thank you very much.

MR. RIVLIN: Yes, thank you Mr. Osborne.

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(WITNESS WITHDREW)

MR. RIVLIN: Now, Your Honour, just one or two matters that I hope will help to save time tomorrow. We are going to call Mr. Lloyd and Mr. Mounter and Mr. Hawkey, hopefully, tomorrow, although his father apparently has died over the weekend.

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HIS HON. JUDGE STROYAN: Oh dear.

MR. RIVLIN: But certainly Mr. Perry we can get in there tomorrow now. Your Honour, in order to save time and the frequent playing of the originals, what I would invite Your Honour to do is this, is when we start tomorrow morning ...

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HIS HON. JUDGE STROYAN: Yes.

MR. RIVLIN: We have the three of them in Court and they can all listen to the alleged originals being played ...

HIS HON. JUDGE STROYAN: Yes.

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MR. RIVLIN: And then they can be asked questions about it when they come to give evidence.

HIS HON. JUDGE STROYAN: Yes. Yes that seems sensible.

MR. SYMONDS: My Lord, I submit that only Perry can in fact give the original evidence as to what was on the tapes.

MR. RIVLIN: Yes.

E

MR. SYMONDS: My Lord, Lloyd and Mounter could only give secondary evidence.

HIS HON. JUDGE STROYAN: Well what we are concerned with ...

MR. SYMONDS: Hearsay.

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HIS HON. JUDGE STROYAN: What we are concerned with is whether the tapes were original. They can all give evidence about that and whether they have been tampered with - and the evidence to some extent about that - and that is the evidence that we are going to hear tomorrow. There is no reason I can see why they shouldn't all hear the tapes being played for the first time. We will save a bit of time like that and when they have done that the other two will go out of Court so that they don't hear your cross-examination and they will be giving their evidence like any other witnesses.

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MR. SYMONDS: Thank you My Lord.

HIS HON. JUDGE STROYAN: And you now know who is to be called tomorrow so you can be already to deal with that person and it is important to try and concentrate on the matters which I have got to decide, which are whether the tapes are authentic and whether they have been in any way tampered with. Those are the points. It is not a question of whether they are right word for word when you listen to the tape and you look at

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the transcript, do you understand, are they original? Are they authentic? Have they been tampered with? Very well. I don't know when the prisoner is likely to arrive here in the morning but certainly, Mr. Birnberg, if you wish to see him tomorrow morning you may see him on the same basis as you saw him this afternoon.

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(Court adjourned for the day)

B

"I certify that I took shorthand notes of the proceedings in the trial of Regina v John Alexander Symonds and that the pages numbered 1 - 71 are a correct and complete transcript of my said shorthand notes to the best of my skill and ability"

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