

IN THE CROWN COURT

Before:

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

Held at Teesside Crown Court,
Victoria Buildings,
Middlesbrough,
Cleveland.

Friday 13th March 1981

R E G I N A

v

JOHN ALEXANDER SYMONDS

.....
(Transcript of the Shorthand Notes of MRS. ANN LEE of HUMPHREYS BARNETT AND
CO., Official Shorthand Writers, 19 Queen Victoria Street, Leeds, LS1 6BD.
Tele: 455082
.....

MR. G. RIVLIN Q.C. with MR. RADCLIFFE appeared as Counsel for the Prosecution.
THE ACCUSED appeared on his own behalf.

A

I N D E X

B

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TEESSIDE CROWN COURT

BEFORE: HIS HONOUR JUDGE R.A.R. STROYAN Q.C.

FRIDAY, 13th MARCH 1981

A
THE DEFENDANT: My lord I would like to commence by making a statement on the law as it related to what you now have to decide.

B
THE JUDGE: Mr. Symonds if you prefer you can rest by sitting down if you are not feeling well.

C
THE DEFENDANT: I submit there is no dispute but your task is to decide on the balance of the probabilities whether these tapes are both original and authentic as is contended by the prosecution and thus whether they are admissible as evidence. It has not been claimed by the prosecution that these tapes are copies and so I will not deal with the question of the admissibility of copies. I take it that the prosecution would accept that if these tapes were shown to be copies that they would thereby become inadmissible as they would not have shown the whereabouts of the originals or why they were not available.

I take it also your lordship would accept the one out all out principle which was generally accepted in the case of ROBSON & HARRIS. LORD EDMUND DAVIES on page 11 of our transcript on his judgment in that case...

D
THE JUDGE: Give me a moment please. LORD JUSTICE EDMUND DAVIES page 11 do you say.

THE DEFENDANT: Yes my lord.

THE JUDGE: Yes.

E
THE DEFENDANT: ... of the transcript of his judgment of the case of ROBSON & HARRIS in the Court of Appeal, said, and I quote, "That evidence" and he is referring to the evidence of The Times newspapers ...

THE JUDGE: Where is this?

F
THE DEFENDANT: ... "was of such an interlocked nature that the Crown accepted, and rightly as he learned judge considered, that either all the recordings were admissible in evidence or all should be excluded and, that if for example, one was suspected to be a copy then all should be rejected", as it was tersely put. It was a case of one out all out."

G
I recommend that opinion to your lordship with one proviso to which I shall return. It is my contention that if it be shown that even a tape like number one to which your lordship has indicated he does not attach a great deal of importance, is shown to be a copy then all the other tapes become inadmissible. Because they are so inextricably bound up together to impugn one is to impugn all, as was accepted in the ROBSON & HARRIS case.

H
I should just like to submit at this point that my reservations to the one out all out principle arises out of one part of MR. JUSTICE SHAW's judgment in the case of ROBSON & HARRIS. He says, on page 6 of our transcript,

A "In the end I came to the view that in continuity clarity and coherence their quality was of the least adequate to enable the jury to form a fair and reasonable assessment of the conversations which were recorded."

B In my submission your lordship, even if you decide that these tapes are admissible as evidence, you should exclude tape two exhibit two. This is, by general agreement, a tape of very poor quality in terms of continuity, clarity and coherence and there is no direct evidence that goes to the first count that I am facing. There is also no back-up tape, except we hear snatches of conversation which are highly prejudicial to me without being of any probative value whatsoever. It cannot help the jury to decide whether I accepted money on October 28th by listening to tape two, but the impression given by that tape is highly prejudicial to the defence and I invite you to hold this tape inadmissible in any event, not because there is any evidence as to whether its a copy or not, but because its prejudicial value exceeds its probative value.

C With that exception my lord I invite you to follow the one out all out principle. It is therefore the task which I face to convince you that on the balance of probabilities at least one of these tapes is a copy or not authentic.

D As MR. JUSTICE KILNER BROWN puts it in the STEPHENSON case, "Once the original is impugned and sufficient details as to certain peculiarities in proffered evidence have been examined in court and once the situation is reached that it is likely that the proffered evidence is not the original, it is not the primary and best evidence, that seems to me to create a situation in which whether on reasonable grounds or whether on a prime facie basis the judge is left with no alternative but to reject the evidence.

E And so saying, the honourable judge whose opinion Mr. Rivlin yesterday accepted, continued to find the evidence to be inadmissible. It is my submission, that your honour has heard ample evidence that care was not taken of these tapes, especially in the early days of this investigation and, to quote the words of MR. JUSTICE KILNER BROWN in STEPHENSON, "It is however quite plain to me that there was opportunity for someone to have interfered with the original and putting it at its lowest there is clear evidence before me that some interference may have taken place."

F THE JUDGE: Just one moment there please. One thing I would like to hear you about is this, Mr. Symonds, is that the experts you called all said there was no evidence of any doctoring of the conversations which they said had in fact taken place. Now that is different from what confronted MR. JUSTICE KILNER BROWN. Do you see? Do you see what I mean?

G THE DEFENDANT: Yes my lord, the experts said they could show no evidence but they also said that they could show no evidence anyway of tapes which had been even competently edited and I would suggest that the marks on the tapes, which are undisputed, show some form of interference and the Hums show another form of interference my lord, because those hums should not be there. That is what I meant by interference at this stage.

H THE JUDGE: Yes.

THE DEFENDANT: Marks on the 50 kHz and the (inaudible) kHz, so it is at this level that I put my submission, that there was opportunity to interfere with these tapes and the marks alone, which are undisputed, clearly indicate that there was indeed some interference at sometime by somebody.

A It was to deal with the first limb of the proposition, the opportunity was there to interfere, the opportunity that occupied a lot of my cross-examination of the reporters. It is certainly my contention that the reporters are not telling the truth when they dealt in their evidence with the custody of the tapes and indeed the prosecution accept that their witnesses are not telling the truth in some respects.

B I now turn to deal with the evidence your lordship heard as to the opportunity that existed for interference or for a mix-up of the tapes. The evidence of the two journalists has been that from almost the first hour they realised the importance of these tapes. If we are to accept their evidence they were aware almost immediately that the tapes might be used in a court of law and they were also advised on how important it was to keep the tapes safe.

C Royd tells us after the first day the tapes were always virgin. Orton tells us they were almost always virgin. Orton who gave evidence after the evidence for the prosecution said they may have used second hand tapes, not just a question of memory my lord, but Lloyd and Mounter referred to near contemporaneous statements before asserting the virginity of the tapes.

D My lord the reporters by "virginity" made it quite clear they meant brand-new untouched tapes broken from their seals and plastic bag containers. That has been the standard of reporters all along your lordship and I would remind you that two men have gone to prison on that evidence, that all the tapes were brand-new virgin and it was only yesterday or a couple of days ago the situation has now changed and they may not have been brand-new when they were used.

E Tape three, your lordship, we are asked to accept that Hawkey, or the reporters, brought back a used tape, used the previous day and proceeded to wind it on to the machine because 3B does not start at the beginning of the tape my lord, it starts halfway through the tape. I would ask is it really feasible that this could be proffered as an original. I would suggest, my lord, it is much more likely this tape has resulted from the copying process and possibly perhaps the reporters wanted to put several conversations together on one tape for compactness because I would suggest in the early days of the enquiry they were solely concerned with the story they were going to run.

F There are many points of conflict in the evidence and there are .. there is much evidence of mixing up of tapes. I refer your lordship to the markings on the boxes and on the spools. There are many mix-ups there. Some spools are marked "original" and some not. Some boxes are marked either with "Master", either at the time or the time of copying or, we have heard, by a police officer later. We have discovered a number of tapes in the wrong boxes my lord. Some of the original tapes were in the wrong box and at least one of the police copy tapes is in the wrong box and, further to that at least one of The Times copy tapes is in the wrong box.

G I would submit that this portrays an incompetence somewhere in the handling of the tapes. However an important point arose with one witness I did call apart from the experts, Miss Millard, and she gave evidence that there was in fact a copying process each night at the end of a recording exercise.

I suggest to your lordship this is very probably the true story.

H THE JUDGE: I don't think she did. What she said is, "I believe the tapes were taken straight back to LSO to be copied."

THE DEFENDANT: Yes my lord I put some dates to her, a series of dates.

A THE JUDGE: Yes I know you did. Her answer to all of this was, "My memory about copies is very confused."

A THE DEFENDANT: I then asked her I think my lord, "Was it confused at the time you made your statement to the police the week after the last event."

THE JUDGE: "I could remember when I made my witness statement", she says.

THE DEFENDANT: Yes.

B THE JUDGE: Yes.

B THE DEFENDANT: Your lordship has read the statements which are used for the purposes of this enquiry instead of calling witnesses.

THE JUDGE: Yes.

C THE DEFENDANT: And I would invite your lordship in this most particularly to the statements referring to the fact that Location Sounds Facilities invoiced The Times newspapers for more tapes than are accounted for here and I would suggest that these further tapes were in fact used during the editing and copying processes.

D A further important point which arises during the evidence of a mix-up and a lack of carefulness in handling, was the matter that 14 tapes being delivered to the police on the 28th November, fourteen copy tapes which grew into fifteen originals some days later. That point has never been answered my lord.

I was referring you to Mr. Pridmore's statement.

THE JUDGE: Yes I have got that.

THE DEFENDANT: Which is page ten of your bundle.

E THE JUDGE: Yes I have got that.

THE DEFENDANT: On the first page of the statement. On the 30th October, he was setting off to meet the reporters at the address of Perry's brother and he states that before going to this address, "I had to report to The Times office to collect an envelope which I understood to contain some tapes."

F THE JUDGE: That is 30th October?

THE DEFENDANT: On the 30th October my lord.

THE JUDGE: Yes.

G THE DEFENDANT: And it was mentioned in evidence by Mr. Lloyd that, going back on his original statement that the tapes had been kept in a locked safe from day one, he did at one stage admit that to my recollection that in the early part he was in the habit of looking after the tapes by taking them home and I would suggest my lord that these two tapes on the 30th .. there is no evidence of a copying process until the 11th November, these must have been original tapes.

H Supporting that is the statement of Mr. Owen, on page one of your bundle, when he describes on the 30th October picking up Mr. Pridmore and going to

and going to/...

-5-

A The Times office for Mr. Pridmore to collect a parcel and then taking him on to Beckenham and, later on in Mr. Owen's statement, there is another important point which I would draw to your lordship's notice. It is on page seven of your bundle, when after discussing how he had driven Mr. Pridmore around to take up his position during a meeting, it says on the very bottom of page six, "I then drove with Mr. Pridmore towards the pub, but before we reached the entrance to the car park Mr. Pridmore, decided it would be better for him to try walking through the car park with his camera to try and get photographs of the meeting."

B My lord I mention that point in respect of this business of the photographer walking past and being spotted and your lordship some conversation which should have been on the tape recording.

I would also during the statements, in the statement made, you read the statement of Mr. Buchanan ...

C THE JUDGE: Yes.

THE DEFENDANT: ... in which Mr. Buchanan states he received a very peculiar 'phone call from LSF sometime after the original tape recordings had been given to EMI and the question was whether EMI could establish whether the tapes were original true masters or copy edited masters. I would suggest that is of some interest to you my lord.

D THE JUDGE: Whatever may be the truth about that it appears that Mr. Buchanan and Mr. Hewson, with whom he had the conversation, are at odds. with each other.

E THE DEFENDANT: Yes my lord. My lord referring to Miss Dippey's statements, it is quite clear that she did transcribe from an original and, regarding Miss Waugh's telephone call it is clear that this was a practice at the beginning of The Times enquiry for the secretaries to transcribe from originals and in fact that she had possession of them, for I think it says a period of seven to ten days. Her evidence to you about a key your lordship will notice conflicts with the evidence we have heard here about who had a key or keys for the filing cabinet.

THE JUDGE: Miss Dippey you said?

F THE DEFENDANT: Miss Dippey and Miss Waugh, two depositions. I ask your lordship to pay attention to them.

THE JUDGE: Yes I am looking at Miss Dippey's statement now, Where is the passage.

THE DEFENDANT: Miss Dippey's statement is page 58.

THE JUDGE: Yes I am looking at it. I have got that.

G THE DEFENDANT: And, on the first page she says the tape recording she was asked to transcribe was an original one.

THE JUDGE: Yes I am looking at the passage about the key. Where is that?

THE DEFENDANT: That's in Miss Waugh's.

H THE JUDGE: Oh Miss Waugh, I am sorry. Yes I have seen that in Miss Waugh's statement.

A

THE DEFENDANT: Yes and Miss Waugh is also fairly certain that the tapes which she was transcribing from were in fact original ones. The prosecution had admitted that Messrs. Osborne Vernon and Collins did allow the tapes out of their custody on one or two occasions to a Mr. Marsden and to somebody else and here I come to the question of Mr. Moody, your lordship, who was in charge of this enquiry for the bulk of the time the enquiry was being undertaken, and I would submit to your lordship that as the officer in charge of the enquiry he would have access to tape recordings and that in the light of subsequent events this should also be regarded with suspicion.

B

THE JUDGE: Well that is not what Mr. Duffy said is it or the other officers come to that .. but I see what you mean.

THE DEFENDANT: My lord I am making this submission under two heads really.

THE JUDGE: Yes I see what you mean. Yes.

C

THE DEFENDANT: That the burden on the prosecution is to produce to you before this court the original tape recordings.

THE JUDGE: Yes.

D

THE DEFENDANT: And to back that up by saying well they must be originals because this has been the continuity of them, they have been handled carefully and by these people of impeccable character throughout and I would submit to your lordship that at least one danger of their handling and their care and custody, it was a considerable stage of some years, that Mr. Moody did have access to them your lordship, and I would remind you also of the evidence of Sergeant Osborne where the originals and the copies were kept in a steel... in a cabinet or a box at Scotland Yard and there could have been a mix-up. It could have happened that a copy has got into an original box.

E

The mix-up could have been either at the time they were copied or during their custody in The Times office or during their custody by the police, because my lord, some of these tape recordings now produced as originals, according to our experts just could not be true virgin originals taken under the conditions described on a battery recorder. By that I am referring to the 50 hz hum could only be induced by running of a recorder from the mains, or near to a source of a 50 hz hum.

F

The extra tape of November 21st I would particularly remind you to bear in mind we have had evidence that a tape was taken from Mr. Hawkey and this in fact was the only occasion when independent people had an opportunity to monitor conversations and would have been of the most important tape recording.

G

THE JUDGE: I think there was some evidence that it was listened to by, or the recording was listened to by the two people on a receiver in the car, but when they came to transcribe and listen to the tape recording, that there was nothing on it. I think that was the evidence about that one. In other words they overheard the conversation but there turned out to be nothing on the tape. I think that was the one.

H

THE DEFENDANT: The evidence was there was nothing on the tape your lordship. I think one of the reporters, I don't think Mr. Hawkey, said that and there is in the documents evidence, this tape recording was listened to by people in the car after the meeting on the way back to Bedford.

A There are a number of tapes missing my lord not just that one, which I think is another matter for your attention.

Well coming to the tapes. The second limb of the KILNER BROWN proposition that is clear evidence of some interference may have taken place which involves the evidence of the three experts. I would remind you, your lordship, that the prosecution have not called any evidence to rebut that given by experts called for the defence.

B THE JUDGE: Well I think what they said was that any conversations alleged did in fact take place and that there was no evidence of the doctoring of those conversations. That was my impression really of the evidence.

THE DEFENDANT: I think the words were that they said these words were spoken ... these words were spoken ... I don't think our experts ever said, and they could not say ... that that was the true conversation that took place on that day.

C THE JUDGE: Well Mr. Taylor said, "Given the tapes were not virgin, I have been unable to find no defect which indicates fabrication and", said Mr. Taylor, he had never suggested the tapes were fabricated.

D THE DEFENDANT: Yes my lord but Mr. Taylor also said where Mr. Kilick said it would take him one hour to teach a person to edit tapes beyond his eventual discovery of edits, I think Mr. Taylor reduced it to several minutes and I would remind your lordship that because the experts say they can find no evidence of editing does not mean that the tapes ... they are not saying that the tapes have not been edited. I think all our experts made a particular point of that.

E THE JUDGE: Well let me just look at that. Mr. Kilick says, "There is no positive evidence that any of the tapes have been edited", and went on to say, "The conversation did take place. There is nothing in the conversation to indicate doctoring of any kind." That is what Mr. Kilick said, and Mr. Ford said the conversation was all the same duration and he was not able to find any evidence of fabrication either.

THE DEFENDANT: My lord when I called the three expert witnesses I was trying to follow very narrowly the narrow path you had outlined on several occasions.

F THE JUDGE: Yes.

G THE DEFENDANT: And my lord then my narrow path was (a) I attempted to lay the groundwork before the experts my lord to show there was an opportunity to interfere and I called the experts purely to show that there was for long enough on these tapes which show that they did not conform to their given speeds (?) and, furthermore, this phenomena indicated a form of copying. I did not put any questions to the experts about other matters my lord and the points you have raised were brought out in fact in cross-examination by Mr. Rivlin.

H THE JUDGE: Yes.

THE DEFENDANT: My lord I submit to you that what you must bear in mind here is the phenomena and that is you have evidence of phenomena which could only have been induced on to a tape recording by a copying process

A THE JUDGE: What Mr. Ford said was there's no evidence that any conversation has been inserted or removed nor any evidence to the contrary."

THE DEFENDANT: Yes my lord but they also said they could not expect to find such evidence after a competent editing job had been done.

THE JUDGE: Yes. Yes, I am sorry to interrupt.

B THE DEFENDANT: My lord the evidence of the experts also relates to the markings on the boxes which clearly suggests the tapes were getting mixed up.

C Before I deal with the expert evidence I should like to emphasize one aspect of tape recordings as evidence. Mr. Ford was very sceptical about the use of tape recordings in evidence and so were Mr. Kilick and Mr. Taylor. The reason is that each of them emphasized that even they could not detect whether a tape is an original or a copy, whether it is edited or un-edited, provided it is done with some competence.

D Clearly there are dangers in accepting tapes in evidence in court which have not yet been fully aired. As I say my lord I would say it would hardly be in Mr. Ford or Mr. Kilick's own interests that tape recordings should never be allowed. It is the personal experience of Mr. Kilick and Mr. Ford which makes them so sceptical of such evidence and warned us that we should be very wary of taped evidence. Having said that, it was the opinion of Mr. Ford and Mr. Kilick that there were phenomena on these tapes which could not be explained by the histories described.

E It should be said that there were no formal admissions made at the Old Bailey about the virginity of tapes. By agreement the experts reports were exchanged. Mr. Ford's was given at the Old Bailey and Mr. Kilick's here and I would ask if it is purely a coincidence that the admission then came from the prosecution. My lord in 1972 and in 1970 the prosecution had been told by their own experts that something was wrong and 3B and 5 were not virgin originals, as I understand it, and yet it was between 1970-1972 I received no information from the Director of Public Prosecutions informing me that such an admission was to be made and no such admission was made at my committal in 1971. I would suggest to your lordship that this is the only way the prosecution can hope to continue. They either have to admit that 3B and 5 are used tapes or they have to admit that they are copies. There is no more evidence of one than the other my lord, but they cannot admit they are copies because copies are inadmissible. Instead they now say that they are used. A fact the one person who should know, Mr. Hawkey, strenuously denies. In the face of such a contradiction how can it be argued there are no indications of interference? Both Mr. Ford and Mr. Kilick found editing marks on 3B and 5 my lord and Mr. Rivlin sought to make something of Mr. Taylor's admission that he had not found the marks.

G If we ignore, as should be ignored, Mr. Woodlands (?) shabby accusations, what that leads to is the suggestion the tapes Mr. Ford and Mr. Kilick were shown and examined and which are now produced, are not the same tapes as Mr. Taylor examined. In other words these tapes are not the originals.

H In either event the marks show clear signs of interference. We are told by Mr. Ford that there was 30 hz tone burst on tape 1-5. All experts agree that

A the only explanation for this unique phenomena was that someone was trying to make these tapes look virgin. This is another clear sign of interference. We were also told we had 50 hz hum on tapes one and 3B and thirteen. The hums on tapes 3B and thirteen can only be explained by some sort of electrical interference during the copying process. None of the experts thought much of Mr. Newman's explanation for tape thirteen my lord, the Crystal Palace idea. There's this blatant evidence of interference with almost all these tapes and coupled with the evidence of opportunity for interference it is hard to think of a case where there could be clearer evidence that the prosecution have not discharged the burden upon them. That of proving on the balance of probabilities that these tapes are original and authentic. This is not simply a question of deciding whether there was a *prima facie* case. It is, as MR. JUSTICE SHAW in ROBSON-Harris argued, it might be enough to hear just the prosecution case for originality and authenticity without hearing the defence on it. Well my lord in any event he did hear the defence case.

B THE JUDGE: Yes.

C THE DEFENDANT: My lord in Mr. Rivlin's submissions to you he did raise one or two points, in three categories. The evidence of the person involved. The evidence of those who made the recordings and had custody and the expert evidence. I would suggest, as I think Mr. Ford and Mr. Killick did, this category should also include those who had custody for a lengthy period of time and that was the police.

D Well my lord that is just about as far as I got in making my case this morning and I will leave it at that.

THE JUDGE: Yes thank you. Well I shall rise and consider those submissions.

E RETIRED

RULING

F THE JUDGE: When I started to hear this case two weeks ago, on the 2nd of March, and I was asked to decide on the *voir dire* before the case was opened before the jury, but after the jury was sworn, the issue whether the tape recordings which are exhibits one to seven and the conversations allegedly reported on them were admissible in evidence, I was reluctant to do so because G of my fear that if I did I would in effect be robbing the jury of a very important part of their task and in that connection I bore in mind two authorities which seemed to me to be helpful on the topic. The first is the case of MAQSUD ALI, 1965 2 ALL ENGLAND reports at page 264. That was a case H which went to the Court of Appeal and in which the learned judge undertook and sought

and sought/..

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A the view of the evidence with a view to deciding the same sort of issues
which I had to decide and MR. JUSTICE MARSHALL in the Court of Appeal
MAQSUD ALI (1965) 2 ALL ENGLAND page 471, said that, "In the view of this
B court, the cases must be rare where the judge is justified in undertaking his
own investigation into the weight of the evidence which, subject to proper
directions by the judge, is really the province of the jury, but the court
sees there can be cases where the issues of admissibility and weight can
C overlay each other. We think that this is one of those rare cases in which
the judge was justified in doing what he did."

That case was followed by that of STEVENSON (1971 1 ALL ENGLAND at page
D 678. That was a case in which MR. JUSTICE KILNER BROWN carried out the same
procedure in effect as I have done in this case and, at the end of the day
he ruled that the evidence before him was NOT admissible.

In doing so, however, he said this at page 680, "Nevertheless, as a general
E rule, it seems to me to be highly undesirable, and indeed wrong for such an
investigation to take place before the judge. If it is regarded as a general
practice it would lead to the ludicrous situation that in every case where
an accused person said that the prosecution evidence is fabricated, the judge
would be called upon to usurp the functions of the jury.

F That last passage accords very closely with my own views. If I were in the
future to be confronted with another case in which I was asked, on the voir dire,
to decide the admissibility of conversations recorded on tape, I should require
a very great deal of persuasion before I undertook the same sort of enquiry
which I have undertaken in this case.

G Here, however, this case follows on that of the case of ROBSON & HARRIS,
after a long period during which the defendant, of his own volition, was absent
from this country from 1972-1980 but, nevertheless, some of the same witnesses
are involved in this case as were involved in that, and the general inquiry
H which produced the tape recording evidence was the same Times enquiry into
corruption in the Metropolitan Police Force.

A In the ROBSON & HARRIS case Mr. JUSTICE SHAW as he then was, adopted the course which I have done before he admitted the evidence of the tape recordings. Similarly at the abortive trial of Mr. Symonds at the Central Criminal Court last November, the learned recorder of London also heard the same issue on the voir dire, though at the end of the voir dire in that case **B** the proceedings came to an end.

Both the prosecution and the defendant asked me to adopt the same course of hearing evidence as to the admissibility of the tape recordings on the voir dire and the circumstances which I have mentioned led me to conclude that this **C** was one of the rare occasions on which it was right to do so.

As a result I have, during the last two weeks, heard a great deal of evidence. I have heard extensive cross-examination of prosecution witnesses and I have heard expert and other evidence from the defendant and I have read very carefully **D** a number of statements which were put before me as agreed evidence for the purposes of the trial of this issue. I have read the transcript of what was said by MR. JUSTICE SHAW, as he then was, on this particular topic, in the case of ROBSON & HARRIS. I have derived great assistance from what he said in that **E** case and I respectfully entirely agree with the approach which he adopted there. It seems to me entirely appropriate to adopt the same approach here. In particular I have to guard against setting myself up as a jury to decide any of these points.

F On the authorities, in my judgment, all I have to decide is a very limited issue, and that is whether, on the balance of probabilities there is a prima facie case that the tapes, exhibits one to seven, are originals

G In this case it has also been submitted to me that the tapes, again on the balance of probabilities, are prima facie authentic, in the sense they have not been doctored with or fabricated.

I have considered the evidence I have heard with great care and, similarly, I have considered the submissions the defendant has made to me this morning with **H** great care.

great care.

A Many of his points appear to me to be jury points which are not for me to decide.

B At the end of it all I have reached the clear conclusion, on the balance of probabilities, that there is a strong prima facia case that the tapes are original and indeed that they are authentic. I therefore rule that the tapes and the conversations which are alleged to be recorded on them are admissible as evidence before the jury.

C The case will therefore proceed before the jury but that it will do after the adjournment. I think it wise to say nothing about the evidence.

.....

MR. RIVLIN: Your honour might I mention a matter before the adjournment?

THE JUDGE: Yes.

D MR. RIVLIN: It is this and it concerns the documents which are to go before the jury in my opening.

THE JUDGE: Yes.

MR. RIVLIN: May I tell your honour the documents I propose to put before the jury.

THE JUDGE: Yes.

E MR. RIVLIN: This has been communicated to the defence but I think I am led to believe there may be an objection. The documents I would like to put before the jury in my opening are as follows: First, a copy of the indictment showing three counts.

THE JUDGE: Yes.

F MR. RIVLIN: I think there is no objection to that.

THE JUDGE: Yes.

MR. RIVLIN: Second, copies of the photographs exhibits eleven and twelve. Those are the photographs taken by the photographers of the meetings, on the 31st October and the 21st November.

G THE JUDGE: Yes. I don't think I have seen those.

MR. RIVLIN: You probably wont have done. I would also like the jury to see exhibit sixteen, which is a copy of Perry's criminal record. I think it is right they should have that.

H THE JUDGE: Yes.

have that/Yes/...

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A MR. RIVLIN: I should like the jury to have exhibit 31 which is a typewritten transcript of the defendant's diary. That is his duty diary.

THE JUDGE: Yes.

MR. RIVLIN: And I am led to believe there is no objection to any of those documents going in. I would now like to turn to exhibit 35 which at present comprises four transcripts of evidence.

B THE JUDGE: Yes.

MR. RIVLIN: May I begin by saying your honour I would like if I may to re-arrange them so that they come in chronological and logical order. So that they are as follows: Exhibit 35(a), the Times transcripts. Your honour it is clear that was a document the defendant wished to put before the court.

C THE JUDGE: Yes.

D MR. RIVLIN: And if I can then make exhibit 35(b) the first police transcript. That is the one with the pages in that are strictly speaking not relevant to this case but which show the cut-off point and the like in tape 5 exhibit No. 3. Third, exhibit 35(c), which is the second edited police transcript. That is the one that contains no inadmissible material, no technically inadmissible material and, finally, the transcript that I would wish to use in opening the case, exhibit 35(d), that which will be proved by Mr. Penna and Mr. Eley, who are the technicians who have been in recent times, listening to these tapes and transcribing them.

THE JUDGE: Yes.

E MR. RIVLIN: And your honour may remember that I formally withdrew that last transcript, exhibit 35(d), on this basis, that I felt it inappropriate to trouble to prove it during the course of the voir dire.

THE JUDGE: Yes.

MR. RIVLIN: My reason for that was quite simply this, that I was concerned about the amount of time the voir dire was taking.

F THE JUDGE: Yes so was I.

MR. RIVLIN: Finally your honour I would like the jury to have ...

THE JUDGE: Are there four transcripts?

G MR. RIVLIN: Can I come back to the transcripts in a moment? I am just giving a list at the moment. Finally, I would like the jury to have the schedule of tapes that you have got. You remember that document?

THE JUDGE: Schedule of markings?

H MR. RIVLIN: That's the second one. I would like them to have the schedule of markings. I would also like them to have the schedule of tapes which is the list, the lengthwise list.

THE JUDGE: Yes.

A

MR. RIVLIN: Those are the two schedules I would like the jury to have, with your leave, because I feel that that may assist them to follow the evidence as it is being given.

Coming back to the transcripts. The position is this. That so far as the prosecution is concerned I am content to admit exhibit 35 (a), the Times transcript, if the defendant wishes the jury to have it. Although I must confess that at the present time we are not in a position to formally prove it by calling the transcribers. We have got Miss Dippey for example.

B

THE JUDGE: Yes.

MR. RIVLIN: And a statement from her and we have Miss Waugh who is in Australia, but we have not got any statement of evidence that has been put in proving that transcript. My attitude is that if the defendant would like the jury to have that I am content that they should have it.

C

THE JUDGE: Yes.

MR. RIVLIN: As regards exhibit 35(b) which will be the first police transcript, the one with the conversations that are either not relevant or not directly related to this case but do show that there has been a cut off point and such like. My attitude to that is this, that if the defendant wishes the jury to have it by all means, no objection.

D

THE JUDGE: I should have thought it would be more convenient, for opening purposes, to have only one before the jury.

MR. RIVLIN: Well your honour certainly. What I would like to do, if I may say so, is this. To take the bundles available and tell the jury they may receive them but I am not going to be taking the jury through a lot of different transcripts. Far from it.

E

THE JUDGE: No.

MR. RIVLIN: But the point I make is this, that if the defendant wishes the jury to have that bundle, the first bundle of police transcripts, I should have no objection and it can be put in on the basis it need not be formally proved.

F

THE JUDGE: Yes.

MR. RIVLIN: The exhibit number 35 (c) can of course be proved and has been proved in the trial within a trial.

THE JUDGE: Yes.

G

MR. RIVLIN: That is the second police transcript, the one that was originally in your papers your honour.

THE JUDGE: Yes.

MR. RIVLIN: And it is carefully numbered and it certainly is of some assistance from that point of view.

H

THE JUDGE: Yes.

MR. RIVLIN: And of course, it is further assistance from the defendant's point of

view, is that I would be the first to say that there are things which are... that there are things in that transcript which do not appear in the first Times transcript because the police heard more we say, than the original transcribers from The Times.

A

THE JUDGE: Yes.

MR. RIVLIN: And I would also be the first to admit there are things in the last transcript, the Penna and Eley transcript, which are not in the police transcript, again because we say, that Mr. Penna and Mr. Eley were able to hear, were able to decipher more than the police were able to.

B

THE JUDGE: Yes.

MR. RIVLIN: Now your honour it is the Penna and Eley transcript I would like to put before the jury, for two reasons.

The first reason is this, that we say that this is now the best transcript in that the most has been obtained from the recordings that can be. Although I may say, your honour, that Mr. Penna and Mr. Eley are still finding things as they listen to the tape as no doubt we all shall from time to time.

C

THE JUDGE: Yes.

MR. RIVLIN: My second reason for wanting to use that transcript is this, that it is very carefully tabulated with times which means that whoever is operating the tape recording machine when we come to hear the tapes, will be able to use that transcript. All of us in court will be able to use it and help us go straight to that part of the tape which is relevant.

D

THE JUDGE: It can if necessary be proved?

MR. RIVLIN: It can, not if necessary, it can and will be proved.

E

THE JUDGE: Yes.

MR. RIVLIN: Now it is right to say this your honour and I draw this to your attention, that if you look at page 24 of that transcript and it is tape 14, its the last of the tapes. Page 24 page 3.

THE JUDGE: This is (d) is it?

F

MR. RIVLIN: This is right, well your honour I don't know whether up to now you have been calling it (d). I think up to now you have not. I think you have been calling it (c) up to now but I am proposing it should be called (d).

THE JUDGE: (c) appears to be a copy of the defendant's diary.

MR. RIVLIN: No your honour I think not. We can certainly sort that out.

G

THE JUDGE: Yes.

MR. RIVLIN: But it is the one you were listening to as you heard the tapes.

THE JUDGE: Yes I remember it. Yes I have it 35(c).

H

MR. RIVLIN: Yes it is, now would you be so kind as to mark it 35(d) so we have

them all in chronological order your honour. If you look at page 24 of that and at the bottom of the page you will see timing 27/28.

A THE JUDGE: Yes.

MR. RIVLIN: And its Mr. Perry saying, "Yeh here you are I may as well give you that now. I can't, I can't get fuck all" and then "Cheers."

THE JUDGE: Yes.

B MR. RIVLIN: Now your honour, I hope that I have the right place here to point this out but the situation is this, that that particular passage does not appear on any other transcript. It is marked in the police transcript as "garbled" because it comes very quickly. It does sound garbled. But the situation is, your honour, that Mr. Penna and Mr. Eley say that if you listen to the tapes frequently enough and with a trained ear, you can get that and, may I say that when your honour was listening to the tapes, I didn't notice you asking to go back on that bit.

C THE JUDGE: No.

MR. RIVLIN: Perhaps because you heard it for yourself and indeed, your honour, with the use of this equipment in open court it is possible to hear things much more clearly I am led to believe, than, with this sort of loud speaker equipment, than it is if you are just doing it in a little room using a tape recorder and speaker.

D THE JUDGE: Yes.

E MR. RIVLIN: Now, as I understand it, the defendant very strongly objects to this transcript because it contains that passage, but my submission to your honour is this, that the jury will in any event and must be told, as your honour has said, the transcripts are there for their guidance and benefit. They are not intended to be holy writ and that this will be proved and the situation is the jury will have to make up their own minds about this. Mr. Penna and Mr. Eley will both say that they can hear those words and it is interesting your honour, it is an interesting feature, that although this transcript was, is, based upon tape 14, if you listen to tape 13, which is the one which was slung around Perry's neck, these words come out louder because Perry of course was doing the talking and Mr. Eley and Mr. Penna will point that out to the court in due course, but my point is this, your honour, that given that that will be proved and that is, as I understand it, the only matter to which any serious objection is taken in this transcript, it is appropriate and proper that the jury should have this transcript for their assistance and guidance during the course of this case.

F THE JUDGE: Yes.

G MR. RIVLIN: Your honour if I may illustrate the point that I am making to you. If you look at the police transcript, the one with all the numbers on, exhibit number 35(c), as I would like to call it, the second police transcript and, if you look at page 18 of that ...

H THE JUDGE: Yes.

MR. RIVLIN: I think I have the right place. If you would just allow me a moment please.

moment please/...

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A THE JUDGE: I am not sure I have the right document. The transcript of the police. Is that the one.

MR. RIVLIN: Yes.

THE JUDGE: 35(a) it appears to be marked.

B MR. RIVLIN: Yes if you just allow me a moment please. I am losing track of my transcripts. The position is this, perhaps your honour will take it from me, this little passage does not appear on the police transcript.

THE JUDGE: No.

C MR. RIVLIN: Its the second police transcript I think at page 18 but it does not appear on that and I accept that that, that the police officers when they were transcribing so long ago did not manage to decipher that bit of garbled conversation.

THE JUDGE: Yes.

MR. RIVLIN: In relation to documents and finally, may I tell your honour it is our intention in due course to put in and to prove a plan of the area, but the plan that I would like to put in is not available at the present time.

D THE JUDGE: No. Yes. Mr. Symonds before I ask you to deal with those points. You have heard my ruling. The tapes are going to go before the jury so a fresh trial will be started before the jury. I think it is right now you have had the experience of conducting the proceedings for yourself during the last two weeks, to ask you again if you would like the assistance of counsel during the rest of the trial.

E MR. SYMONDS: Can I discuss that with my solicitor during the lunch break?

F THE JUDGE: Yes. Don't answer me now but I think you might, now you know what it is like, you might find that an advantage and, in addition, we have now reached a stage in which you might like sometime to consider the matter with your solicitor in any event. It seems to me that the position now deserves some consideration. I will say no more than that. I think the best thing for me to do is to rise now and when I sit again we will deal with those points. If you want to instruct counsel well then you shall have the necessary adjournment but I must emphasize Mr. Symonds, if you were to instruct counsel at this stage which it would be perfectly proper and possible for you to do, I should certainly not expect you to dispense with his services at a later stage in the trial.

MR. SYMONDS: I would not.

G ADJOURNED FOR LUNCH

THE JUDGE: Now then Mr. Symonds, have you thought about what I said?

MR. SYMONDS: Yes my lord, I have decided to carry on.

THE JUDGE: Carry on yourself?

H MR. SYMONDS: Yes.

yourself/Yes/...

-18-

THE JUDGE: Without counsel?

MR. SYMONDS: Yes, my lord. There are some points I would like to raise before the jury comes in.

THE JUDGE: Yes.

MR. SYMONDS: The first is the question of witnesses. I wonder if your lordship is still trying to stand by the ruling, the practice direction of about seventeen witnesses or whether now would be the right time to decide which witnesses I can call.

THE JUDGE: Well so far as witnesses are concerned, what I am not prepared to do is to have a lot of people brought here, if I may put it "on spec.". If your solicitor can take statements from witnesses whose evidence they say is relevant then you shall call them.

MR. SYMONDS: The other point is the matter of transcripts. I do wish to make an application to you that transcripts should not be allowed in fact in this case. Any transcripts at all. I would submit your lordship that they are, that it is hearsay evidence.

THE JUDGE: It is not it is going to be proved.

MR. SYMONDS: I am sorry, I beg your pardon my lord.

THE JUDGE: The transcripts are going to be proved.

MR. SYMONDS: Yes but they are going to be proved by witnesses who were not present at the time of the alleged conversation.

THE JUDGE: The witnesses will prove what they have written down on the transcript and the important thing is the jury will hear what is on the tapes.

MR. SYMONDS: I would say, to borrow an expression from Mr. Cumming, that in the matter of transcripts the ear follows the eye and much of these transcripts .. of the tape recordings is garbled and the fact that there are four transcripts in existence at the moment differing quite considerably between each other, is a factor in that.

THE JUDGE: It may be said they get better and better. I think it will be for the jury to say whether, when they have heard the tapes, what the contents amount to.

MR. SYMONDS: The Times staff did listen to them many times and made the transcript, and then certain police officers listened to them many times and made another transcript and this is a third attempt, as it were, and I would suggest that many parts of the transcript, exhibit 35, which is now 35 (d) are not intelligible to the human ear and I would suggest the transcripts have been prepared by some mechanical means by filtering out background noises and then guessing at words to concoct very very damaging statements, and I would suggest to your lordship if you yourself cannot hear and understand every word on those tapes you should now allow the transcripts.

THE JUDGE: Well different people may hear different things but what I shall certainly direct the jury is that what counts is what they hear from the tape recordings. They are entitled to use the transcripts as a means of keeping track and, if they hear something, it may be the jury will hear something which is not on any of the transcripts, and if they are sure it is right then

would be entitled to give effect to it.

A MR. SYMONDS: But I submit its very prejudicial to me for the jury, first of all to see what has been imagined by some people, with the use of complicated machinery and, naturally they will follow on from that and be minded to think that in fact was what was said. The transcripts were used in the ROBSON-HARRIS case my lord, but I would suggest that the circumstances there were somewhat different as to the nature of the conversations.

B THE JUDGE: Yes.

MR. SYMONDS: The statements in my case are supposed to be part of the offence and not statements of confessions. They are words spoken on the tape recordings. I submit that does make a difference.

THE JUDGE: What makes a difference?

C MR. SYMONDS: The fact that the words spoken are not alleged to be a confession.

THE JUDGE: Well I expect what the prosecution are going to say is that those words indicate that you were acting corruptly. To put it as shortly as I can.

D MR. SYMONDS: Yes my lord but those words are disputed. They are indecipherable to the normal ear. At the Old Bailey it was agreed between both parties that all words which were originally transcribed by The Times typist as garbled and in many cases by the police transcribers as garbled and are now purported to be what I would call (inaudible) should be blanked out from the transcripts and I believe transcripts were prepared with all the disputed words blanked out. I suggest if you are going to allow the transcripts in, I suggest that is a fairer way than persuading the jury to imagine they can hear something, having read very disputed and unintelligible words on the present transcript.

E THE JUDGE: Yes?

MR. SYMONDS: Prosecuting counsel mentioned some exhibits this morning which he proposed to give to the jury straightaway and I would object to that your lordship. The photographs I object to and exhibit 31. I am not sure what that is.

THE JUDGE: A transcript of your own diary.

F MR. SYMONDS: Yes I object to that my lord.

THE JUDGE: Why?

MR. SYMONDS: I would like it to be proved.

THE JUDGE: Why?

G MR. SYMONDS: Because certain parts I object to and for the same reason I object to the transcripts. I think it is prejudicial to have things which are objected to and to have things which are going to be objected to and may not be properly proved and may well be eventually withdrawn and which may be before the jury for several weeks before I have a chance to take steps to have them withdrawn. I don't see the necessity for photographs and my diary to be given to the jury at this stage. I object very very strongly to the transcripts because in my opinion the transcripts are even more

H

prejudicial than indeed listening to the tape recordings.

A

THE JUDGE: You object to the transcripts, photograph and the diary. Anything else?

MR. SYMONDS: Yes my lord, talking about prejudice, as you know there is a lot of prejudice in this case.

THE JUDGE: There has been none so far.

B

MR. SYMONDS: Well the High Court judge did think there was prejudice my lord and that is why this trial is being held here in fact in the North of England, and following on from that my lord, I would like to ask you to take certain steps to warn the jury about certain matters when they come into this court.

THE JUDGE: I don't know what you want me to warn them about. I am sure ...

C

MR. SYMONDS: My lord there are books and newspaper articles in existence if brought to the notice of the jury during the course of this trial which would, in my submission, be very very prejudicial to me.

THE JUDGE: I for my part don't know of any books but I would certainly warn the jury that there may be books, I don't know of any.

D

MR. RIVLIN: There is one book your honour called, the "Fall of the Yard", in which there are innumerable references in the early part of the book to the defendant.

THE JUDGE: I didn't know about that. Yes.

MR. RIVLIN: Your honour, yes, and I would readily concede that it could be prejudicial to the defendant if any juror was to read that book.

E

THE JUDGE: Yes.

MR. RIVLIN: "The fall of the Yard". "The Fall of Scotland Yard."

THE JUDGE: Yes. If you would like me to warn them not to read that book ...

F

MR. SYMONDS: I would like you to warn them not to read anything. I would rather you did not mention the book because jurors are human and to mention the identity of the book may arise interest in it.

THE JUDGE: Well what warning would you like me to give?

MR. SYMONDS: To be very careful about reading anything.

G

THE JUDGE: I shall certainly warn them to try the case on the evidence they hear in the case and nothing else and to be very careful about anything that they read.

MR. SYMONDS: Yes my lord and going back to the witnesses, I wonder when we could arrange this? Am I to believe I must show you some statements now by the witnesses?

H

THE JUDGE: No.

MR. SYMONDS: ... before I instruct my solicitor to arrange to bring them before

the court?

A THE JUDGE: No. Your solicitors can interview any witnesses whom they believe to be relevant to the matters concerned and, when they have statements from them, if they are of the view those are relevant, then the witnesses can be called.

MR. SYMONDS: Well my lord there are already 40 or 50 statements in existence which I think show the relevance of the witnesses but my solicitors I think feel in rather an awkward position about calling them.

B THE JUDGE: I am sure your solicitors need feel under no anxiety at all about calling relevant witnesses and, if you have any statement of any witness taken by your solicitors, which are in their view relevant, you can certainly call them.

C MR. SYMONDS: My lord in respect of Mr. Rivlin's opening speech there are one or two points I would like to bring up, particularly the reference to Harris, which I consider unnecessary, the fact Mr. Rivlin says Harris was convicted in respect of this, or the words I should say give the indication that Harris was eventually convicted. I wonder whether Mr. Rivlin would be prepared to change that little bit. I don't think it makes very much difference to his speech as such.

THE JUDGE: Anything else?

D MR. SYMONDS: No my lord, that's all for now my lord.

THE JUDGE: Mmmm?

MR. SYMONDS: No my lord.

THE JUDGE: Very well. Mr. Rivlin perhaps you can deal quite shortly with the matters, first of all the transcripts.

E MR. RIVLIN: Certainly so far as the transcripts are concerned it is right there was an agreement, as I understand it, at the Old Bailey, although I was not made aware of it until the defendant mentioned it, that the jury should have in opening transcripts with certain contested passages deleted. Now the situation is this that, for my part, in this trial, I cannot see any justification for that. It seems to me the situation is here that these are going to be proved by witnesses giving evidence under oath and I cannot see any justification for it. What I am prepared to do ...

THE JUDGE: The Old Bailey of course only got as far as the voir dire of course.

MR. RIVLIN: Got as far as the opening.

THE JUDGE: The opening before the jury?

G MR. RIVLIN: Yes got as far as the opening.

THE JUDGE: Yes I see.

MR. RIVLIN: What I am prepared to do in relation to page 24 which is the passage that I specifically referred you to...

H THE JUDGE: I should have thought that could be cut off.

MR. RIVLIN: Yes to have that cut off. Well not cut off, we could have it

blanked out and the situation is there is when Mr. Penna and Mr. Eley give evidence they can give the words that they heard.

A THE JUDGE: Yes.

MR. RIVLIN: May I tell you what happened before the Recorder at The Old Bailey, as I understand it, any reference whatsoever to money was deleted. In our submission there can be no justification for that. There are a number of important passages here concerning money which can be plainly heard as one is listening to the tapes. In our submission, subject to this particular matter on page 24, the transcripts should stand as they are.

B THE JUDGE: Yes.

MR. RIVLIN: The next point is this and it concerns the diary.

THE JUDGE: That is those parts of the transcript which are to be proved obviously.

C MR. RIVLIN: Oh yes, they are certainly all to be proved.

THE JUDGE: I am anxious not to be ... the difficulty about proving The Times transcripts...

MR. RIVLIN: Yes, I don't know ... I am happy either way there if the defendant wishes to put them in as agreed documents they can be, if not, not. But I am talking at the moment about Mr. Penna and Mr. Eley's transcripts.

D THE JUDGE: I think if we could confine ourselves to one transcript to the jury it would be much easier.

MR. RIVLIN: Well that's the one I am going to use, 35(d), the last one we have been using hitherto when listening to the tapes.

THE JUDGE: Yes.

E MR. RIVLIN: Subject to the agreed deletion of the passage on page 24 at the bottom, where we can either delete it or cross it off or cut it off the bottom of the page, in our submission it is appropriate the jury should have the whole transcript. The transcript is there to assist, no more and these words, in our submission, can plainly and clearly be heard and the transcript should be before the jury.

F THE JUDGE: Yes.

MR. RIVLIN: The second point concerns the diary.

THE JUDGE: The photographs.

G MR. RIVLIN: The photographs, well I cannot, with respect, see any justification whatsoever in the defendant's submission there. The photographs will be proved by the photographers. They are photographs of the defendant's motor car and Perry's motor car in the car park, or... that's The Grove, on the 31st October and the 21st November.

THE JUDGE: Yes.

H MR. RIVLIN: In our submission there can be no proper objection to the production of those photographs.

THE JUDGE: I don't really see they affect the matter a great deal do they.

A MR. RIVLIN: They don't, not a great deal, but given that the photographs are going to be proved, one finds it difficult to understand what the legal objection to the admissibility of those photographs can be.

THE JUDGE: Yes.

B MR. RIVLIN: Now for my part, your honour, I am happy to concede that the photographs are not all important in this case, but I would respectfully submit that it is appropriate I refer to them in opening so that the jury can see them and understand what they are about.

THE JUDGE: Yes.

C MR. RIVLIN: The third point is the diary. As to that we have got bundles and your honour has a bundle, of a typewritten copy of the entries in the defendant's diary.

THE JUDGE: I have a bundle but I have not looked at it yet.

D MR. RIVLIN: No. Your honour there are three days of course which are relevant. The whole diary for the year has been copied but there are three days which are really relevant, the 28th October, the 31st October and the 21st November and, again for our part, I should be happy to have those three pages extracted and put before the jury.

The whole bundle is a thick one. There is a relevance to the whole bundle your honour but the relevance really is not going to be immediately apparent and it is not terribly important, so I would be happy to extract the three relevant pages and let the jury have those.

THE JUDGE: Yes.

E MR. RIVLIN: Your honour, as to my opening of the case, as you know we have submitted a copy to the defence and invited any comments. Well we have just had one. That there is an objection to my referring to the fact that ROBSON and HARRIS were the subject of criminal investigation. Well they were and it is very difficult indeed, in our submission, to avoid that matter coming to the jury's attention, in fact impossible, and indeed there would be, in our submission, an extraordinary puzzlement in the minds of the jury if they might be led to believe that, whereas Mr. Symonds has been prosecuted nothing was done about Mr. Robson and Mr. Harris. I made it clear to the defence, or we did in a letter, that was sent to his solicitors, that we would not refer to the fact that ROBSON & HARRIS had been convicted of any criminal offence and would concede that that would not be relevant in this case and I have not, as yet, referred to that in all of the evidence we have heard.

F THE JUDGE: No.

G MR. RIVLIN: But it would be, in our submission, unrealistic and, quite unrealistic, to suppose that the jury would not, sooner or later, learn that ROBSON & HARRIS were the subject of criminal investigation and indeed the defendant himself during the course of the evidence frequently referred to the ROBSON & HARRIS case.

H THE JUDGE: Yes.

MR. RIVLIN: And, as I understand it, his experts find it necessary to refer to

A the ROBSON & HARRIS case and, with the best will in the world, it is difficult to see how by the end of this case the jury will not know that ROBSON & HARRIS were investigated and, given that to be the position, it is, in our submission, it is best that they learn this at the outset rather than at a time when they might not properly understand the position.

THE JUDGE: Yes.

B MR. RIVLIN: Your honour I don't think that I can be of any further assistance to you at the present time in relation to the exhibits that we propose to put before the jury.

THE JUDGE: No. Yes, now Mr. Symonds have you anything to add?

C MR. SYMONDS: My lord I think that prosecuting counsel got hold of the wrong end of the stick there because my words weren't I was objecting to any mention of ROBSON & HARRIS. I objected to the one particular sentence which shows quite clearly that HARRIS was eventually convicted. I am looking for that sentence now my lord.

MR. RIVLIN: If the defendant finds that and points it out to me I shall gladly delete it. I don't remember it myself.

THE JUDGE: Well your objection has been met on that score. Mr. Rivlin is not going to refer to it. Anything else?

D MR. SYMONDS: I am looking for the one sentence.

MR. RIVLIN: Your honour I think I have been given the point by Mr. Green, very kindly. I have taken the point. I didn't appreciate that what I was going to say could be construed as in any way that HARRIS had been convicted. but I can I think deal with the point to the satisfaction of the defence so there's no need to worry about that.

E THE JUDGE: Yes very well.

F MR. SYMONDS: My lord on the question of the transcripts I would, if you are going to include them my lord, I would ask that you seriously consider the decision of the learned Recorder of London about deleting these references to money in the transcripts, particularly as most of the references have been extracted by some device. Previously described as garbled conversation. A number of Times typists and police officers could not decipher them previously.

THE JUDGE: Well you heard the passage to which I think you principally object.

MR. SYMONDS: I object to all the passages my lord.

G THE JUDGE: Yes. One to which you principally drew my attention is not going to be referred to until it comes to the evidence of Mr. Penna and Mr. Eley but the remainder of that transcript should I think go before the jury. It will be open to you to call evidence about it and make comments about it when your turn comes and I can see no reason at all why the photographs should not go in. So far as your diary is concerned Mr. Rivlin is content to put in the three days only when there were meetings with PERRY. Would you prefer that to the whole diary going in?

H MR. SYMONDS: In that case the whole diary might as well go in my lord. I withdraw that.

A

MR. RIVLIN: My lord it is indeed. There is one matter I would like to mention if I may my lord and that is this. That during the course of this voir dire the defendant has from time to time found it necessary to make little speeches about various things. Now I have never complained when he has done so, except on one occasion, and of course, the main reason why I have not complained is he has been making them to your honour in the absence of the jury, but I would respectfully remind the defendant, who does seem if I may say so, and pay tribute to this, to have a pretty good command of the laws of evidence. I would respectfully remind the defendant that when the jury come into court it would be quite improper for him to make little speeches...

B

THE JUDGE: Yes.

MR. RIVLIN: ... and to say what he anticipates the witnesses have said or will say or may say, particularly if they are not going to live up to that.

C

THE JUDGE: Yes.

MR. RIVLIN: And really the trial might take an unfortunate turn, from the defendant's point of view, if he were to persist in that.

THE JUDGE: Yes.

D

MR. SYMONDS: My lord in answer to that I hope your lordship has noticed that my little speeches usually came after about quarter past four and five o'clock or quarter to six, at the end of an extremely long and gruelling day, and I would ask your lordship if during the trial ...

THE JUDGE: We never sat later than five at the very latest.

E

MR. SYMONDS: ... if during the trial my lord I could from time to time perhaps once in the morning and once in the afternoon, take a small recess for five to ten minutes.

THE JUDGE: Yes we will see how we go. I certainly think if that is necessary that's what we shall do but I am sure you will confine yourself when cross-examining witnesses to asking questions. You will be able to make your speech at the end of the case. Yes. I think the jury may at last return to court.

F

MR. RIVLIN: Yes. It will take a little time your honour for the transcripts to be suitable altered but I think I can continue with what I have to say ...

THE JUDGE: Yes.

MR. RIVLIN: ... without the transcripts.

G

THE JUDGE: Yes. Are we likely to get as far as the transcripts?

MR. RIVLIN: I am afraid not your honour, for this reason, your honour has seen my opening. There are passages in the transcript about various things which need explaining.

THE JUDGE: Yes.

H

MR. RIVLIN: There's reference to events and people and it is going to be

going to be/...

A necessary for me to explain to the jury what it is all about, otherwise they are going to be in a complete fog and my own estimate, your honour, is that my opening will take half a working day.

THE JUDGE: Yes. I am sure you will prune it as much as is reasonably possible.

B MR. RIVLIN: Well of course your honour, I will, yes.

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JURY CAME INTO COURT

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C
JURORS IDENTIFIED

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THE JUDGE: Members of the jury, before this case is opened to you by Mr. Rivlin may I say how sorry I am it has not been possible to start the case before you until now. I hope you have not been kept hanging about the court too long but we have had a number of quite complex matters to deal with before the matter could come before you. That has now been done. The other thing I would like to say to you is that this case concerns events which occurred a very long time ago. Will you please be extremely careful to judge the case only on the evidence which you hear in this court. Do not allow yourselves to read or listen to or hear any other material which might in any way affect your minds so far as this trial is concerned. Close your minds to anything so far as this trial is concerned, save that you hear in this court. Would you please be very careful about that? We do not want there to be any prejudice or difficulty because of anything that might be said or heard outside this court. So please do be very careful to decide this matter only on what you hear inside this court and to exclude anything which you might hear outside this court.

G
MR. RIVLIN: Members of the jury, I appear in this case on behalf of the prosecution, together with my learned friend, Mr. Radcliffe, who sits here. The defendant represents himself but he does so with the assistance of a solicitor, Mr. Green. The fact that the defendant represents himself is his choice...

PROSECUTION OPENING SPEECH COMMENCED.

H
I CERTIFY that I took shorthand notes in the trial R V SYMONDS on 13th March 1981 and that pages 1-26 inclusive hereof are a complete and correct transcript of my said shorthand notes to the best of my skill and ability.

Humphreys, Barnett & Co.

Ana Lee