

IN THE CROWN COURT

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Before:

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

C

Held at:

The Law Courts,  
Victoria Square,  
Middlesbrough.

D

On:

Thursday, 2nd April, 1981

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R E G I N A

- v -

F

JOHN ALEXANDER SYMONDS

G

MR. G. RIVLIN Q.C. assisted by Mr. F. Radcliffe appeared as counsel on behalf of the Crown.

MR. SYMONDS was unrepresented.

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Transcript of the Shorthand Notes by Mrs. C. Bowe of Humphreys, Barnett & Co.,  
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CLIVE STANLEY PENNA

Cross-examined by the Defendant Symonds:

**A** MR. RIVLIN: You are still giving evidence on oath, Mr. Penna.

WITNESS PENNA: Yes.

DEFENDANT SYMONDS:

**B** Q. Mr. Penna, what is your date of birth please? - A. 23/7/1944.

Q. And you say you have been nine years with the tape recording laboratory, is that right? - A. Nine years dealing with tape recordings in that laboratory.

Q. Were you with the laboratory before that? Since its inception, in fact? - A. Yes. Since its inception, that's when it started.

**C** Q. And was its inception in 1969? - A. No, not as such.

Q. Is it to your knowledge that there was a tape recording laboratory, or laboratory with tape recording facilities set up in 1969? - A. Not as such. I know what was available in '69 though.

**D** Q. And what was available in 1969? - A. Very little to be honest. A tape recorder, very simple filtering equipment, but that's about it.

Q. And I notice you have been operating these machines during this trial. Is this a normal tape recorder here, in court? - A. Which one are you referring to?

Q. The tape recorder. - A. The large one?

**E** Q. Yes? - A. No, it's considered to be a professional tape recorder.

Q. And the other machines attached to it, do they include a filtering machine? - A. No.

**F** Q. What exactly are these other machines? - A. You have an amplifier to provide power for the loudspeaker, and you have a transmitter which is in the blue box there, which provides the infra-red signal for the headphones. There is no filtering equipment within the tape recorder.

Q. And when examining these tapes, did you ever use filtering equipment? - A. To examine them?

Q. When you were listening to them? - A. I listened to copies which were filtered copies, and I listened to the originals, as well, which were unfiltered.

**G** Q. And the filtered copies, were they made in such a way that background noises were removed, such as buses passing, etcetera? - A. No. No. Just to make it easier to listen to, rather like a tone control on a radio.

Q. And the tapes that you have played to this court, are they the alleged original tapes? - A. Yes.

**H** Q. And have they been played at the normal speed? - A. Yes.

Q. When giving your qualifications, you mentioned a City and Guilds Certificate? - A. Yes.

Q. What exactly is that, please? - A. It's a course, four year course by the City and Guilds.

A Q. Is that evening classes, or ...?- A. Day release.

Q. Day release. So you go what, one day a week? - A. I did.

Q. And this is a trade certificate, is that right? - A. No.

Q. And what exactly was the subject of your certificate? - A. The subjects encompassed within the ...?

B Q. No, the subject that you took, received a certificate for? - A. It's electronics, telecommunications.

Q. And did that include the subject of magnetic recordings? - A. Not magnetic recordings, but electronics and magnetics.

C Q. May I ask, what is your experience of the manufacture of recording tape? - A. I have never manufactured any.

Q. And what is your experience of the manufacture of recording equipment? - A. The last nine years, dealing with the equipment.

Q. But manufacture? - A. I have never manufactured a tape recorder, no.

D Q. And what is your experience of measuring the performance of tapes and tape recorders? - A. We often measure various parameters on tape recordings when examining forensic tape recordings.

Q. And by 'measuring parameters', perhaps you would clarify that for my sake, and the jury's? - A. There are many of them, Mr. Symonds. If you would like to mention one, I'll ...

E Q. You tell us what one parameter is?

HIS HONOUR JUDGE STROYAN: How is this going to help?

DEFENDANT SYMONDS: I don't know what a parameter is, Your Honour, to be quite honest.

HIS HONOUR JUDGE STROYAN: Well I don't think it matters.

F DEFENDANT SYMONDS: It doesn't matter?

HIS HONOUR JUDGE STROYAN: I should not have thought it did. No-one has been giving evidence about parameters, so far.

DEFENDANT SYMONDS: Well, does anyone know what it means?

G HIS HONOUR JUDGE STROYAN: Come along, let's get on. Does it matter?

DEFENDANT SYMONDS: Your Honour, this man has put himself forward as an expert, and has presented the court with an opinion. Surely I am entitled to query his qualifications, or if he has no qualifications, his experience.

HIS HONOUR JUDGE STROYAN: Well, he said he has been nine years in the tape laboratory, in the Metropolitan Police laboratory, and he has got a City and Guilds Certificate.

H

DEFENDANT SYMONDS: And he has often been engaged in measuring parameters, and I admit, quite openly now, to everybody, my ignorance, I don't know what a parameter is. And I would like to know, because I don't have a dictionary to look it up.

A

Q. What, exactly, is a parameter? - A. Many features of tape recordings, we measure, many electrical characteristics. I can go through them all, if necessary.

HIS HONOUR JUDGE STROYAN: No.

DEFENDANT SYMONDS:

B

Q. A parameter is an electrical characteristic of a tape recording, would that be right? - A. It could be.

Q. And what is your experience of editing sound recordings, for example, for radio transmission, making records, etcetera? - A. I have not made any records, and I have not done any editing for that particular purpose.

C

Q. Have you edited tapes as an amateur, for your own ...? - A. For my own work. For work concerned with forensic tape recordings I have edited tapes.

Q. And when you edited tapes, did you use one method in particular, or various methods of editing? - A. I have tried all methods.

D

Q. Including cutting tapes, and editing by omission, such as we were talking about yesterday? - A. Yes.

Q. And would you say such edits, commonplace edits, are normally detectable? - A. Under what circumstances?

Q. Under the circumstances of an examination by an expert, or non-expert? - A. They may be. They may not be.

E

Q. So, they may not be detectable? - A. That's true.

Q. Would you say the edits that are detectable, would be poor edits? - A. In general.

Q. Or incompetent edits? - A. Not necessarily incompetent. It just maybe impossible to edit in a certain part of a tape recording.

F

Q. Would that be because of, for example, background noise, or something like that? - A. That could be one of the problems.

Q. But couldn't background noise be put on afterwards, as it were? - A. That could be done.

G

Q. So if background noise could be put in afterwards, the background noise present on the original master would be no problem? - A. Assuming there was no noise when the original was made. If it helps you, Mr. Symonds, I heard Mr. Hyde's answers to you, and I concur with, generally, what he said. So if that helps you in any way as to the case of editing, so be it.

H

Q. Very good. And did you hear my question to Mr. Hyde about the fact that there could be 200 edits in one pop record? Under the normal pop record sold in a shop could contain 200 edits? - A. That's possible.

HIS HONOUR JUDGE STROYAN: I don't think we have heard any pop records in this case, yet.

DEFENDANT SYMONDS:

- A Q. And if there were, for example, 50 edits on three minutes of tape recording, would you be able to detect them? - A. You would have to define the tape recording, the medium under which it was recorded, many factors. You are talking about a record.
- Q. I am talking about competently done edits, by a professional or skilled amateur? - A. I think it has been said many times, that under favourable conditions, an edit wouldn't be detectable.
- B Q. Thank you. So would you agree, therefore, that it is not possible to reliably detect edits? - A. Notwithstanding my last answer, yes.
- Q. Following on from that, could you tell with certainty whether a tape, or a recording, is an original or a copy? - A. Unless I made it myself, and had custody of it myself, no. No more than you could tell that anything was original.
- C Q. And when you have carried out editing of tapes, or your own purposes, or in the course of your duties, was it your practice to mark the tape in some way at the point that you intend to make part of the edit; to cut the tape as it were, or to edit in some other fashion? - A. Yes, it would be necessary.
- D Q. When did you exactly come on to this case, Mr. Penna, was it in 1980? - A. 25th of July, 1980.
- Q. And during your investigations, did you examine certain marks which had been discovered on certain of these tape recordings? - A. I have seen them, but they are a lot fainter than I believe they originally were.
- E Q. And can you offer any explanation for these marks, other than that they were put on at some stage of an editing process, or intended editing process? - A. Yes.
- Q. Perhaps you would offer that? - A. Well they could quite easily have been put on there in order to identify a point of interest for analysis purposes, for instance.
- F Q. And if you were engaged in analysing a tape recording which is a court exhibit, or is likely to become a court exhibit, would you consider marking that tape in that way? - A. Yes. But I would make a note of it, and I would admit that I had done it.
- Q. Now, looking at this machine, are there not other ways in which to find your place, as it were, in a tape recording, other than marking the tape? - A. Well, you can listen to the contents.
- G Q. But don't machines have these row of numbers? - A. Certainly you have counter readings.
- Q. You can see exactly where certain points of a conversation come? - A. Not for detailed editing, it wouldn't be possible, I don't think.
- Q. For detailed editing? - A. Not to do it by numbers.
- H Q. No? - A. It would be nowhere near accurate enough.

Q. No, but for the point of view of you ... I believe you said, of analysis, could you use the numbers? - A. Not if you were looking for a specific, perhaps, fraction of a second on a tape recording, it wouldn't be accurate enough.

A Q. And we have heard of other ways in which tapes have been marked, by sticking a bit of paper on to the spool and marking a scale on? -  
A. Yes.

Q. Have you used that method? - A. No. I normally write on the box, myself.

B Q. I am talking about finding places? - A. Sorry. No, normally I wouldn't use that method. If you are talking about sticking a label on a spool, I don't normally use that method.

Q. And when you are marking tapes, or when you are using tape recordings for any purpose, would you make any form of identification mark upon the white leader, the non-magnetic bit of plastic at the beginning? -  
A. If I wanted to identify a recording, I would identify it by announcing my name at the beginning of the recording, which is even better, with the name, date, time and place.

C Q. Yes, I agree it would be. But have you ever thought of marking a tape which, perhaps, you were examining, or you were using, but you were not recording upon yourself? It may have been recorded upon by some other people, for example? - A. No.

D Q. By writing a note, or a number, or some sort of reference on the white leader? - A. No, I wouldn't normally do that. I would examine it and seal it in an envelope which bore my signature.

Q. Is it to your knowledge that professional users of tape do mark the white leader? - A. They may well do.

E Q. Because would you agree that the way that these tapes have been identified by markings, the tapes themselves are in no way marked, but only the spools and boxes? - A. Yes. I realise the way they have been marked. It is not really surprising the way they have been marked. I have seen many other tape recordings marked in similar ways.

Q. And that in fact, if you are using a tape with a dual track machine, for example, the tape would be physically removed from the first spool, would it not, on to the second spool, before the second track was used? - A. Yes.

F Q. And in fact, in that case, where two tracks have been used, it should be right to mark two spools? - A. No. I would mark each side of one spool, personally.

Q. Would you mark one side where the tape was playing off to, and the other side where the tape was playing onto? - A. I would mark the side I could see that was playing, on the spool that the tape came from. Does that make sense?

G Q. But you do agree that quarter inch magnetic tapes are not only easily, but commonly removed from one tape to another during playing? -  
A. Yes.

HIS HONOUR JUDGE STROYAN: What?

H DEFENDANT SYMONDS: Well, to play a quarter inch tape ...

HIS HONOUR JUDGE STROYAN: You mean removed from one spool.

DEFENDANT SYMONDS: Yes, Your Honour. What you do, you put the new spool on, you run it on to another one.

HIS HONOUR JUDGE STROYAN: I know. Yes, yes. You said 'tape' not 'spool'.

DEFENDANT SYMONDS:

Q. During your examination of these tapes, did you have cause to examine the batch numbers of the tapes, and the batch numbers of the boxes? - A. Yes, I saw them.

Q. Did you discover that certain tapes are now in the wrong boxes? - A. Yes, I have noted that.

Q. And would you agree that under normal, controlled conditions, this should not happen, where the tape recording is being made under the conditions alleged in this case? - A. No, not necessarily. I have found the complete contrary to that.

Q. Would it appear to you to be some form of incompetence? - A. There could be many reasons for it. That could be one of them.

Q. Could there also be a nefarious reason?

HIS HONOUR JUDGE STROYAN: He said there could be many reasons. Some could, no doubt, be sinister; some could not.

DEFENDANT SYMONDS: As long as that is understood.

HIS HONOUR JUDGE STROYAN: Yes.

DEFENDANT SYMONDS:

Q. Now Mr. Penna, I believe that you are a radio ham? - A. That's indeed so, yes.

Q. A radio amateur. Do radio amateurs use a frequency or wave length known as the two metre band? - A. Yes.

Q. And this is fairly close to the radio microphone frequency band, around 17<sup>4</sup> MHz? - A. Well no, it is 30 MHz away.

HIS HONOUR JUDGE STROYAN: Are we back to Hertz's?

DEFENDANT SYMONDS: We are coming back to Hertz's in a minute.

HIS HONOUR JUDGE STROYAN: Very well, yes.

DEFENDANT SYMONDS: Well have you, or to your knowledge, any of your fellow amateurs, suffered a 50 Hz hum pick up from T.V. transmitters on the two meter band? - A. Yes.

Q. Well, let's be clear about this. I mean 50 Hz sino-sodal hum, not the T.V. wave form. Are they not different? - A. In the context we are dealing with, the hum which I think you are referring to Tape 13, the four minute gap, is so weak it is impossible to tell what its original form was.

Q. Well what about other places where hum was found, was it not 50 Hz sino-sodal hum? - A. Yes.

Q. It was. So the question was. Is not the 50 Hz sino-sodal hum ...? -  
A. On which tape?

Q. ... Different from the T.V. wave form? - A. In the other instances,  
yes.

A Q. And I must ask you if you would expect to find 50 Hz hum on a tape  
recording which had been taken with battery operated equipment? -  
A. Normally I wouldn't expect it, but it has been experienced  
before.

Q. To your knowledge? - A. Yes. On recordings made under controlled  
conditions.

B Q. Underneath a television tower? - A. Yes. Made within about two miles  
of a television transmitter.

Q. Are you referring to the experiment made by you and Mr. Eley? - A. No,  
I am not.

Q. Did you take part in the experiment made by Mr. Eley? - A. No, but I  
know of the results.

C Q. Can you confirm that 50 Hz sino-sodal hum is present on Tape 1? -  
A. Yes.

Q. And on Tape 3B? - A. Yes. It's nominal 50 Hz, it is not exactly 50 Hz.

Q. And on Tape 13? - A. Yes.

D HIS HONOUR JUDGE STROYAN: How many on which tapes, do you say?

DEFENDANT SYMONDS: One, 3B and 13.

HIS HONOUR JUDGE STROYAN: Yes.

WITNESS PENNA: It's on 3A as well.

E DEFENDANT SYMONDS:

Q. Now, you have been present in court when I cross-examined Mr. Hyde about  
this phenomena which has been found on the tape recordings - the 50 Hz  
hum and 30 Hz burst? - A. Yes.

F Q. I believe, about the marks found on the tape recordings. And would it  
be right to say, as it was in Mr. Hyde's case, that you were not  
responsible yourself for discovering any of this phenomena? It was  
in fact, brought to your attention after the tapes had been examined  
by other experts, would that be right to say? - A. Well, the situation  
was that I didn't examine them in 1971. Had I done so, I would  
probably have noticed it for myself.

G Q. You say you would probably have noticed it for yourself because ...  
Would that be because you would have examined the unrecorded parts  
of the tapes, looking for precisely that feature? - A. Not necessarily.  
The hum on Tape 1 is as large as life, as is on Tape 3 of reasonable  
quantity. You can actually hear it when you are listening to the tape.  
It doesn't take any examination at all.

H Q. Now, you say you have previous experience of finding 50 Hz hum on tape  
recordings taken on battery operated recorders, is that correct? -  
A. Yes.

HIS HONOUR JUDGE STROYAN: Where is all this getting us?

DEFENDANT SYMONDS: To the vital point, to the whole vital point Your Honour, to the whole business.

HIS HONOUR JUDGE STROYAN: We have got the point already. We know that in certain circumstances hum on some of the tapes shows that they weren't virgin tapes, they had been used before. That's the point, isn't it?

DEFENDANT SYMONDS: No. This gentleman has just said that in his experience he has come across 50 Hz hum ...

HIS HONOUR JUDGE STROYAN: Yes. We have heard what he said. Let's get on.

DEFENDANT SYMONDS: ... On tape recordings which have been made on battery operated tapes, battery operated tape recorders.

HIS HONOUR JUDGE STROYAN: Yes, very well. Let's get on.

DEFENDANT SYMONDS: And I was going further into that, Your Honour, because that is the vital point.

HIS HONOUR JUDGE STROYAN: Yes, well, go on.

DEFENDANT SYMONDS:

Q. I will come back to that point later. Mr. Penna, you have given evidence that you made the transcripts, Exhibit 35 D, is that right? - A. Yes.

Q. And I believe you gave evidence that you made Exhibits ... That you made the transcript of Tape 1, Tape 2, is that right? - A. In fact, I originally did the latest transcript of, I think, 1 ... Tape No. 1 and Tape No. 5. Mr. Eley did Tape 2 and Tape 14, and then we both cross-checked each others. So, effectively, we did the lot between us.

Q. When you made these transcripts, did you refer to transcripts previously in existence, made by The Times and by police officers? - A. No. The only one I used as a basis was Exhibit 35B ... And 35C, which is the same content.

Q. And it would appear, that you have discovered, in the main, a number of further words. Would that be right? - A. Yes, I believe so.

Q. Now, when you discovered these words ... - A. Not just necessarily further words, but incorrect words on the first transcript.

Q. Which would be 35B, is that right? - A. That's right.

Q. And so looking at Page 4 of your transcript, would that be against Page 5 of 35B? - A. Yes. Part of Page 5, I would think.

HIS HONOUR JUDGE STROYAN: 35B, did you say?

DEFENDANT SYMONDS: Yes, Your Honour.

HIS HONOUR JUDGE STROYAN: Well, what corresponds with Page 4 of 35B is, I think, Page 5.

DEFENDANT SYMONDS: Page 4 of 35D corresponds with Page 5 of 35B.

HIS HONOUR JUDGE STROYAN: Page 5 of 35B, yes. That's right, yes. You said Page 4.

DEFENDANT SYMONDS: And Page 2 of 35A. Now this is Tape 2 regarding a meeting on the 28th of October, and at 5.10 there are a number of words there: "anyway I will have to go and see your bits and pieces and tell him you have got the (something) and tell him to get in touch with the Guvnor down at the (something) office. I can tell you later you know."? -  
A. Yes.

A Q. At 5.10, is that right? - A. Yes.

Q. Now you, you discovered those words entirely anew, is that right? -  
A. If they are not in the other transcripts.

B Q. Well, they are not on ...? - A. We didn't use a ... As a matter of interest, we didn't use any original transcript, that is, 35B or C, in the making of the transcript of Tape 2. It was done entirely fresh.

Q. You see, what I put to you is that you discovered a lot of new words, and I think you said that, or you preferred to be said that you had discovered a lot of mistakes? - A. I said some new, and some mistakes.

C Q. You see, according to the Times transcript, after: "You won't get as much in 10 (garbled)". There comes a bit not recording, and then: "Here you are, I am going to let you come and see them (garbled)" comes after the words 'Not Recording'. And on the police transcript the first words come at "2.35", ending: "You won't make as much in 10 (garbled)". Then: "Not Recording", and then: "Here you are, I am going to let you come and see them (garbled, a lot of interference)"? -  
A. Yes.

D Q. Right. So, according to The Times and the police, the period between the end of the words "At 2.35" and the beginning of the words at "5.20" is just listed as "Not Recording". Now would you agree that many places on The Times transcript and on the police transcript show such words as 'garbled' or 'a lot of interference'? - A. Yes, I think both of them do. In fact, our own transcript also shows the word 'garbled'. We carried on using the same word.

E Q. The point I am trying to make, you see, is that printed in capital letters are the words 'Not Recording' on the Times transcript, and the words 'Not Recording' on the police transcript? - A. Yes.

Q. Which would indicate, would it not, some form of silence, total silence? -  
A. It may do, yes.

F Q. And if there had been a snatch of conversation, or a garbled voice, or interference, it would have been shown, or likely to have been shown? -  
A. I couldn't possibly say.

G Q. Because now, you see, you come up at 5.10, during the period which is shown quite clearly as 'Not Recording' on The Times transcript, and 'Not Recording' on the ...? - A. It may well be that the timings on Tape 2, as shown in 35B, are not entirely accurate, and we are dealing with the same area in the tape, and Tape 3B is just incorrectly transcribed at that particular point. There is only ten seconds in it, and it is quite possible there is an error in the timing.

Q. Well according to the police timing, at 5.20 there come the words: "Here you are, I am going to let you come and see them"? - A. That's right. That's what it says.

H Q. And at 5.20 ... There is no entry at 5.20 on your transcript? - A. Well there's no timing at 5.20, but there may well be sounds at 5.20.

A Q. Yes. So, are we to assume from that then, that the times are different between the police transcript and your transcript, and: "Here you are, I'm going to let you come and see them (garbled) and (a lot of interference)", has now become the words: "Anyway I'll have to go and see your bits and pieces and tell him you have got the ... and get in touch with the Guv'nor down at the (something) office. I can tell you later you know"? - A. I couldn't say to be honest.

B Q. I wonder if you would care to listen to that little bit on Tape 2, because I believe you were present when certain questions were put to Mr. Perry about that bit. "Who is the Guv'nor", etcetera etcetera, and Mr. Perry said: "Oh, there I was talking about Inspector Silvester at Peckham". So I would like you to listen, now, and try to clarify this point, and whether you still think the words we are going to hear are truly represented on your transcript.

HIS HONOUR JUDGE STROYAN: We are hearing the first two lines of Tape 2, are we?

DEFENDANT SYMONDS: Yes Your Honour. This bit at 5 ... Which is at 5.10 on Mr. Penna's transcript, and may well be at 5.20 on the police transcript.

HIS HONOUR JUDGE STROYAN: Ten seconds later. Yes.

DEFENDANT SYMONDS: And if you could carry on, after that, up until: "Have done fuck all about it".

Tape played

D DEFENDANT SYMONDS: Have we gone through: "I didn't know you these things. That's right"?

Tape played

DEFENDANT SYMONDS: Alright.

E Q. Now, you have heard that? - A. Yes.

Q. These words, and these words were either ... come under the 'Not Recording' heading, or they have been thought to be by the Times typist, and by the police officers who examined the tape to be: "Here you are, I'm going to let you come and see them (garbled) (a lot of interference)"? - A. Yes. That is the same point, I would think.

F Q. Now, you have managed to translate this, this noise, into these words: "Anyway, I'll have to go and see your (something) bits and pieces and tell him you have got the ... and get in touch with the Guv'nor down at (something) office. I can tell you later, you know"? - A. Yes.

Q. Now, how exactly did you manage to do that? - A. By listening to it.

Q. By listening to it over and over again? - A. Yes.

G Q. And, when you listened to it over and over again, did you play it particularly slowly? - A. No, normal speed.

Q. At normal speed? - A. Most of the time, yes.

H Q. And did you have any device going to eliminate the buzzes, and squeaks, and scratches, and what not we have there? - A. We would have played our copies, I think, on the initial transcription, and then the original.

- A
- Q. Because what I would suggest to you, is that a lot of that is imagination, your version of that conversation? - A. No, it's not imagination.
- Q. You listened to it many times over, and did you imagine that this might have been what was said? - A. No, it's what we heard. It's open to individual interpretation.
- Q. To individual interpretation? - A. I still hear the words 'Guv'nor, get in touch with the Guv'nor'.
- Q. Perhaps you would like to hear it again would you, and perhaps everyone would listen to this very, very carefully, and out of this mess of noise see if they can recognise the words: "Anyway I'll have to go and see your ... bits and pieces, and tell him you've got the ... and tell him to get in touch with the Guv'nor down at the (something) office. I can tell you later, you know"?
- B

Tape played

HIS HONOUR JUDGE STROYAN: It does seem to get clearer the more you listen to it. Yes.

C  
WITNESS PENNA: I think it's just: "Down at there".

DEFENDANT SYMONDS: Now we have heard evidence from the police that they listened to this time and time again, many times over? - A. Yes.

D  
Q. And they didn't hear it, apparently? - A. No, but I think they have also said that it would appear the equipment they were using wasn't that good.

HIS HONOUR JUDGE STROYAN: We need not bother about it. The jury have just heard it a couple of times. They can make their own minds up about it, whatever anyone else thinks. Let's go on.

DEFENDANT SYMONDS:

E  
Q. In general, on Tape 2, apart from that at 5.29: "I didn't know you", that doesn't appear in the police transcript. Symonds saying: "These things" doesn't appear. Now, most of these other words that you have found, that The Times and the police didn't find, you found using this same method, did you? - A. Yes. As I said, we didn't use the police transcript as a basis for our own. The original of this transcript is written out in Mr. Eley's hand.

F  
Q. And on the next tape, Tape 5, I believe you gave evidence in chief that you heard a door open and a door close, right at the very beginning? - A. That's what it sounds like, yes.

DEFENDANT SYMONDS: Perhaps we could play that, could we?

HIS HONOUR JUDGE STROYAN: Members of the jury, it is your own choice whether you use the headphones or not. You may find them an improvement, you may find otherwise. I listened to those last two myself, and I found it clearer without them. You may choose to do what you like.

G

DEFENDANT SYMONDS: I beg your pardon, Your Honour?

HIS HONOUR JUDGE STROYAN: I was talking to the jury. I said they could use their headphones or not if they liked, and I told them by way of an example, that the last two little pieces we heard played, I personally found it easier to hear without. But it is a matter for the jury.

H

Are we going to hear the door opening and closing?

DEFENDANT SYMONDS: The door open and close, Your Honour. The bit that came out in examination in chief.

HIS HONOUR JUDGE STROYAN: Yes. Let's listen to the door opening and closing.

Tape played

HIS HONOUR JUDGE STROYAN: I think that's the wrong tape, isn't it? I am looking at Page 7.

MR. RIVLIN: Yes, Your Honour, so are we, but I think that the tape was started at the wrong place, a bit too early.

HIS HONOUR JUDGE STROYAN: Yes. My recollection was that there was a bit of music, and I think the evidence was that the noise of the door opening immediately followed the end of the music; and the evidence was that the door closing came after the phrase: "How are you doing Mickey?"

MR. RIVLIN: Your Honour, that's right.

HIS HONOUR JUDGE STROYAN: Let's try to get it back, please. Not very exciting to listen to cars going along the road.

Tape played

DEFENDANT SYMONDS:

Q. I wonder if you could point to the exact spot where you hear the door open. If you listen to it again, and stop it when you hear the door open? - A. I don't think my reactions are that quick, actually.

Tape played

WITNESS PENNA: There's a slight shuffle before the: "How are you doing Mickey?" which is over-covered by music.

DEFENDANT SYMONDS:

Q. You see, you have given evidence that you heard the door opening. Well I can't hear it, quite honestly. Perhaps you would care to hear it again? - A. You can certainly hear the door close, without any doubt at all.

DEFENDANT SYMONDS: Well, you can hear the noise of a door at some stage, but I would like to hear the door opening bit.

Tape played

WITNESS PENNA: There's a very slight shuffle before ... A scraping noise before: "How are you doing Mickey?". But you have got the radio on at the same time, so it's difficult to hear, I agree. And undoubtedly the door is closed.

DEFENDANT SYMONDS:

Q. Are there not several scraping noises? - A. Yes, there are some prior to that movement that presumably ...

Q. The other scraping noises seem to be more or less the same as the scraping noise which you now think is the noise of the door opening? - A. Yes, it was undoubtedly opened though.

HIS HONOUR JUDGE STROYAN: Well, you are not suggesting it was never opened,

are you?

DEFENDANT SYMONDS: Your Honour, I am querying the evidence this witness has given in chief, when he pointed out ... In fact, I think the jury were asked to write in, weren't they 'door opening, door closing'?

A MR. RIVLIN: No they weren't.

DEFENDANT SYMONDS: Or, something like that. There was evidence given by this witness, in chief, that he could hear the door being opened and closed.

HIS HONOUR JUDGE STROYAN: Yes, very well.

B DEFENDANT SYMONDS: Which severely damaged the points that I had made before about these words: "A bit more dough" being made at a certain stage.

WITNESS PENNA: Yes. I believe the door is open when you say: "How are you doing Mickey?", but you are not necessarily completely sitting in the car, and the door hasn't closed until after that. Immediately after: "How are you doing Mickey?", the door closes.

C DEFENDANT SYMONDS:

Q. Could not the noise heard of a door latch going, be the door opening after the words: "How are you doing Mickey"?

HIS HONOUR JUDGE STROYAN: Well I suppose if the door wasn't opened you would have to climb through the window.

D WITNESS PENNA: Quite.

HIS HONOUR JUDGE STROYAN: Yes.

DEFENDANT SYMONDS: I don't see any point in playing it again, Your Honour. I didn't hear it, and it's for the jury now to make their opinion whether they could hear the door being opened.

E HIS HONOUR JUDGE STROYAN: Yes, very well. On we go.

DEFENDANT SYMONDS:

Q. Now, going on to another bit of evidence you gave, while we are talking about that. You referred to the end of Tape 13? - A. Yes.

F Q. And where you heard the tape being played back, is that right? - A. Yes.

Q. And you referred to Exhibit 35B, because this is the only transcript of the conversation after? - A. Yes.

Q. And I believe your evidence was, or the theory that was put, was that on the back end of Tape 13 we can hear bits of Tape 14 being played back, is that right? - A. That's right, yes.

G Q. That is the proposition put up? - A. Yes.

Q. Very good. Now, looking at the times on Tape 13? - A. Yes.

Q. Incidentally, how long does a seven inch tape run for, being played at ...? - A. At  $3\frac{1}{4}$ , I think it is 64 minutes.

H Q. Sixty-four minutes. So a seven inch tape, switched on at the beginning, brand new tape, would run out after 64 minutes, is that right? -

A. That's right. Normally 64 minutes.

A Q. So looking at the beginning of Tape 13, we have got 00 on Page 29, which shows that it is starting. Then we have music for approximately 24 minutes, and then the conversation starts, is that right? Are you looking at Page 29 of Exhibit 35B? - A. I am now, yes.

Q. And then, turning through the pages, we come to Page 38, which shows another time 37.34 'conversation terminated'? - A. Yes.

B Q. Yes. And then at 37.47 it says 'Twenty-to one now', and shortly afterwards 'Ten-to one now'. And then at 56.04 the conversation starts, allegedly between Perry and the reporters, and the sound engineer, is that right? - A. Yes.

Q. At the bottom of Page 38. And then yesterday, you led us over on to Page 39, I believe? - A. I think it was 40.

Q. Forty, was it? Over on to Page 40, and there's a sound of a tape being re-wound, and you pointed out to us Item 6, and I believe Item 10? - A. That's when it is being re-wound, yes.

C Q. Yes. And then at Item 15 there's the sound of a tape conversation being played back, is that right? At Item 15, after 'female'? - A. Yes, that's right.

Q. And I believe you gave evidence that you had, by some technical means, you had recorded this noise of tapes being played back? - A. No.

D Q. Did you not? - A. No I didn't.

Q. Did you make a recording of the noise of the tape being played back? - A. No.

HIS HONOUR JUDGE STROYAN: Well, you had better tell him again what you said.

E WITNESS PENNA: I made a recording of the tape being re-wound at the point contained at '6' and '10' in the transcript, not the tape being played back. You can't decipher the tape that is being played back. It's too low a level on the recording.

DEFENDANT SYMONDS:

F Q. Alright. So at '6' and '10', you made a recording of the tape being re-wound? - A. That's right.

Q. And then you managed to decipher this, and make another recording. This would have been backwards then, re-wound? - A. At that point, it's backwards, so we turned it round the right way and slowed it down.

G Q. Yes. And I believe you found certain words on this recording you made, which were referred to on Tape 14, is that right? Can you recall those, the words you found? - A. Yes. Exhibit 35D, Page 35.

Q. Page 35? - A. Yes. Eight lines down: "Symonds: 'I've got to find out the names of the police officers who are dealing with them, right'."

Q. Yes? - A. And over the page, Page 36, three lines down: "Find out exactly what the strength of it is, and also how much."

H Q. Yes? - A. That line.

Q. And your evidence was, that these were parts of Tape 14, being replayed on Tape 13, was that right? - A. That's a severe possibility, I would think.

Q. And everybody was referred to these two parts to look at? - A. Yes.

A Q. Right. Now, looking over the page, Page 41 of the police full transcript, 35B, we have the tape ending at 60.47, would that be right? - A. That's what it says.

Q. Yes. You see, now, we have heard evidence that these Tapes 13 and 14 have been synchronised, and we have also heard evidence that they're both switched on at the same time, in a certain place, etcetera. Now, if you look at Tape 14, on the next page, do you see it starts at 00: 'Start of tape. Car radio music' on Page 42? - A. Yes.

B Q. And do you see, going through it ... Well, let's check against ... Go through Tape 14 up until ... Because there is no time shown here. Go through Tape 14 up until Page 52, and you see the words at 38.11: 'Twenty-to one now', do you see that? - A. Yes.

C Q. And then if you compare that against Page 38, so we are now comparing Page 38 against Page 52, you see the words: 'Twenty-to one now' and they are shown at 37.47? - A. Yes.

Q. On Page 38; and the words 'Twenty-to one now' are shown at 38.11? - A. Yes.

Q. So, it would appear, would it not ...

D HIS HONOUR JUDGE STROYAN: Thirty-eight, what?

DEFENDANT SYMONDS: 38.11 on Page 52. 'Twenty-to one now', Perry says.

HIS HONOUR JUDGE STROYAN: Yes, I've got that.

DEFENDANT SYMONDS: Yes. And at 37.47 on Page 38, Perry says: 'Twenty-to one now'.

E HIS HONOUR JUDGE STROYAN: Are we looking at the same?

DEFENDANT SYMONDS: We should be looking at Pages 38 and 52 of Exhibit 35B, Your Honour.

HIS HONOUR JUDGE STROYAN: Yes.

F DEFENDANT SYMONDS: Page 38 and 52 of Exhibit 35B.

Q. So, looking at Page 38? - A. Yes.

Q. Perry is shown saying: 'Twenty-to one now', and the time on the tape ... The tape has been running for 37 minutes 47 seconds? - A. That's what it says.

G Q. And then looking at Page 52, Perry is shown as saying: 'Twenty-to one now' at 38 minutes 11 seconds? - A. That's what it says.

Q. So, would it appear from that, that one of these tapes was switched on a few seconds earlier than the other? - A. If you assume these timings are correct, yes.

H Q. It would be, in fact, less than one second. It would be half a second difference roughly, would that be right? - A. No. No, it would be 24 seconds.

Q. Twenty-four seconds, would it? - A. Yes.

Q. So there is 24 seconds difference, roughly, then? - A. If those timings are correct.

A

Q. If those times are correct. And then continuing on Page 52, you see 38.11: 'Twenty-to one now. Car engine noise.' 48.41: 'Ten-to one now'. 50.21: 'Car radio on'. 55.16: 'Car door slamming'. 56.06: 'Car radio off, door slams, static background noises to end of tape'. And then the tape runs out at 63.51, is that right? - A. No. It says 'end of tape'. Now, what that precisely means, I wouldn't know.

B

Q. Well you said ... I think you said it was 64 minutes? - A. No. I said that's the nominal length of a recording.

Q. Is it to your knowledge that this tape was recorded throughout its section, Tape 14? - A. No, I don't think it is. We can soon prove the point by playing it.

C

Q. We will come back to that in a minute. The point I am trying to make to you now, Mr. ... - A. I think 13 is recorded throughout its length.

Q. And Tape 13 finishes at 60 minutes 47 seconds, right? Three minutes before Tape 14? - A. That's what that says. Well, no. It says that the last words, which were in fact unintelligible, were at 60.47. Not that the tape ended at 60.47.

D

Q. Anyway, we will play them both in a minute. But what I would like to point out to you now, you see, is that according to the transcripts, Tape 13 and 14 were switched on more or less together with, I think we have agreed, something like a few seconds difference? - A. Well, no, we haven't agreed that. We have assumed that the timings are correct.

E

Q. Well, alright then. There was some seconds difference, alright. And then, according to the transcript, Tape 13 plays for 60 minutes at least? - A. No. Yes, at least. In fact it plays to the end.

Q. To the end. And Tape 14 also plays to the end, in fact even longer? - A. No. No, as I say, I think it ends ... The last recorded words on Tape 14 are before the end of the physical tape.

DEFENDANT SYMONDS: Well let's sort it out. Can we now play the ends of Tape 13 and 14?

F

HIS HONOUR JUDGE STROYAN: Mr. Symonds, how does this playing about with seconds help the jury decide whether you received these gifts?

DEFENDANT SYMONDS: Can we play the ends of these tapes, Your Honour, and then it will be seen, because we have a little bit of difficulty here.

HIS HONOUR JUDGE STROYAN: I don't see ...

G

DEFENDANT SYMONDS: Well every ... Most of the other people in the court have seen it, Your Honour. If you like, I will make a little speech.

HIS HONOUR JUDGE STROYAN: No.

H

DEFENDANT SYMONDS: And I will say exactly what point I am getting to, but it might be better just to play the ends of these tapes to satisfy this witness, and then everything will become clear.

HIS HONOUR JUDGE STROYAN: Well, I will let you do it.

DEFENDANT SYMONDS: Thank you very much. Will you please play the very ends of Tapes 13 and 14? On Tape 13, it will be from the point just before where: 'Male: "What does it do?" (unintelligible)'.

**A** WITNESS PENNA: That is approximately 60 minutes into the transcript, it would appear.

DEFENDANT SYMONDS: The last recorded timing is 60 minutes and 47 seconds, I believe, but can you play from where the male says: "Well what does it do?" (unintelligible) three unintelligible.

**B** HIS HONOUR JUDGE STROYAN: Which transcript are you looking at?

DEFENDANT SYMONDS: I am looking at Page 41 of Transcript 35B, Your Honour. So we want to have the last bits of 13 and 14.

Tape 13 played

DEFENDANT SYMONDS:

**C** Q. Is that the very end of the tape now? - A. No. That's the radio microphone being switched off when Perry says: "Undo this one". That's the unintelligible bit on Page 41, last line, No. 3.

Q. And does this radio microphone noise continue to the end of the tape? - A. That noise you hear there, continues to the end of the tape.

**D** Q. Which could be what? Another one or two minutes? - A. Off-hand, I don't know. How many more minutes is it? It's probably four minutes, is it?

OFFICER (Operating Tape Recorder): We are 61.50 at this moment. There's possibly another two or three minutes.

DEFENDANT SYMONDS: Perhaps we could hear that. That would answer one question.

**E** Tape switched on

WITNESS PENNA: Perhaps it might help if we 'fast forward' it to the end of the tape.

Tape on fast forward to end

**F** DEFENDANT SYMONDS: So that's it. Now could we have the end of Tape 14, please, the very end?

MR. RIVLIN: The timing, Your Honour, for the sake of the record, is about 62½ minutes, but it is not suggested that that is absolutely accurate.

HIS HONOUR JUDGE STROYAN: The timing of Tape 13?

**G** MR. RIVLIN: Yes.

HIS HONOUR JUDGE STROYAN: Mr. Symonds, I am going to let you do this, but there is going to be a limit to the amount of time wasting that I am going to allow in this court.

**H** DEFENDANT SYMONDS: I am not trying to waste time now, Your Honour. I am just trying to make a point in my defence. If I wanted to waste time, there are lots of things I could do - playing the tapes over, going through all the transcripts word by word. Lots of things I could do. I am not trying to waste time.

What I will do, perhaps I can continue asking questions, if this tape is going to take two or three minutes to be wound on.

HIS HONOUR JUDGE STROYAN: Very well.

**A** DEFENDANT SYMONDS: So what I suggest now, Mr. Penna, is that Tape 13 and Tape 14 were switched on more or less together, might have been a few seconds one behind the other. We check that out at that stage where Perry says: 'Twenty-to one now', which is recorded on both tapes. I don't dispute that Tape 13 played for 62½ minutes, or thereabouts. I will suggest to you now that Tape 14 played for 63½ minutes or thereabouts. And I would suggest to you therefore, that those playing back noises, rewinding noises that you made into a tape recording, could therefore have no way have been Tape 14 being played back as you suggested in your evidence. Because **B** I would suggest that if both these tapes were switched on more or less together, and both played for over one hour, how could Tape 14 have been, according to the evidence, have been played back at that stage? Could it, in fact, have been the missing tape mobile? - A. I doubt it, but we will see when it is played.

**C** Q. Yes. You get the point, Mr. Penna? - A. I see what you are trying to suggest.

Q. According to the record, both tapes played continuously to the very end, and therefore it could not have been one of the two tapes in the boot of Mr. Perry's car that is heard being rewound and played back? - A. I think what you will find is that Tape 14 doesn't last for as long as Tape 13 has lasted for.

**D** DEFENDANT SYMONDS: Perhaps you will see that now.

Tape played

DEFENDANT SYMONDS:

Q. So now do you agree that Tape 14 is recorded to the end of the tape? - A. Yes.

**E** Q. And do you agree that right up until the end, you can hear background noises, cars passing, etcetera? - A. It would appear so, yes.

Q. And I wonder what time that was?

MR. RIVLIN: Your Honour, I am told that the timing there was 62 minutes, approximately 62 minutes.

**F** DEFENDANT SYMONDS:

Q. So now do you agree that both tapes played for 62 minutes?

MR. RIVLIN: No Your Honour, the timing of the other one was longer than 62 minutes.

**G** DEFENDANT SYMONDS:

Q. Well one tape played for 62 minutes and a bit, and the other ...? - A. The approximate length of each tape is 62 minutes. Whether they started at the same point, whether the timings are correct, the only possible way you could do this, is to start the conversation at the beginning on both tape recordings at the same time and play through to ascertain correct timings.

**H** Q. And is it to your knowledge that these tapes were synchronised at some stage? - A. They have been. The two conversations are identical.

A Q. And referring to the beginning of the tape at certain parts, such as Perry saying: 'Twenty-to one now', would it appear to you that the tapes were switched on more or less at the same time? By that I mean, only a few seconds between them? - A. No, I wouldn't rely on that, personally. I would have to go by radio programme material, or tape content.

Q. Would you say that it appears that both tapes played through for approximately one hour, or some time like that? - A. Both tapes last for approximately that time, yes.

HIS HONOUR JUDGE STROYAN: Mr. Symonds, is your point this? Both those tapes were switched on roughly the same time?

B DEFENDANT SYMONDS: Yes.

HIS HONOUR JUDGE STROYAN: They play for roughly the same length?

DEFENDANT SYMONDS: Yes.

C HIS HONOUR JUDGE STROYAN: And therefore, there wouldn't have been time for one to be taken off, rolled back, and played on the other?

DEFENDANT SYMONDS: No Your Honour, the point is that this has given ...

HIS HONOUR JUDGE STROYAN: Just let me finish. And accordingly, if that is right, it must have been something else he was talking about when he said, yesterday, that his demonstration tape showed that this was ...

D DEFENDANT SYMONDS: Tape 14 being replayed.

HIS HONOUR JUDGE STROYAN: That is your point.

DEFENDANT SYMONDS: That's the point, yes Your Honour.

HIS HONOUR JUDGE STROYAN: Very well. We have got that now.

E DEFENDANT SYMONDS:

Q. Do you understand that? Therefore, your evidence yesterday must have been quite wrong? - A. No, I don't think so. If you could make another suggestion as to what it could be, other than Tape 14, I will see whether I can agree with you, or not.

F Q. I suggest it could be the missing Tape 'X', the mobile Nagra which was in Mr. Hawkey's car, which is not before the court? - A. Well from the transcript, it would appear not.

Q. Why? - A. Well, on Page 38 and 39 they speak of the recording not coming out, and in fact, Hawkey says: "I couldn't bend across to switch it on and check it".

G Q. Where do they say about the recording not coming out, the exact words please? - A. Where are we? "No, we didn't hear it", 17 on Page 38.

Q. But weren't you present when Mr. Hawkey was asked these self-same questions by prosecuting counsel, and didn't you hear his replies? - A. Yes, I think he said ...

H Q. Because this is not a time for guesswork Mr. Penna. You are supposed to be here as an expert. - A. I think he said that it didn't come out and it was very poor quality. But if you look on Page 40, where they are playing that tape recording, Mr. Mounter says: "The speaker

quality, very good, I like it". In other words, it would appear they are playing back a very good quality tape, which Tape 14 is.

A Q. But how can you explain to this court, that at that stage both tapes were, apparently, running on their recorders in the boot of Mr. Perry's car? - A. No, I don't accept that.

Q. So, your evidence is still, that at some stage before the end of one hour, Tape 14 was removed, or wound back, and played on ... Parts of which can be heard on Tape 13, is that still your evidence? - A. It would appear so.

Q. Will you please look at Page 40? - A. Four zero?

B Q. Yes? - A. Yes.

Q. 'Male'. That's what you are referring to, is it, about? "The next thing I know he's right beside us", general laughter. "I thought to myself, I've got to bend down and switch it on. Have you got the un-gear mate? The others got it. Good. You can play it back through (unintelligible) if you like to plug it into the (unintelligible) and hear it played back on the (unintelligible)".

C Male: "What has he got to say?" "Will you take this one off, Ken?"

Male: "There's a big one and a little one. The red one goes in the big hole."

D What do you think that refers to? - A. They are dealing with the playback leads, I would think. They used headphones. I think there was a mention of headphones somewhere in there, and they are obviously coupling the leads up to play the tape back.

Q. So, it would appear then, that when you say: "Will you take this off?", would that be take the tape off? - A. No, that's Perry saying: "Will you take this off?", meaning will you switch the radio microphone off, which he in fact repeats at the very end of that tape on Page 41 in the unintelligible part listed as No. 3 on Page 41. Says: "Better undo this one", and then you get the radio microphone switched off.

E Q. Now, do you know this, or are you guessing again, because I suggest that half your evidence is guesswork? - A. That's what Perry says.

Q. The point I am making, to put it as simply as I can, is that it would appear, according to the evidence we have heard, and according to the tape recordings we have before this court, that Tapes 13 and 14 were switched on at about the same time, and they played through their length which was about one hour, a couple of minutes either way. They both ran out to their length. And, at some stage on Tape 13, before the end ... - A. No.

F Q. On the recording - please let me finish - we hear the sound of another tape being wound back and played? - A. No, I think ...

G Q. I am putting to you that that could not have been Tape 14, because it would appear to us that Tape 14 was still spinning on its spool at that time? - A. No, I think you are fundamentally incorrect, and I will give you the point where I think you are incorrect. Page 29 of the transcript, 35B. There is approximately, on these timings alone, a difference of a minute, but I don't accept these timings.

H Q. What difference is a minute? You asked us to look at Page 29, which we are now looking at. - A. Well yes, there's a timing difference there of about a minute, but ...

Q. Where? - A. Roughly the start of the conversation.

Q. In connection with what? - A. The difference between 13 and 14. I feel there is more of a difference somewhere else.

**A** HIS HONOUR JUDGE STROYAN: Would a minute be a long enough time to get a tape off its recorder in the boot, and ready to play back inside the car? That is the point you are concerned with.

DEFENDANT SYMONDS: Yes Your Honour. I am saying that this is quite ridiculous.

HIS HONOUR JUDGE STROYAN: Yes, I follow.

**B** WITNESS PENNA: Yes, I agree, a minute is a short time, if that be correct.

DEFENDANT SYMONDS:

**C** Q. Is it not obvious from the conversation we heard which lasted more, which lasted several minutes, about the playing back, which again took place many minutes before the end of Tape 13? - A. Yes, it does take place before.

Q. And therefore that could not have been Tape 14? - A. I would have to check them in sympathy with each other, before I could agree one way or the other, Mr. Symonds. I just cannot work with the transcript, and hope to be accurate.

**D** Q. Well, I suggest that if you check them in sympathy with each other, you will see that both tapes play for about an hour, and they both run out at the very end, and they were both switched on within seconds of each other; and that at some stage, several minutes before the end of Tape 13, many minutes before the end of Tape 13, we hear the sound of a tape being rewound and playing, and I suggest to you that in no way can that possibly be Tape 14 as per your evidence to this court yesterday? - A. I can't accept that without checking it. It may be the case, but I can't accept it just like that.

**E** Q. You see, you are supposed to be giving expert evidence, are you not Mr. Penna? You are supposed to be, what? An independent expert? Or, are you trying rather hard to put certain evidence in a certain way? The worst way for me, or what? - A. I ...

**F** Q. You see, either you are a police witness, or you are a prosecution witness, or you are an expert, or an independent expert, which I submit you no way are, and it is quite obvious from your behaviour now. You refuse to accept the most simple and obvious point.

HIS HONOUR JUDGE STROYAN: Mr. Symonds. Mr. Symonds, we've got to ...

DEFENDANT SYMONDS: Could we have a break?

**G** HIS HONOUR JUDGE STROYAN: Mr. Symonds, you have got the point, and you are not going to make a speech.

WITNESS PENNA: It makes no difference to me whether these tape recordings are original or forgeries, in the sense that if they are forgeries of any sort, I would be giving evidence to that effect; and if they are original, I would be giving evidence to that effect. Which way the balance weighs is of no consequence to me.

**H** DEFENDANT SYMONDS: Your Honour, I wonder if we could have a break for five minutes to discuss the matter.

HIS HONOUR JUDGE STROYAN: Yes, well, you are getting near the ...

DEFENDANT SYMONDS: Your Honour, about this checking, that this witness has asked to be allowed to check. Would it be possible for him to check during the adjournment, and perhaps I could ask him further questions, because I am most dis-satisfied with the answers that have been given so far, because I suggest I am entitled to get a straight-forward 'yes' or 'no' type of answer in this case, rather than 'he can't say unless he does further checks, or synchronises something'.

HIS HONOUR JUDGE STROYAN: It is very, very rarely in these courts, that an expert witness gives a straight 'yes' or 'no' answer. But I think it would be right in the present circumstances, that this witness should check on the evidence about this matter during the adjournment. He can do it during the adjournment.

DEFENDANT SYMONDS: Thank you very much, Your Honour.

HIS HONOUR JUDGE STROYAN: But so far as other matters are concerned, Mr. Symonds, you have taken a very long time cross-examining him, and I hope that you will be able to conclude it apart from that before very long.

DEFENDANT SYMONDS: That's what I want to check up on now, Your Honour. What other questions I need to ask.

HIS HONOUR JUDGE STROYAN: You have asked some answerable questions, and a lot of unanswerable ones.

Short Adjournment

WITNESS PENNA: In order to save time Your Honour, perhaps my colleague may carry on checking this point on the tape, while Mr. Symonds is asking further questions?

HIS HONOUR JUDGE STROYAN: Well I don't know how long it is going to take.

WITNESS PENNA: Well it should not disturb the court with headphones on.

MR. RIVLIN: Well Your Honour, I don't know how long it is going to take, and of course, this is the witness who is giving evidence.

HIS HONOUR JUDGE STROYAN: Yes. I think he ought to do it himself.

MR. RIVLIN: I think he should do it himself. Yes.

HIS HONOUR JUDGE STROYAN: He can do it himself during the adjournment. I shall rise at 1.00 and I shan't sit until 3.00.

MR. RIVLIN: As Your Honour pleases. Well I am sure that will give us plenty of time.

HIS HONOUR JUDGE STROYAN: Yes.

DEFENDANT SYMONDS:

Q. Mr. Penna, going back again now to compare ... Perhaps to help you to compare Pages 38 against Page 52. So, we are looking now, at the end bits of Tape 13 and 14? - A. Yes.

Q. On 38, Perry says: 'Twenty-to one now' at 37.47? - A. Yes.

Q. And on Page 52, he says it at 38.11? - A. Yes.

Q. And then, there is car radio and engine noise?

HIS HONOUR JUDGE STROYAN: Mr. Symonds, we have had this.

**A** DEFENDANT SYMONDS: Yes, Your Honour. This is just to recap.

HIS HONOUR JUDGE STROYAN: We are not going to have what you call 'recapping'.

DEFENDANT SYMONDS: I want to put the point, you see, and I think that when ...

**B** HIS HONOUR JUDGE STROYAN: You have put it once already. You are not going to put it again now. You can return to the matter when the witness has checked through in the adjournment.

DEFENDANT SYMONDS: Right. Yes. I'll do that.

HIS HONOUR JUDGE STROYAN: Yes. Is that all then?

DEFENDANT SYMONDS: No. There's two things I have missed out, Your Honour.

**C** HIS HONOUR JUDGE STROYAN: Yes.

DEFENDANT SYMONDS:

Q. That is, 30 Hz. We have discussed 50 Hz. Mr. Penna, was it ever brought to your notice that 30 Hz had been found on certain of these tapes? - A. Yes.

**D** Q. And did you check the tapes yourself, to find this 30 Hz? - A. Yes, I can confirm it is on there.

Q. And can you offer an explanation of how 30 Hz comes to be on these tapes? -

HIS HONOUR JUDGE STROYAN:

**E** Q. On which tape? - A. On Tape 1 and Tape 5, Your Honour.

HIS HONOUR JUDGE STROYAN: Yes.

WITNESS PENNA: Yes, yes I can.

DEFENDANT SYMONDS:

**F** Q. Could you, perhaps, offer it? - A. Yes. I think a very likely possibility is that Tape 1 and Tape 5 have been previously used and erased, before being used again, using a Nagra tape recorder.

Q. And if that be so, if the tapes were not new, how would this 30 Hz come to be on them after they had been erased? - A. It's put on during the erasure process, or it is possible for it to happen that way.

**G** Q. And is this your own knowledge, or is this the result of information you received from the defence experts? - A. It is directly obtainable from the manual of the tape recorder in question.

Q. The manual? - A. Yes.

Q. Which? The manual of the Nagra? - A. Yes.

**H** Q. And does this manual state that when erasing tape on a Nagra, you may sometimes find 30 Hz left on the tape? - A. No, it states that under certain conditions 30 Hz can be put on to recordings.

Q. Do you have a copy of this manual? - A. No. Mr. Hyde does, though I know.

Q. Perhaps you would care to refer? - A. I am only going from memory.

HIS HONOUR JUDGE STROYAN: (Inaudible)

A

DEFENDANT SYMONDS: This is why I have asked this witness to refer to it.

HIS HONOUR JUDGE STROYAN: Just listen. The contents of the manual are something which was written down by somebody else. You can ask this witness if he agrees with it. But that's all. And I think he does. I think he has.

B

DEFENDANT SYMONDS: Well, he said his memory ... He's not sure of his memory, so I suggest that he looks at the manual, and then I will ask him that very question.

HIS HONOUR JUDGE STROYAN: Yes. The note I have got is, a 30 Hz hum can get on a tape during the erasing process.

C

DEFENDANT SYMONDS: And that this is to be found in the manual of the machine.

HIS HONOUR JUDGE STROYAN: Well, that is not evidence. It is this witnesses' evidence.

WITNESS PENNA: Yes. Page 15 of the manual.

D

DEFENDANT SYMONDS: Then, perhaps this witness maybe allowed to read from this?

HIS HONOUR JUDGE STROYAN: No. You can say: 'Is it your view that 30 Hz hum can get on to a tape during the erasing process?' Is that your view? - A. Yes, I think it is.

HIS HONOUR JUDGE STROYAN: Yes. Well there we are. A witness can give his view, he can't give the view of somebody else. Now, you've got that.

E

DEFENDANT SYMONDS:

Q. Why ... Well may I ask, why only 30 Hz, and no other tones? - A. It's rather dependent on the condition of the recorder at the time.

F

Q. Well, when you examined these tape recordings, did you find the 30 Hz to come within bulk erase noise, or bias erase noise? - A. Well this is where we come across a fundamental error. The noise level measured, taking for example, Tape 5, has been measured by some people, after the Robson meeting, as bulk erase noise. It was not bulk erase noise.

G

Q. The Robson meeting doesn't ... - A. Well, it is the area in which the 30 Hz tones occur, if I have got to refer to it.

Q. And it has been measured as bulk erase noise? - A. By, I believe, your experts.

Q. Yes? - A. It is not bulk erase noise.

Q. You have measured it as, yourself? - A. I believe it to be, and my colleagues believe it to be machine erase noise.

Q. Bias erase noise? - A. That's correct, and it has been measured as such.

... H

Q. When you say you and yourself, did you yourself make this measurement? - A. All three of us made it.

HIS HONOUR JUDGE STROYAN: You can only speak for yourself.

WITNESS PENNA: Yes.

DEFENDANT SYMONDS: May I see that pamphlet, Page 15, please? - A. I think your own experts have a copy of it. I'm not sure.

HIS HONOUR JUDGE STROYAN: We have got this point, now. You need not go on with it.

WITNESS PENNA: I think you are being handed a copy, Mr. Symonds.

DEFENDANT SYMONDS: Perhaps I will refer to that after lunch also, Your Honour, if I may.

Q. And the last point I would like to raise now, is that yesterday we all referred to Page 24 of your transcript? - A. Yes.

Q. And we listened to some recordings of some words, and I believe you gave your version of what you thought was being said? - A. That's what I heard, yes.

Q. Now, were you using your intuition again, here? - A. No, I was using my ears.

Q. And you heard all those words clearly, did you? - A. I am sure, with the exception of one word, which I have an alternative for, that that is what's said.

Q. What word would that be? - A. 'May'.

Q. And what would be your alternative? - A. 'Might'.

Q. Were you in court when Mr. Perry gave evidence as to what he thought those words meant? - A. Yes.

Q. And would you say that he was quite wrong then? - A. I think he was wrong, yes. Based on what he heard on that particular occasion. He only heard one version of the recording. That was Tape 14. It's up to every individual to make their own minds up. The transcripts are not the evidence, after all.

Q. So, it is up to every individual to make their own minds up about these words? - A. I would think so.

DEFENDANT SYMONDS: Very good. Your Honour, that's all the questions for the moment.

HIS HONOUR JUDGE STROYAN: Yes.

MR. RIVLIN: Your Honour, I shan't re-examine the witness, certainly not at this stage. Your Honour, may I say this ... Before I do say something, can I ask that Mr. Penna and Mr. Eley just leave the court for a moment?

HIS HONOUR JUDGE STROYAN: Yes.

Witnesses Penna and Eley left court

MR. RIVLIN: Your Honour, now that he has left the court, may I tell Your Honour, there may be a very simple explanation for the point that the defendant has raised.

HIS HONOUR JUDGE STROYAN: Yes.

**MR. RIVLIN:** Now, I am terribly anxious that it should not be suggested, if Mr. Eley gives that explanation, that there has been any collusion or collaboration between anyone. Mr. Penna, of course, has not been speaking to Mr. Eley whilst he has been giving evidence.

**DEFENDANT SYMONDS:** They have both been sent outside the court together now, Your Honour. It's their first chance to have a little chat, without being warned.

**MR. RIVLIN:** Well Your Honour, Mr. Stone, the Sergeant, has gone outside to make sure that they don't speak to one another.

Now, Your Honour, in the circumstances, I would like Your Honour to order, in open court, that the two should not communicate with one another at all between now and the time that Mr. Eley gives his evidence, so that the suggestion of collaboration or collusion can't be made.

**HIS HONOUR JUDGE STROYAN:** I will certainly do that, yes.

**MR. RIVLIN:** I am obliged.

**HIS HONOUR JUDGE STROYAN:** We might as well start Mr. Eley's evidence now.

**MR. RIVLIN:** Well, I would very much like to, if I may, Your Honour.

**HIS HONOUR JUDGE STROYAN:** Yes. He covers very much the same ground.

**MR. RIVLIN:** He does. He covers very much the same ground, but I would like to ask him one or two questions about the last matter that has been raised with Mr. Penna.

**HIS HONOUR JUDGE STROYAN:** Yes.

**MR. RIVLIN:** And it is probably the best time to do it, before any suggestion can be made.

**HIS HONOUR JUDGE STROYAN:** Yes.

**MICHAEL ELEY (Sworn)**

**Examined by Mr. Rivlin:**

- Q. What is your full name, please? - A. Michael Eley.
- Q. Are you a technical officer employed at the Metropolitan Police Forensic Tape Laboratory? - A. I am.
- Q. And for how long have you been employed there? - A. In the laboratory, for some five years.
- Q. And have you any experience and qualifications in the field of electronics, and communications, and the transcription of tapes, and the analysis of recordings? - A. I have worked in the field of electronics and communications for the best part of 20 years, and I have a Higher National Certificate.
- Q. A Higher National Certificate in what? - A. In electronics and communications.
- Q. And you say you have worked in the field for a long time. During the years that you have been working in the Police Forensic Tape Laboratory, what has been the main nature of your work? - A. It's basically

forensic tape recordings, all aspects of them, the transcription, the enhancement of the speech, and the authentication of them.

A Q. Now, I would like to ask you a question first, about almost the last matter that was raised when the last witness, Mr. Penna, was giving evidence? - A. Yes sir.

Q. To see if we can clear it out of the way. Now, Mr. Penna is going to make some tests over the adjournment? - A. I understand.

B Q. And we will await the results of his tests, and his evidence on those tests. But can I just ask you this question? In relation to the 21st of November of 1969, there are three alleged original recordings in court, are there not? - A. There are, sir.

Q. One of them ... Well, we have dealt with 13 and 14, and the third one is Tape 15, isn't it? - A. That is correct.

Q. Now, I wonder if you would look at the police transcript please, and if the jury would too, at Exhibit 35B at Page 61? - A. I have it, sir.

C Q. You've got that, have you? And can you see No. 7? - A. I do.

Q. "So what I've got to do, I've got to find out the names of the police officers who are dealing with them", right? - A. I see that, sir.

Q. And would you please look over the page? - A. Yes.

HIS HONOUR JUDGE STROYAN: Just a moment please.

D MR. RIVLIN: Would you please look over ...

HIS HONOUR JUDGE STROYAN: Just a moment.

MR. RIVLIN: I am so sorry, Your Honour.

HIS HONOUR JUDGE STROYAN: Yes. Page 62.

E MR. RIVLIN:

Q. Page 62 at No. 5. Do you see there: "So that's what I want to find out. I want to find out exactly what the strength of it is"? - A. I do sir.

F Q. So that it appears that some police officer or officers transcribing Tape 15 caught these words in 1969, early 1970? - A. They did sir.

Q. Now, are you ... You've heard evidence about the demonstration tape of the play-back of those words, haven't you? - A. I have.

HIS HONOUR JUDGE STROYAN: Well now, just a moment please. Is Tape 14, am I right in remembering that is the Grundig tape?

G MR. RIVLIN: No, Tape 15. This one, is the Grundig tape.

HIS HONOUR JUDGE STROYAN: I am sorry, 15 is the one we are looking at. The one we are now looking at is the Grundig tape.

MR. RIVLIN: Absolutely Your Honour, yes. This is the Grundig we are talking about.

H HIS HONOUR JUDGE STROYAN: Yes. Which was on Perry.

MR. RIVLIN: This was, this was on Perry, yes.

HIS HONOUR JUDGE STROYAN: Yes.

MR. RIVLIN: Now, can I just ask you first. As regards the demonstration tape, where you were able to play-back the rewinding, do you understand? We have heard that ... Is this not right, that these were the passages that you managed to get? - A. They are the two easiest passages to identify.

Q. Yes. Now, so far as the Grundig is concerned, Tape No. 15, could you help the jury as to how long that one plays for? - A. I believe it would run for a total of 30 minutes. Whether it did on that occasion, or whether Mr. Perry stopped it prior to that, I cannot actually say.

Q. But that's the sort of, the full length of the tape, about approximately 30 minutes? - A. That is the playing time, yes.

Q. And I'll just ask you this question. Are you able to say, yourself, which tape was being played back? - A. I am not.

Q. Fourteen, or 15, or any other? - A. No. It was thought ... There was an indication from the transcript of Tape 13, when the reporter said: "The quality is very good. I like the speaker", or some such words. It has now occurred to me, they could have been joking because ...

Q. Never mind about that. Are you able to say, of your own knowledge, whether they were playing back 14 or 15? - A. I am not.

Q. You are not. In other words, is there anything in the quality of the tape which persuades you that it is one or the other? - A. There is not.

Q. Now, I would/just like to ask you a little about the transcripts.

HIS HONOUR JUDGE STROYAN: Let me just be clear about this. The Grundig was on Perry.

MR. RIVLIN: The Grundig was on Perry.

HIS HONOUR JUDGE STROYAN: With the microphone and the recording device.

MR. RIVLIN: And the recording device on Perry.

HIS HONOUR JUDGE STROYAN: It was in fact a cassette. I think that was the evidence.

MR. RIVLIN: Your Honour, yes.

HIS HONOUR JUDGE STROYAN:

Q. Do you know about those tapes, Grundig tapes? - A. I do, Your Honour.

Q. Can one readily take the device out of one's pocket? - A. With great ease, Your Honour.

MR. RIVLIN:

Q. Do we have, still have in court, a Grundig device? Look at this, and let the jury know whether it is quite different, or similar to the one that was in use at the time. Do you know? - A. I have no knowledge of the one that was in use at the time, but this is the only current model, an EN3, and I believe this would be identical.

Q. The only current model, in what year? - A. In 1969.

Q. 1969. Just hold it up, so that the jury can see what it looks like.  
And is that a cassette player? - A. It is.

Q. Where do you put the cassette? - A. This is the cassette, and this is the recorder.

HIS HONOUR JUDGE STROYAN:

Q. The whole of ... The machine does both the recording, and plays back? - A. And plays back.

MR. RIVLIN:

Q. Alright. Could you please put it down. Now I would just like to ask you about the transcripts. Have you been involved in the preparation of these transcripts? - A. I have.

Q. Can you help as to how long you were engaged in the preparation of these transcripts? - A. I would think I worked in excess of a week, a total working week.

Q. In excess of a total working week? - A. Yes.

Q. Well what is your working week? - A. A 40 hour week.

Q. And what is the position as regards these transcripts, Mr. Eley? What do you say about them? - A. Well, I would say that about the best guide as to the content of these tapes. One can still continue to make modifications, the more times you listen to them.

MR. RIVLIN: Yes.

HIS HONOUR JUDGE STROYAN:

Q. When you say 'these transcripts', do you mean 35D? - A. 35D.

MR. RIVLIN:

Q. 35D. Well that's the best you have been able to do? - A. It was at that time, yes.

Q. Yes. With the qualification that you are not suggesting that they are infallible? - A. No.

Q. Would you please go to Page 24, because I must ask you about this, as well as the last witness. Have you been able to hear anything, at the bottom of Page 24, in respect of which you feel able to give evidence? - A. Well 27.28 ...

Q. Keep your voice up, will you please? - A. At 27.28, Perry can clearly be heard saying: "Here you are, I may as well give you that now. I can't get fuck all."

Q. And then, could you hear anything immediately after that? - A. Yes, Symonds said: "Cheers".

Q. Then, what did you next hear? - A. Well, Symonds in fact says: "Cheers", that's over and above: "Fuck all lately". It's one of those points where both people are speaking at once.

MR. RIVLIN: Yes. Now ...

HIS HONOUR JUDGE STROYAN:

Q. So, 'lately' is an adverb qualifying 'fuck all'? - A. Yes Your Honour. In fact, Perry said: "I can't get fuck all lately". Symonds said: "Cheers" at the same instant.

MR. RIVLIN:

Q. Now, Mr. Eley, it's right is it not, that you have been made aware of a suggestion that on Tape 13 there's a hum? - A. There is a hum, yes.

Q. Just let's try and put the matter into context. Does that come anywhere within the recording of the alleged conversation between Mr. Penna ... Between Mr. Symonds and Mr. Perry? - A. It does not, no.

Q. Does it come sometime afterwards? - A. Some considerable time after the conversation.

Q. Some considerable time afterwards. Right. Now, you've heard the evidence as as to the route which Mr. Perry took, following that meeting on the 21st? - A. I don't believe I was in court when Mr. Perry in fact gave evidence on that.

Q. Well ... Very well. Let me ask you this. Given that he told us he passed somewhere within the vicinity of the Crystal Palace transmitter, is that something that you have been concerned to investigate? - A. I have.

Q. Yes. Let's have no mystery about this. First, what does the word 'hertz' mean? - A. It's really, it's a German word for 'cycles per second'.

Q. Cycles per second. So a 50 Hz, or a 30 Hz hum means, what? - A. Thirty cycles per second, or 50 cycles per second.

Q. Yes. Now can I just ask you about this, because it is something that many people may have experienced from time to time, when driving around in their motorcar. A lot of cars, of course, are fitted with radios, aren't they? - A. They are.

Q. If you are driving along the road, is it uncommon, if you have got your radio switched on, for there to be some interference, electrical interference of some type or another? - A. Invariably, you can get interference on your radio if you are driving near Crystal Palace, or any other large transmitter.

Q. Let me take the situation of somebody who is just driving along the motorway, under these high tension wires, you know what I mean don't you? - A. I do.

Q. And you've got your radio switched on, and you are listening, might you get interference on the radio when that happens? - A. I would expect you would get a small burst of 50 Hz hum.

Q. Yes. Well, that's the sort of thing you are talking about then, when you say 50 Hz hum?

HIS HONOUR JUDGE STROYAN:

Q. That appalling noise one gets on one's wireless when one is driving under pylons. That is called a 50 Hz hum, is it? A sort of crackling noise? - A. It could be.

MR. RIVLIN:

Q. And if you've got ... Just supposing you were minded for some reason to have a tape recorder switched on at the time, taking a tape of what is being heard on the radio set, alright? - A. Yes.

A Q. Would that come out on the tape recorder? - A. It would do.

Q. Yes. So that when witnesses talk about hums, and that sort of thing, that's a type of situation in which it may occur? - A. It could be, yes.

B Q. It could be. Now you let us know a little about Crystal Palace. Have you ever worked in the vicinity of Crystal Palace? - A. I have, within the last twelve months, carried out an installation near, within two miles of Crystal Palace.

C Q. And tell the jury a little about Crystal Palace. What is Crystal Palace? - A. Crystal Palace is the site of one of the main transmitters in the south-east of England, and it has a total of five T.V. programmes being radioced from there. Some of them are a million watts, which is quite a lot of power, and others are two hundred thousand watts.

D Q. And is there a hertz frequency that is given off from Crystal Palace, or not? - A. Well, it's difficult to put it simply. All the programmes are emanating on carrier waves, and one would expect that you would only receive the programme if you had a receiver tuned into them; but in practice, the power is so great that they will demodulate themselves, and they will show up as either vision buzz, and sound, and it takes varying forms. It will just, almost will be picked up on a straight piece of wire if you have earphones (inaudible).

E Q. Just let me ... If you don't mind, I would like to steer clear of technicalities. Let me ask you about your own experience. What's that? - A. Well, with regard to the installation that I put in, we had considerable trouble not picking up the T.V. programmes, and even with the utmost care, we still had intermittent hums from time to time which we put down, correctly or incorrectly, to the T.V. transmitter.

Q. Now, have you been anywhere near Crystal Palace in the recent past? - A. No, but a few weeks ago I got a battery television set and received off-air broadcasts from Crystal Palace transmitter, and I examined the spectral content of the T.V. signals.

F Q. And what did you find? - A. I found the results were such that they could account for the 50 Hz sine-wave found in the gap on Tape 13.

HIS HONOUR JUDGE STROYAN:

Q. May I be clear about that? You got a battery television set? - A. A battery operated T.V. set.

G Q. Yes. What did you do with it? - A. I purely watched T.V. programmes.

Q. Where? - A. This was at a site within four miles of Crystal Palace.

H Q. Yes. 'A few weeks ago I got a battery operated television set, and I watched television programmes about four miles from Crystal Palace.' What did you hear? - A. The purpose of me doing this was to actually examine the spectral content of the T.V. programmes, and I found that the 50 Hz component was some 4 to 6 DB above all others.

MR. RIVLIN:

Q. 'DB' being decibels? - A. Decibels. With the exception of the 15 KHz line frequency, which was 10 BD above all others. If I can put it fairly simply ...?

A Q. Well, I wish you would, please? - A. The problem on Tape 13 is, that I would put forward that the T.V. transmitter could account for the 50 Hz sine-wave found on Tape 13.

Q. You are not ... Let me make it absolutely clear. You are not saying that that definitely was the cause of it? - A. Not at all.

B Q. No. But what you are saying, is this, is it? That in your opinion it could have been the cause of it? - A. It could be.

Q. And is that, really, as far as it goes? - A. That is all I am saying.

MR. RIVLIN: Yes.

HIS HONOUR JUDGE STROYAN: And that is Tape 13?

C MR. RIVLIN: That's Tape 13.

HIS HONOUR JUDGE STROYAN: And it is well after the ...

MR. RIVLIN: Well after the programme. Yes, certainly.

D Q. Do you know how many minutes after the programme ... the conversation it comes? - A. Not exactly. I would be guessing if I said I did.

Q. It's more than one minute after? - A. I think it's about seven to ten minutes. The time it would take to drive from the Grove to Crystal Palace.

HIS HONOUR JUDGE STROYAN: Yes.

E MR. RIVLIN: Now, Your Honour, I've completed my examination in chief of the witness. I would be grateful if you would give him the warning, and the caution that I have suggested.

HIS HONOUR JUDGE STROYAN: Yes. I think Mr. Penna had better come into court too, and I will warn them both.

MR. RIVLIN: Yes.

F DEFENDANT SYMONDS: Your Honour, before we adjourn, perhaps in the absence of the jury, I would like to make an application to you.

HIS HONOUR JUDGE STROYAN: Yes, very well.

Witness Penna brought into court

G HIS HONOUR JUDGE STROYAN: Now, Mr. Penna and Mr. Eley, during this adjournment it is of the greatest importance that you do not communicate with each other in any way at all, and in particular, that you do not talk to each other at all. You must keep well out of each other's way during this adjournment.

WITNESS ELEY: I understand.

H HIS HONOUR JUDGE STROYAN: Thank you. Yes, very well. I am afraid I am not sitting until three o'clock this afternoon, members of the jury. It may be rather later. Be back for three o'clock, please.

Jury left court

Witnesses Eley and Penna left court

A DEFENDANT SYMONDS: Your Honour, there are two police officers I would like to call as defence witnesses, and they are in fact the other officers who were present at the events on the 24th of September. So far, we have had called by the prosecution, Sergeant James and Detective Constable ...

HIS HONOUR JUDGE STROYAN: Well who are they?

B DEFENDANT SYMONDS: Then Sergeant Harley, Your Honour, and then Detective Constable Hill. If you recall the evidence, they were the other two Camberwell officers. There were, in fact, four Camberwell officers present, but one is now in Canada, so I don't seek to call him; but I would like to call the Camberwell officers who were present in respect of the evidence given by the Nunston officers who were present on the 24th.

C HIS HONOUR JUDGE STROYAN: Well, let's deal with Harley first. I mentioned him yesterday. What is the position about Harley?

MR. RIVLIN: Well, Your Honour, the defendant says that he is relevant to the 24th, and the 24th is a very important day in this case, and if he says he knows that these officers can give relevant evidence, who am I to interfere?

D HIS HONOUR JUDGE STROYAN: I follow that, but I thought there was some difficulty about getting him here.

MR. RIVLIN: Your Honour, I don't think so.

HIS HONOUR JUDGE STROYAN: Yes, very well.

DEFENDANT SYMONDS: He is now a Chief Inspector serving at ...

E MR. RIVLIN: Your Honour, as regards Hill, I have already agreed that his statement could be read.

HIS HONOUR JUDGE STROYAN: Yes.

MR. RIVLIN: But I understand the defendant wishes to withdraw that now, and to call him. Well, obviously, I have no objection.

F HIS HONOUR JUDGE STROYAN: Yes. Very well, you may call them, but I must point out to you that I am not going to let them, or any other witness, give hearsay evidence.

DEFENDANT SYMONDS: No, Your Honour. They were both present at the searching of Perry's house, and the events before and afterwards.

G HIS HONOUR JUDGE STROYAN: Yes. Well they can give evidence of that which they saw and heard, provided it is relevant. They are not going to give hearsay evidence. I might as well tell you now, Mr. Symonds, I am sure you know it anyhow, that when it comes to examining your own witnesses, you must be careful not to ask them leading questions. A leading question is a question which suggests its own answer. Do you follow?

H MR. RIVLIN: Your Honour, if it helps the defendant. If the only reason why he wishes to call them, is for example to prove that Perry had in his house, some knives, or bolt croppers, or clothing, I don't think I shall be heard, later on in this case to be arguing that no such things were in his house.

HIS HONOUR JUDGE STROYAN: No.

MR. RIVLIN: The defendant may have other reasons for calling them. If so, fair enough. But, if that's the only reason why he's going to call those people, then I don't think that he need worry too much about that.

HIS HONOUR JUDGE STROYAN: No.

DEFENDANT SYMONDS: Your Honour, there are other reasons.

MR. RIVLIN: Well, very well.

HIS HONOUR JUDGE STROYAN: Very well.

Luncheon Adjournment

In the presence of the jury

CLIVE STANLEY PENNA

Cross-examination by the Defendant Symonds (Continued)

HIS HONOUR JUDGE STROYAN: Yes. Now, you can go back, shortly I hope, to the topic about which this witness has been making further enquiries.

DEFENDANT SYMONDS:

Q. Mr. Penna, have you now made these tests in connection with synchronising, was it? - A. I have made a number of tests, Your Honour, over the adjournment. I can confirm that Tape 13 and Tape 14 are roughly synchronous, within certainly less than a minute.

HIS HONOUR JUDGE STROYAN: Just a moment. Within one minute. Yes.

DEFENDANT SYMONDS: And can you confirm that they were both played throughout their length? - A. Yes.

Q. And would it be so, that they would then have both finished running within a minute? - A. Yes.

Q. And would it be so, that that could not be parts of tape 14, heard being played back on Tape 13? - A. That's correct.

HIS HONOUR JUDGE STROYAN: Just a moment, please.

Q. 'Therefore, it could not have been part of Tape 14 which was played at the end of Tape 13', is that right? - A. That's correct.

DEFENDANT SYMONDS:

Q. So, would it follow from that, that the evidence you gave yesterday was incorrect? - A. Yes. There was a mistake in as much as, it's not 14, and I now believe that it was, and in fact can point to indications, that it was in fact Tape 15.

Q. Well, would you please do that? - A. Yes, certainly.

HIS HONOUR JUDGE STROYAN:

Q. That's the Grundig one? - A. That's correct, My Lord.

HIS HONOUR JUDGE STROYAN: Yes.

WITNESS PENNA: Page 38 of 35B. Unfortunately, there's some previously untranscribable speech which leads one to the answer to this problem. Between 18 and 19, where there is a section marked unintelligible, you have what I believe to be Julian Mounter saying: "You've got it on your ..."

HIS HONOUR JUDGE STROYAN:

Q. Just a moment. At Line 19. Page 38, line 19? - A. That's right.

Q. Mounter says, what? - A. "You've got it on your ...". Perry interrupts by saying: "Got it on my one, yeah."

HIS HONOUR JUDGE STROYAN: Just a moment.

DEFENDANT SYMONDS:

Q. On 19 you say you think it reads: "You've got it on your ..."? - A. The unintelligible part, or part that previously has not been transcribed, is Mounter saying: "You've got it on your ..." Perry says: "Got it on my one, yeah". That's approximately 57 minutes 25 seconds into Tape 13.

HIS HONOUR JUDGE STROYAN:

Q. Perry says, what? - A. "Got it on my one, yeah".

Q. Where does that come? - A. That comes immediately after: "You've got it on your ...", by Mounter.

Q. Before the words: "It was in there, was it"? - A. Yes. There's no 'it' there. I can't hear the word 'it'. "Was in there, I presume". That's what I hear.

DEFENDANT SYMONDS:

Q. "It was in there ..."? - A. No. "Was in there, I presume".

Q. Instead of: "It was in there, was it"? - A. Yes.

HIS HONOUR JUDGE STROYAN:

Q. Now, may I get this straight? - A. Yes.

Q. At Line 19? - A. Yes.

Q. The words, in your view read: "No, we've got it". How does it go on after that? "We've got it ..."? - A. Well, there's still something slightly indecipherable there. "We've got it on the ..." Mounter says: "You've got it on your ...", and Perry interrupts saying: "Yes, got it on my one, yeah", and that's contained in that ...

Q. Just a moment. Yes. So what I have written down is here. At Line 19, the words should be: "No, we've got it ...", and then it changes to Mounter: "You've got it on your ...", and then it changes to Perry: "I've got it on my one". Is that right? - A. Yes.

Q. That, you say, should be substituted for that part which starts with the words 'Lead' before 'unintelligible to me'. "It was in there, was it", that goes out, does it? - A. Well it's... I don't believe 'it', "it was in there, was it". That's not quite correct.

A Q. And what about the "yeah, yeah"? - A. I imagine that's there, My Lord, Your Honour, but I didn't apply, looking at that particular transcript further. It goes on. Perry asks on the next page, No. 3, the end of that line: "See if that one in the boot works ..." and "don't it?" The 'garbled' is ... The bit that's been labelled 'garbled' is: "Do you want it all off, do you".

Q. Do ...? - A. "Do you want it all off, do you".

Q. "Do you want it all off, do you"? - A. To which Mounter replies: "No".

Q. And where does that go in? - A. That's the 'garbled' bit, "Do you want it all off, do you". That's the 'garbled' bit six lines down.

B Q. Second garbled? - A. That's correct.

HIS HONOUR JUDGE STROYAN: Yes, I see.

DEFENDANT SYMONDS:

C Q. Does that come in between: "Er, no we don't. Take the er ..."? - A. No, it comes after "Don't it" and before "Er".

HIS HONOUR JUDGE STROYAN: Yes, I have got that now. Yes.

DEFENDANT SYMONDS:

Q. Perhaps we could hear these, could we? - A. Certainly.

D HIS HONOUR JUDGE STROYAN: Yes.

DEFENDANT SYMONDS:

E Q. Is that all your evidence about Tape 15? - A. No. There's further indications that it is Tape 15 on Page 40, where there's a discussion of how they can play the tape back. It is known that there were only possibly, four tapes that could have been used, three Nagra recordings and a Grundig recording. The Nagra recordings have play-back facilities within them. The Grundig - I have one here Your Honour - that is a microphone and play-back unit. It acts as both microphone and loudspeaker. We don't know whether that was available to them. When used with an external microphone, you have to plug the microphone in this socket at the end.

HIS HONOUR JUDGE STROYAN: Yes.

F WITNESS PENNA: And to play-back, as we have been doing in court, we plug into the end here, and play it via the equipment. And what would seem very likely is that on Page 40, No. 4: "You can play it back through (unintelligible) if you like to plug it into (unintelligible), and hear it played back on the (unintelligible)." Followed by, No. 6 it says: "There's a big one and a little one. The red one goes in the big hole", and there's a reference to what goes in the middle hole. And in fact you will note, that on the end of this tape recorder, there is a little hole, and a large hole; and you require, to get a signal from this tape recorder, to plug two leads in, one in the small hole, one in the large hole.

G HIS HONOUR JUDGE STROYAN:

H Q. In other words, to play it back, you have got to plug-in two plugs? - A. Yes.

Q. That connects it to what? - A. Whatever play-back facility you have there, My Lord.

Q. Yes. - A. And if you rewind this tape (tape rewound on Grundig), that's what you get.

HIS HONOUR JUDGE STROYAN: Yes. Yes.

DEFENDANT SYMONDS: Well, perhaps we could hear these bits played back now, Your Honour, that have been referred to?

HIS HONOUR JUDGE STROYAN: Yes.

WITNESS PENNA: May I leave the witness box, sir?

HIS HONOUR JUDGE STROYAN: Have you got a problem?

MR. RIVLIN: Your Honour, the problem is that Mr. Eley, of course, is outside court.

HIS HONOUR JUDGE STROYAN: Yes.

MR. RIVLIN: So that he can't hear what the witness is saying.

HIS HONOUR JUDGE STROYAN: Yes.

MR. RIVLIN: Now, I wonder if the defendant would mind, if Mr. Eley was allowed to operate the equipment, or if he would prefer this witness to operate it.

DEFENDANT SYMONDS: For the moment, I would prefer this witness to operate the equipment.

HIS HONOUR JUDGE STROYAN: Yes, very well.

MR. RIVLIN: Perhaps, Your Honour, the witness could give his evidence from there, if it is necessary for him to say anything about what he is actually hearing.

HIS HONOUR JUDGE STROYAN: He is certainly not going to give his evidence from there. He can give his evidence from the witness box. He can go and play-back the tape, and then come back into the witness box to give his evidence.

MR. RIVLIN: Yes, very well.

DEFENDANT SYMONDS:

Q. Perhaps you can play-back from 56.04? - A. Yes.

Q. Where the male says: "A bit funny". And in the first instance, perhaps you could play the full conversation, which is about five minutes, four minutes.

HIS HONOUR JUDGE STROYAN: Which page are we at now?

DEFENDANT SYMONDS: Page 38 now, Your Honour, and the conversation goes from 56.04 to 60.00. So it's about four minutes of conversation. That includes the references to 'red one, big hole and little hole', etcetera.

HIS HONOUR JUDGE STROYAN: Very well. Off we go.

Tape played

HIS HONOUR JUDGE STROYAN:

Q. Now, I think the position is this, that Mr. Symonds' point is that because

Tapes 13 and 14 are pretty well synchronised, it can't have been Tape 14 that you heard playing back on Tape 13, and therefore, that what you said yesterday to that effect was wrong? - A. That's correct.

HIS HONOUR JUDGE STROYAN: That's your point Mr. Symonds, I think, isn't it?

DEFENDANT SYMONDS: Yes Your Honour, but then I am going to ...

HIS HONOUR JUDGE STROYAN: Just a moment. And the witnesses' point, I think, is he accepts that he was wrong about that yesterday, that his evidence now is that what he heard being played back was from the Grundig tape, No. 15. And that, I think, is the position.

WITNESS PENNA: Yes.

HIS HONOUR JUDGE STROYAN: Yes.

DEFENDANT SYMONDS:

Q. Well, the first point I would like to make, is looking at Page 38. The conversation started off: "A bit funny". Perry: "What's that? Pick up?" Male: "Yes". Perry: "What? The recording's a bit funny, you mean?" Male: "No, No, we didn't hear it". Perry: "Didn't you?" And then you say that on that very difficult passage: Male: "No, we got it on the ..." "You got it on your ...", Mounter says. "It was in there was it, I presume"? - A. No.

Q. Perry says: "Got it on my one, yeah". Then you go on to say that there is evidence of the tape recording being wound back, so I would suggest that if your word is right, if your transcription is right, that in fact the tape recording would not have been wound back by then, at the time that Mr. Perry, on those words that you thought you picked out, is saying that he'd got it, and therefore he wouldn't know whether he had got it or not, because later on we have the sound of a tape recording being wound back.

HIS HONOUR JUDGE STROYAN: Got what?

DEFENDANT SYMONDS: I beg your pardon, Your Honour?

HIS HONOUR JUDGE STROYAN: Got what?

DEFENDANT SYMONDS: The recording on the tape recorder.

Q. You see, Mr. Penna has suggested words to fit into a previously undecipherable part, which would indicate that Mr. Perry is telling Mr. Mounter that he had got the recording on his machine. And I would suggest, following on from that, how did Mr. Perry know that if we later hear, on the next page, or the page after next, the sound of the machine being wound back? - A. Well, it must have been Perry that turned the tape recorder on and off, and he would have seen that the tape had transferred from one spool to the other, and might have made the assumption, but that's undoubtedly what he says, in my view.

Q. So, you are saying that those words that you attribute to Perry, that he had got a tape recording, you are now ... He was assuming he had, is that right? - A. I have got no idea at all, really, what was in his mind, but that's what I think he says.

HIS HONOUR JUDGE STROYAN:

Q. "I have got it on my one"? - A. Yes.

HIS HONOUR JUDGE STROYAN:

Q. That might mean that he knew he had got the recording actually on his one; or it might mean no more than that as his recording machine, the Grundig was switched on, it would be on that. One doesn't know what it meant.

A

DEFENDANT SYMONDS:

Q. I would also suggest that the quality of the recording is so bad at that stage, that that voice could have been Mr. Hawkey saying that he had got it on his machine, because 19 is identified as 'Male', and we have had evidence of at least two people speaking, one over the other? -  
A. No, that's wrong. That's wrong, because you can clearly hear Perry speaking on Tape 13, because the microphone is very close to him, and the speaker who says: "Got it on my one", is, I believe, Perry.

B

HIS HONOUR JUDGE STROYAN: Just a moment.

DEFENDANT SYMONDS:

Q. We will listen to that bit again, later on. We will go on with the questions, first. Now, this recording is supposed to have been from a microphone on Mr. Perry's chest? - A. No.

C

HIS HONOUR JUDGE STROYAN: Just a minute. Just a moment please, before we go on to that.

Q. If you look at No. 39, and see if you can help me about that, Page 39, No. 8. Can you identify the male at No. 8 who is speaking? - A. It sounds like Mr. Hawkey, Your Honour.

D

HIS HONOUR JUDGE STROYAN: Well, what is reported there is, whoever that was speaking, Mr. Hawkey or someone else, is saying: "The sound went off completely on our one".

MR. RIVLIN: Your Honour, we have had evidence from ...

E

DEFENDANT SYMONDS: From Mr. Hawkey, who swore on oath that, in actual fact, there was a recording, if you recall Your Honour. This point was put to Mr. Hawkey in cross-examination, in re-examination by prosecuting counsel.

MR. RIVLIN: I'm sorry Your Honour, but that's not right. The evidence of Mr. Hawkey was, that those words were his.

F

HIS HONOUR JUDGE STROYAN: Yes.

MR. RIVLIN: That he was talking then.

DEFENDANT SYMONDS: And he said it wasn't a very good recording. It was broken up. Perhaps we ought to check the court transcript at this stage, because this is rather an important point. I believe that a false point has just been made.

G

HIS HONOUR JUDGE STROYAN: Anymore questions?

DEFENDANT SYMONDS: Well, if I may continue with the question I was putting?

HIS HONOUR JUDGE STROYAN: Yes, go on.

DEFENDANT SYMONDS:

H

Q. Is Tape 13 supposed to be a recording made by means of a microphone affixed to Mr. Perry's chest, which was sending a radio message to a

tape recorder in the boot of his car? - A. It's said to be round his neck, precisely where, I don't know, but that's the general idea.

A Q. Yes. Well, if your theory is right that it was the Grundig which was also on his person, do you notice any noises here on Tape 13, of the Grundig being removed from Mr. Perry, from his clothing, also? -

A. I think you would have to listen through again. We understand that the Grundig was in his pocket, so just how much noise you get from it being taken out of his pocket, I have no idea.

B Q. But, were there not wires affixed to his body, and was not the microphone supposed to be on another part of his body? - A. The microphone, as I understand it, is down his sleeve, but you just unplug the microphone in the manner I showed earlier.

Q. Now, you demonstrated a Grundig tape recorder, but I believe there is present, in court, the original Grundig tape recorder? - A. I understand it is around, yes.

C Q. Would you look at that, please? That was claimed to have been used on that occasion. The one you showed the court, I think you said you thought it was the 1969 model. And if you recall, when I was asking you questions about Tape 13 and 14 earlier, I asked you about "The red one goes in the big hole", etcetera, the big one and the little one. Is it right to say that your answers to me then, were to the effect that this was referring to the transmitting equipment, the transmitter or the radio? - A. I don't think I have said anything of the sort.

D Q. Perhaps you would now compare the machine you showed the court, against the alleged original machine? - A. Yes. The alleged original machine, very very similar, with a large hole and a small hole at the end.

Q. Perhaps I could look at that? Well to me, the holes look exactly the same, but ... If there is a difference, it is very very minute. I wonder if you would care to look at that machine, Your Honour?

E HIS HONOUR JUDGE STROYAN: Yes.

WITNESS PENNA: You can see more easily with the plugs that actually plug in it, that they are quite different in size.

DEFENDANT SYMONDS:

F Q. And the recorded conversation is: "The red one goes in the big hole". Now, which would be the red one on that original machine, because it seemed to me there were two (inaudible) looking plugs? - A. No, that will be the leads that they were plugging in, presumably. They would have a plug with a red plug, and I don't know what the other colour was. That's a part unintelligible. But presumably there were two leads, and one was red, and that went in the little hole.

G Q. Now, would it be right, the evidence has been that Tapes 13 and 14 played throughout their length? - A. They are recorded throughout their length.

Q. And would it follow, that when they were first connected up, the white leader would have been taken from the new virgin tape, and placed on to a second spool? There would be two spools in use, right? - A. Yes.

H Q. And would it be correct to say, that if both tapes recorded throughout their length, they would have run off the original spool, and on to the second spool? - A. Yes.

Q. And then looking at the second, or both full spools, you would not see the white leader, but you would see a piece of red material which is called the red trailer? - A. Yes.

A

Q. And therefore, before the tape recording could be played back, would it not be necessary ...? - A. To rewind it.

Q. To take the red one, or the red trailer, and take that across the machine, and fit it into a hole on the original spool? - A. Yes.

B

Q. And therefore, if this conversation referred to a spool of tape which had run out, and was going to be played back, it would also fit that 'the red one', the red trailer, goes into a hole, or 'the big hole' on the original spool? - A. No. No. No, when listening to this, four lines up from the reference to a big hole and a little hole is: "You can play it back through ... Plug it into ... and hear it back on the ...", which was a clear reference to how you could play back the recording they were considering playing.

Q. Will it not also apply to playing back quarter inch tape? - A. No, it certainly could not apply to playing back 13 or 14, as we know.

C

Q. Now when Tape 15 was played to this court, it was described as a poor recording, would that be right? - A. It's poor from some points of view, but not from others. Certainly everything on it is decipherable, virtually every word is decipherable.

Q. And was there not a lot of background noise, or interference? - A. Well, there is noise on all these recordings.

D

Q. But was there not a particular lot on Tape 15? - A. There is a certain amount, yes. There's more on 15, than 13 for instance.

HIS HONOUR JUDGE STROYAN: Yes.

DEFENDANT SYMONDS:

E

Q. And so, why should someone admire the speaker quality, and someone else say: "Very good", about a recording which has been described as poor? -

HIS HONOUR JUDGE STROYAN: Well, he can't answer that.

DEFENDANT SYMONDS: I am just making the point, Your Honour.

WITNESS PENNA: Well ...

F

HIS HONOUR JUDGE STROYAN: Don't try to answer it. He has made the point now. Yes. On to the next one.

DEFENDANT SYMONDS:

Q. Now, you say you made a recording of these tapes being played back. Is it in the court now? - A. Sorry?

G

Q. The recording you made of the tapes being rewound, and you pointed to various passages which you can identify? - A. Yes.

DEFENDANT SYMONDS: Maybe it would help to hear that, Your Honour?

HIS HONOUR JUDGE STROYAN: I don't see how it possibly could.

H

DEFENDANT SYMONDS: If it was identical to Tape 15, which we can also hear parts of, which this court has heard once, with a lot of interference on

it, the words could barely be made out, and if the recording played back is similar to that, then I would say that that would be the point. But if the recording played back is fairly clear, and much better quality than the Grundig, then I would say that that is another point which can be made as to whether or not this is Tape 15 or Tape X, the missing one.

**A**  
HIS HONOUR JUDGE STROYAN: Yes.

DEFENDANT SYMONDS:

**B**  
Q. And further on, on Page 41, it says: "With that microphone we had on that machine, we could hear (unintelligible) telephone call"? -  
A. Sorry.

Q. On top of Page 41. Would they still be referring to the Grundig? -  
A. I don't know. It's preceded by unintelligible, so it's a little bit difficult to know what they were talking about.

**C**  
Q. And on Line 10 at Page 40, after "The speaker quality". Second Male: "Very good". Third Male: "I like it". Item 10, Male: "Yeah, much better mike".? - A. "Than the other", is decipherable as well.

Q. So does that read to ...? - A. It reads "Much better mike than the other", perhaps indicating that they changed their microphones.

**D**  
Q. Could they change their microphone on the Grundig machine? - A. Yes, you could use a number of different microphones with it. In answer to a previous question you put to me, Mr. Symonds, about whether you can hear what we have deciphered on Tape 15. The lines that we have underlined in the transcript, on Page 35 and 36, have been transcribed on Page 61 and 62 of the transcript of Tape 15.

DEFENDANT SYMONDS: That point was made in your evidence in chief.

HIS HONOUR JUDGE STROYAN: We have heard that once, yes.

MR. RIVLIN: The point was made by Mr. Eley.

**E**  
HIS HONOUR JUDGE STROYAN: Yes, well, we have heard it once anyhow. Yes. Well I think you have got your point.

DEFENDANT SYMONDS:

**F**  
Q. You see, I would suggest that evidence has been given in regards Tape 'X', that this tape had been monitored, as it were, and that people were in a position at that time to comment on whether a recording had been made or not. But regards Tape 15, at that stage when those words, you claim were said, it would appear that that tape had not been played back yet if what you say is right, and the sounds of a tape being played back are, in fact, the sounds of Tape 15? - A. Your comment doesn't follow from the transcript, No. 10 on Page 39.

**G**  
Q. Yes, but I think you were present in court when Mr. Hawkey gave evidence, weren't you? - A. Yes.

Q. Probably he's the best person to say what he meant there, and what happened. Now, Mr. Penna, did I ask you if you have any knowledge of a report submitted by Mr. Eley, regarding the picking up of 50 Hz hum from a television tower? - A. I said Mr. Eley did the investigation.

**H**  
Q. And did you take any part in this experiment? - A. I was there when he was doing certain checks.

Q. And so, is this a joint report, in a way? - A. No, because I haven't made a statement on it.

Q. Do you agree with Mr. Eley's theory? - A. I believe it's a possibility. It's one of the possible causes.

**A**  
HIS HONOUR JUDGE STROYAN: Well, we shall hear Mr. Eley very shortly, and the jury can make their minds up when they hear him.

WITNESS PENNA: I know it to be a problem in the Crystal Palace area.

HIS HONOUR JUDGE STROYAN: Yes.

**B**  
WITNESS PENNA: Television transmission, having lived there.

DEFENDANT SYMONDS:

Q. I believe you gave evidence regarding the noise level found on the rear end of Tape 1, is that right, and I think you said our experts had ...? -  
A. I said Tape 5, I referred to.

**C**  
Q. Tape 5. And I believe you said that you disagreed with ...? - A. Their measurements.

Q. Their measurements? - A. That's right.

Q. And did you measure the noise level on the end of this tape yourself? -  
A. Yes.

**D**  
Q. And what was the measured level? - A. It's consistent with machine erase noise.

Q. But what was the level? - A. I have ... Mr. Hyde produced some recordings, level recordings of this. We know that there is a gap between the Symonds meeting and the Robson meeting, Your Honour, of approximately half a second.

**E**  
Q. But what was the level of the noise? - A. In what terms?

Q. That you measured? - A. In what terms? We have a level recording of it on paper.

Q. Yes, well, could you give that information, because I believe it was your evidence that ...

**F**  
HIS HONOUR JUDGE STROYAN: Well, how is it going to help?

DEFENDANT SYMONDS: The measurements might be going to help.

WITNESS PENNA: It's a print-out, rather than a ...

DEFENDANT SYMONDS:

**G**  
Q. Well are you in a position to say, what is the measured noise level? -  
A. It's ... The noise level in the gap is identical with the noise level following the Robson meeting, which is claimed to be bulk erase noise.

Q. And did you measure that noise? - A. Yes.

Q. And what was the measurement? - A. As shown on this print-out.

**H**  
Q. Well, is there a figure given there? - A. No, it's a calibrated chart.

A Q. So, would that chart only show that both noises were bulk erase, or both noises were bias erase? - A. We know that the gap is ... how the gap was caused. We, therefore know that the noise level in that gap must be machine erase noise. And we have also found, other noise on the tape that is lower than your experts claim to be bulk erase noise. And we say that is the more likely to be the bulk erase noise level. Not the one that they've put.

Q. And where did you find this lower noise? - A. Well, it's both at the beginning of the recording, and at the end. At the end, there's approximately two seconds, and at the beginning, something like half a second.

B Q. So you say, at the beginning and end there is a lower noise, which you say would be the bulk erase noise? - A. Far more likely to be so, because it's lower than what your experts say is bulk erase noise.

Q. And you say, on part of the tape there is a higher noise, which you say is therefore bias erase, or machine erase noise? - A. That's so.

C Q. Could you say, what is the measured difference you would expect to find between bulk erase and bias erase noise? - A. It rather depends on the recorder.

HIS HONOUR JUDGE STROYAN: I don't think we are going to get any further on this.

DEFENDANT SYMONDS: Well, it will become important later, Your Honour, because this is quite a claim to make.

D HIS HONOUR JUDGE STROYAN: What is quite a claim to make?

DEFENDANT SYMONDS: Well, that our experts measurements were wrong, according to this gentleman, but when I asked this gentlemen, what were his measurements, he hasn't made any.

HIS HONOUR JUDGE STROYAN: What are you talking about?

E DEFENDANT SYMONDS: It's guess work again.

HIS HONOUR JUDGE STROYAN: Well never mind whether it is guess work.

DEFENDANT SYMONDS: So, how can he say that our experts' measurements are wrong...

F HIS HONOUR JUDGE STROYAN: Listen to me.

DEFENDANT SYMONDS: ... When he hasn't made any measurements himself.

HIS HONOUR JUDGE STROYAN: Listen to me. What we are concerned with, is not those parts of the tape which have got nothing on them. It's those parts of the tape which have got your conversations on them.

G DEFENDANT SYMONDS: Your Honour, I would respectfully submit that the whole point of now many weeks of struggling, is about the tapes as a whole.

HIS HONOUR JUDGE STROYAN: Yes, we have got endless points about the tapes, either individually, or collectively.

DEFENDANT SYMONDS: Because, the tapes should be virgin fresh tapes.

H HIS HONOUR JUDGE STROYAN: Yes, we have had that.

DEFENDANT SYMONDS: They are not. They are copies.

HIS HONOUR JUDGE STROYAN: Yes. Yes. You have made the point many, many times. We are not going to go on making it at this stage. The point has been made very often by you. We are all very conversant with it. May we now go on.

DEFENDANT SYMONDS: You see, this gentleman is coming forward as an expert, Your Honour. He is offering himself as an expert. And therefore he should be entitled to, and expect to receive, questions about his expertise because he has given an opinion.

HIS HONOUR JUDGE STROYAN: I know, but let's get on to something that matters.

DEFENDANT SYMONDS: Well, I would suggest that I am entitled to ask him questions on what he based his opinion. He said that our experts measurements are wrong. I am entitled to say: 'Well, why are they wrong. What are your measurements?' He said: 'I didn't make any'.

WITNESS PENNA: I didn't say that. I said I did make them, and they are on this graph.

HIS HONOUR JUDGE STROYAN: Well there we are. Your experts can have a look at them. Let's get on.

DEFENDANT SYMONDS:

Q. Can I ask you if you have compared the noise level found at the end of Tapes 1 and 5, against those obtained from known factory bulk erase samples of EMI Type A12 Tape? - A. No, because the batch numbers of the tapes used, there is no equivalent batch available. And as far as I know, your experts haven't either.

Q. Did you make enquiries at EMI to see if there were any equivalent batches available? - A. No. We'd done our measurements within the tape recordings, and so on.

Q. So, you were just guessing that there were none available because of the time lapse, is that right?

HIS HONOUR JUDGE STROYAN: Mr. Symonds, let's please move on.

DEFENDANT SYMONDS: This chap is supposed to be an expert, Your Honour.

HIS HONOUR JUDGE STROYAN: You've said that.

DEFENDANT SYMONDS: It's outrageous. It's impudence to put forward such a man as an expert. Impudence. Because he is not an expert.

HIS HONOUR JUDGE STROYAN: That will be for the jury to decide. Now, let's get on.

DEFENDANT SYMONDS: I think the jury can see this quite, quite easily from now.

HIS HONOUR JUDGE STROYAN: Let's get on, please.

DEFENDANT SYMONDS: He's offering up half-baked guess work.

HIS HONOUR JUDGE STROYAN: No, no, no. Mr. Symonds, that won't do. You know it won't do. No-one is going to put ...

DEFENDANT SYMONDS: No point in asking any further questions, Your Honour.

MR. RIVLIN: Thank you very much indeed, Mr. Penna.

MICHAEL ELEY (Continued)

A

Cross-examined by the Defendant Symonds:

MR. RIVLIN: Now, Mr. Eley, you are still giving evidence on oath.

WITNESS ELEY: I understand.

DEFENDANT SYMONDS:

B

Q. Mr. Eley, I believe you gave an opinion, did you not ... I will come back to that. Have you submitted an opinion regarding the spectral ... Tests, regarding the spectral content of off-air transmissions? -  
A. I have.

Q. Do you have a copy of that opinion before you? - A. I do, yes.

C

Q. Would it say: "Further to my two previous statements, dated 18th of August 1980 and 1st of March 1981, I would add that I have recently carried out tests, so as to ascertain the spectral content of 'off-air' television transmissions that emanate from the Crystal Palace television transmitters"? - A. Yes, that's what it says.

Q. And do you continue to say: "I am now able to say that the level of the 50 Hz component present in a typical transmission is such as to account for the 50 Hz sine wave that can be found in the gap on Tape 13"? -  
A. Yes, I do.

D

Q. Do you go on to say: "It is also in my knowledge that the Crystal Palace transmitters are responsible for many complaints from the general public who live in the area, regarding interference on their domestic radio, T.V., and hi-fi equipment"? - A. I do.

E

Q. And do you finish off by saying: "I have recent operational experience of using a radio microphone together with a high quality tape recorder in the vicinity of the transmitter, and can state that the installation suffered from mis-operation of the radio-microphone muting circuit, together with intermittent and varying breakthrough from the television transmitters"? - A. That is correct.

Q. Well, the first thing about that, is that ...

F

HIS HONOUR JUDGE STROYAN:

Q. Does that mean that the machine is crackling?

DEFENDANT SYMONDS: What that means, Your Honour, is that ...

HIS HONOUR JUDGE STROYAN: No. I am asking the witness.

G

WITNESS ELEY: No, Your Honour.

HIS HONOUR JUDGE STROYAN:

Q. Well, what does it mean? - A. It meant that the radio transmitter muting circuit mis-operated, as was evident on Tape 13, in a very similar fashion. It also suffered from hum, and T.V. break-through.

H

Q. Yes. Does that mean is sounds crackley? - A. It could be put that way.

HIS HONOUR JUDGE STROYAN: Yes. Well let's use ordinary words.

DEFENDANT SYMONDS:

Q. I would suggest to you, Mr. Eley, that that is balder-dash, that report?

HIS HONOUR JUDGE STROYAN: Very well. Mr. Eley says it's crackley. You say it's balder-dash. Now, what's the next point?

DEFENDANT SYMONDS:

Q. Because what this report means, is that you are offering an explanation - a crazy one ...

HIS HONOUR JUDGE STROYAN: No, no.

DEFENDANT SYMONDS:

Q. ... As to how the 50 Hz got on to Tape 13, that's what it means, doesn't it? That's the prosecution explanation for 50 Hz hum being found on Tape 13? - A. No, Mr. Symonds. It is not the explanation. I say it's a possible explanation, and I stand by it.

Q. I note that you say that the 50 Hz sine-wave found in the gap ... You measured that, did you, and it was 50 Hz sine wave? - A. I did.

Q. And, may I ask what measuring equipment you have, or equipment and facilities you have at your laboratory? - A. With respect to what?

Q. With respect to the measuring of phenomena and such on magnetic recordings? - A. We have a 'real-time' spectrum analyser. In fact, we have several of them.

Q. Spectral analyser? - A. Spectrum analyser.

HIS HONOUR JUDGE STROYAN: Nothing to do with ghosts. Spectrum not spectral. Yes.

DEFENDANT SYMONDS:

Q. I am sorry. Did I make a mistake there? Should I have said spectrum analyser? - A. That's so, yes.

HIS HONOUR JUDGE STROYAN: Never mind, Mr. Symonds. Let's go on.

DEFENDANT SYMONDS:

Q. And would that be the machine that you used when you established that the hum in the gap on Tape 13 was a 50 Hz sine wave? - A. It was.

Q. And are you suggesting that this hum emanates from a T.V. transmitter, is that right? - A. I have said it is a possible explanation, yes.

Q. And you stated ... Well, Your Honour, I know you made a joke of me, and everyone laughed when I said spectral, but I must ask this gentleman, here. Did you write down: "So as to ascertain the spectral content"? - A. I did, yes.

Q. Was that the right word, or should it be spectrum content? - A. No, that's the right word in that context.

DEFENDANT SYMONDS: Oh, I see. Thank you.

WITNESS ELEY: The equipment is described as a spectrum analyser.

HIS HONOUR JUDGE STROYAN: It depends whether you use it as a noun or an adjective, I expect. Don't let's worry about that.

DEFENDANT SYMONDS:

Q. So you stated that you looked at the spectral content of the 'off-air signal from the Crystal Palace television transmitters?

HIS HONOUR JUDGE STROYAN: Mr. Symonds, what he's said so far, if my note is right, is this. "I have got a spectrum analyser. I used it to establish 50 Hz hum in the gap in Tape 13. The television transmitter is a possible explanation."

DEFENDANT SYMONDS:

Q. Yes. Well, may I ask, to which of the four Crystal Palace T.V. transmitters you are referring? - A. I don't think I understand you. There is one main transmitter at Crystal Palace; a common aerial, which has, I would think, four transmitting aeriols on it; and some short distance away, there is yet another one at (Bewlay?) Hill.

Q. Well, would you say that there are television transmitters at Crystal Palace serving IBA, BBC 1, and BBC 2? - A. There are.

Q. Would you say that also, there is one serving the old 405 line BBC 1 transmitter? - A. I am not certain about that. I believe there is, in fact, two. The one at (Bewlay?) Hill still serves the ITA Channel 9 service.

Q. Well, I put it to you, that there are in fact four transmitters at Crystal Palace? - A. Well, I'll take your word for it.

Q. And that each transmitter operates on two frequencies - one for the vision transmission, and another for the sound transmission? - A. I will accept that, yes.

Q. And I would ask you if you have any experience in television engineering? - A. I have some experience, yes.

HIS HONOUR JUDGE STROYAN: I don't think we need waste a lot of time on this point. What the witness is saying is that he thinks that, for what it is worth, the hum on the gap in Tape 13 may have been caused by a television transmitter. You are putting to him that that is wrong, is that right, Mr. Symonds?

DEFENDANT SYMONDS: Yes, Your Honour, and I would like to put to him, reasons which would show the jury that he is quite wrong, which I think would be an even better thing to do under these circumstances.

HIS HONOUR JUDGE STROYAN: Well, I think we have got the point. I don't think we need go into the components of a television station.

DEFENDANT SYMONDS: Well, may I ask ... Well, I think it is important, Your Honour, because I have described this report as balder-dash, and I will even describe it as ...

HIS HONOUR JUDGE STROYAN: I don't think you had better.

DEFENDANT SYMONDS: Well ...

HIS HONOUR JUDGE STROYAN: Now let's go on to the next point.

DEFENDANT SYMONDS:

A Q. Well, I would ask you, Mr. Eley, at what frequencies are the sound and vision carriers? - A. From memory, the BBC 1 405, they are around 45 M Hz. I think the sound may well be on the low side and be 41 M Hz., but I wouldn't be certain.

Q. Yes. And what about the frequencies of the three 625 lines colour transmissions, BBC 1? - A. They are up in the UHF band, around 450 M Hz., and the sound isn't strictly on a separate carrier, it's on an inter-carrier at (6 megs?).

B HIS HONOUR JUDGE STROYAN: It sounds as if we are all getting up into UHF band at the moment. Can we descend to Earth?

DEFENDANT SYMONDS:

Q. Well, would you accept that BBC 1, BBC 2 are in fact up in the 500? - A. Yes. I'll accept whatever you say. I know it's in the UHF band.

C Q. And would you accept that all these frequencies are well above the 174 M Hz. radio microphone band, and could not result in harmonic pick-up in the radio microphone? - A. I accept the first thing you said. I do not accept the second thing, as my statement made clear. If I can assist you, Mr. Symonds, I carried out the tests, and I made a contemporaneous note of them, and I kept photographs of the results. If you would like to show me some other evidence, you may change my mind.

D Q. And did you make a recording of this, I think we could call it, this spectral hum? - A. In the form of a photograph, yes.

HIS HONOUR JUDGE STROYAN: I am getting bogged down.

DEFENDANT SYMONDS:

Q. Did you make a recording of ...

E HIS HONOUR JUDGE STROYAN: Come along, Mr. Symonds, we are getting bogged down in details which don't really matter, and are very difficult to understand. You have put your case quite clearly about this.

DEFENDANT SYMONDS:

F Q. I would like to know. You see, the witness says that ... That you recorded the hum, is that right? You went to Crystal Palace with a high quality tape recorder. Do you recall the type of tape recorder? - A. I do.

Q. What was it? - A. It was a (Napamichi?) 550 cassette recorder.

Q. It was not a Nagra recorder? - A. It was not.

G Q. It was not a Nagra. Yes. And, do you recall the radio microphone you were using? - A. I am afraid that all I can actually say about that installation, I have said in my statement. I am not in a position to say anything further about that.

Q. Well, was it a similar type of microphone used by the reporters on this occasion, a type RSH 9, I think they said?

H HIS HONOUR JUDGE STROYAN: Mr. Symonds, I have been very patient about this. You have put a large number of points in immense detail. You can call your

own expert evidence about it. We have had enough of it now, and we are going to move on. We have now reached the time wasting stage.

DEFENDANT SYMONDS: Your Honour, this man has come forward as an expert.

HIS HONOUR JUDGE STROYAN: I know, but we are going to move on.

DEFENDANT SYMONDS: He has put in evidence, a statement, which is very important to the whole case.

HIS HONOUR JUDGE STROYAN: We have all heard what he has said, and now we are going on to the next point.

DEFENDANT SYMONDS: Well, I must say that I should be allowed to ask him questions on his expertise.

HIS HONOUR JUDGE STROYAN: No more on this point. No more on this point. We have dealt with this Crystal Palace business ad nauseam, and we are not going to go on. It is only a very minor point in the case as a whole.

DEFENDANT SYMONDS: Your Honour, it's the crux of the case how this hum got on here. We say the hum came on here during the copying process, when the tape recorders were plugged into the mains, and picked up 50 Hz. And we say that this is very suspicious, if they used virgin tapes in the first place.

HIS HONOUR JUDGE STROYAN: Mr. Symonds, you have said almost everything in this case is suspicious.

DEFENDANT SYMONDS: Yes, well this gentleman has come forward and said that 50 Hz could have been picked up under the most incredible and unimaginable conditions, literally, literally from the air, from a television tower, which is nonsense, and I would like to ...

HIS HONOUR JUDGE STROYAN: We've heard ...

DEFENDANT SYMONDS: ... It is only fair to Mr. Eley, that he should be allowed to explain a bit more as to how he came to this conclusion.

HIS HONOUR JUDGE STROYAN: We are moving on from that point. We are hearing no more of this Crystal Palace business.

DEFENDANT SYMONDS: Well I say that this report is very damaging to me, Your Honour, and I say that if I was allowed to cross-examine this witness, I could ... I could put this report in its proper perspective, that no attention at all should be paid to it.

HIS HONOUR JUDGE STROYAN: The witness has given his opinion as a possibility only, you have cross-examined at very great length about it, and now we are moving on.

DEFENDANT SYMONDS: Well I haven't asked a fraction of the questions I wanted to ask, Your Honour, on that point.

HIS HONOUR JUDGE STROYAN: Well, you are not asking anymore on that point.

DEFENDANT SYMONDS: That is an order, is it?

HIS HONOUR JUDGE STROYAN: Yes.

DEFENDANT SYMONDS:

Q. Very well. Mr. Eley, what is your experience of professional sound

recording? - A. In the studio sense, none at all. I can say that I specialise in forensic recordings.

A Q. Now, I believe when you gave evidence of your qualifications, you mentioned that you have a Higher National Certificate. Now, what exactly is that, a Higher National Certificate? - A. It's a qualification one obtains after five years of study.

Q. Is that five years of continuous study at a university or technical college, or is it five years of evening classes and day-release schemes? - A. It was a combination of day-release and evening classes.

B Q. And what was the subject of your Higher National Certificate? - A. Electronics and communications.

Q. And did that cover the subject of magnetic tape recordings? - A. It did.

Q. And when did you obtain this Higher National Certificate? - A. The second time, about four years ago.

C Q. Four years ago. Now, you have been with the police laboratory for five years, is that right, as a Technical Officer? - A. That is correct.

Q. So when you went there, you had no qualifications at all? - A. Yes, I already had a Higher National. I did it again.

Q. You took the same exam again, in the same subject?

D HIS HONOUR JUDGE STROYAN: Well, I expect the questions were different.

WITNESS ELEY: Exactly.

DEFENDANT SYMONDS:

E Q. And you say you have electronics and communication experience over a period of 20 years. Well, we have heard that you have been with the police laboratory for five years, and where were you for the 15 years before that? - A. I spent four years with British Relay Wireless in their Research Department. I was with Advanced Development Studies with Associated Electrical Industries for about 18 months.

Q. Well, that comes to five and a half years, so far? - A. Well, I was waiting for you to put it down.

F Q. Then where did you go? - A. I then spent some considerable time with different employers in the television rental business.

Q. Television rental business? - A. Yes.

Q. And what were you doing there? Were you renting out sets, or repairing them, or ...?

G HIS HONOUR JUDGE STROYAN: Come along Mr. Symonds.

DEFENDANT SYMONDS: This man has been put up as an expert, Your Honour.

HIS HONOUR JUDGE STROYAN: We have heard what you have said about him, already.

DEFENDANT SYMONDS: And puts forward a fantastic theory which I am not allowed to question him on. Incredible.

H Q. And have you ever given evidence as an expert before? - A. I have.

Q. And was your evidence as an expert on a matter of making transcripts, or was your evidence as an expert on the matter of the analysis of magnetic recordings as to their originality and authenticity? -  
A. Both.

A Q. Now, I believe, when asked what a hertz was, you said it was a German word meaning cycles per second, is that right? - A. Yes. I withdraw that. I was trying to keep it simple.

Q. Yes, I should think you would, because Hertz is the name of a German, isn't it? - A. It is.

B Q. The German that did experiments on this in the first place? - A. On what?

Q. On this type of cycles per second business? - A. I wouldn't put it quite like that.

Q. A German scientist, yes? - A. He was a German scientist.

C Q. And therefore, it is not a German word meaning cycles per second? -  
A. Strictly, no, but it is the equivalent. When people say Hertz, is is equivalent to cycles per second. If you wanted a long answer, and the full history of Dr. Hertz, I can give it to you.

D Q. And you described, I believe to the Judge, as a 50 Hz hum, as the appalling noise one receives on a radio when driving underneath a pylon. Is that a fair description of a 50 Hz hum? - A. No, it's more complicated than that. I would expect to find that 50 Hz would be a component of the interference found.

Q. You see, I am in serious doubts about your professional capabilities, and that's why I am putting these questions.

HIS HONOUR JUDGE STROYAN: You have said this several times, and I am getting rather bored with hearing you say it. Is there any other matter of fact which is relevant, that you want to put to this witness?

E DEFENDANT SYMONDS: There are some questions about Crystal Palace, Your Honour, which I absolutely want to put.

HIS HONOUR JUDGE STROYAN: Well, you are not going to. I have already decided that.

F DEFENDANT SYMONDS: ... About this programme and this installation near Crystal Palace.

HIS HONOUR JUDGE STROYAN: It has no bearing on this case at all, except on a very marginal aspect of it, and we are not going to waste further time.

DEFENDANT SYMONDS:

G Q. Well, would it be right to say, then, when you were talking about Tape 13, when you pointed out the hum had been found in a space which came well after the conversation - I believe you said seven to ten minutes - would it be right to say, that's the only place the hum could be found? - A. That is so.

Q. Because the rest of the tape is recorded? - A. That is correct.

H Q. And if, in fact, there had been hum during the conversation part, or

during the music or radio playing part, it would be almost impossible, if not impossible, to find it? - A. It's almost impossible to find it in the gap, Mr. Symonds.

A Q. But you succeeded in measuring it, and discovering that it was a sine wave? - A. Yes.

Q. I must ask you, what is your experience of editing professional recordings? - A. I have not edited any pop records. As I have already explained, I deal in forensic tape recordings.

B Q. And do you have any experience of the manufacture of magnetic tape, or tape recorders? - A. I am not in the business, and I have not come here as an expert in the manufacture of either of those articles.

Q. And I must ask you, regarding the performance of magnetic tape, and tape recorders, are you an expert in these measurements? - A. I would regard myself as something of an expert in the measurement of the parameters of tape and tape recorders.

C Q. Now, was it brought to your notice, at some stage, that certain other of these tape recordings have 50 Hz hum on them, other than Tape 13? - A. Well, the hum on Tape 1 is quite obvious, and on Tape 3.

Q. And do you have any explanation to offer for that hum being there, apart from the fact of tape recordings being taken, at sometime, near a television tower? - A. On Tape 1 it has got nothing to do with a television tower. It's obvious cyclic hum, which one would expect if you used a Uher tape recorder on a telephone system.

D Q. You mean, connected to the mains? - A. It would be mains derived, and picked up on the telephone system and modulated.

Q. Would it therefore follow that the hum found on Tapes 3B and 13, could also have come from the mains system? - A. Tape 3B was not one that I investigated in depth.

E Q. And was it brought to your notice that 30 Hz hum was found on certain tape recordings? - A. Yes, that is fairly obvious in the unrecorded sections.

HIS HONOUR JUDGE STROYAN: Yes. We have had all this. We need not have it again.

F DEFENDANT SYMONDS: Yes, we have had two varying explanations for it, so far, Your Honour. I believe Mr. Eley was in court when Mr. Hyde gave one explanation, which was that the tape might have been used before, and might have contained conversation, radio music, and a 30 Hz hum burst, and that the tape had been cleaned, and the music and conversation, or whatever, had been cleaned off, but the 30 Hz burst had been left on.

HIS HONOUR JUDGE STROYAN: Yes, we have heard all this. We have heard all this more than once.

G DEFENDANT SYMONDS: Then we had a slightly different explanation from Mr. Penna, I believe.

HIS HONOUR JUDGE STROYAN: We have heard all this.

H DEFENDANT SYMONDS: And I would like to hear Mr. Eley's explanation, if perhaps, it is the same as one or other of his colleagues, or if he has a different explanation for this 30 Hz. hum.

is

WITNESS ELEY: I would believe, the most likely way the 30 Hz tone burst/found on these tapes, is the tapes were machine erased on a Nagra 3 prior to their use. But that isn't the only explanation, it's the one that I feel is most likely.

**A** DEFENDANT SYMONDS:

Q. Now, if there had been machine erase, would you expect to find a bias erase, or machine erase noise on the tape? - A. I would expect to find machine erase noise, and it's my belief, it's my opinion, that is what the noise level is on those tapes.

**B** Q. But have you heard evidence from other sources, that this noise level is, in fact, of a bulk erase level? - A. I have heard that evidence, and I believe it to be not correct.

Q. You said the hum on Tape 1 is cyclic. Why should it be cyclic? - A. It would be cyclic because the Uher tape recorder has a servo-tone in the motor at around 50 Hz, and you also have a 50 Hz coming up the telephone line.

**C** Q. So, you have two lots of 50 Hz there, is that right? One coming from the servo motor of the Uher recorder, and the other one coming down the telephone line, is that right? - A. That is correct.

Q. And have you carried out any tests to duplicate these conditions, on any test recording, perhaps? - A. I did, together with Mr. Penna, and I found it impossible not to get cyclic hum.

**D** Q. And 50 Hz hum you described as a sine wave. Could you confirm that it is, in fact, sinusoidal? - A. On which tape?

Q. Tape 13? - A. It is, yes.

Q. It is sinusoidal? - A. Yes. Can I qualify that? The part of it which can be seen appears to be sinusoidal. I believe it to be fundamental of a rather complex wave-form.

**E** Q. Fundamental ...? - A. Of a rather complex wave-form.

Q. And what exactly do you mean? Could you clarify that, please?

HIS HONOUR JUDGE STROYAN: I don't see how these very technical details can possibly help the jury. The point I understand you to be wanting to make, Mr. Symonds, is that the presence of hum on these tapes indicates that they are not virgin tapes. That is the point, isn't it?

**F** DEFENDANT SYMONDS: No, Your Honour. The point is, as to where this particular hum came from.

HIS HONOUR JUDGE STROYAN: How does that matter?

DEFENDANT SYMONDS: Well, you see ...

**G** HIS HONOUR JUDGE STROYAN: What you are interested in, presumably, is showing that these were not virgin tapes. Well we've got that.

**H** DEFENDANT SYMONDS: No, I am interested in showing that this particular hum, on Tape 13, did not and could not have come from a television transmitter, but came in fact from a copying process after the edited master tapes were being copied. After the master tapes, which had been edited, were being copied on to the tapes which are now before the court and produced as alleged masters.

WITNESS ELEY: I find that the least likely of the explanations, Mr. Symonds.

DEFENDANT SYMONDS:

Q. Your explanation, is it not, is that it comes from television tower?

HIS HONOUR JUDGE STROYAN: We are not going back to that tower.

DEFENDANT SYMONDS: Well, Your Honour, I wonder if I could once again ask if I have missed anything out, ask for a five minute break to refresh my memory, and to see if I have missed anything out before I release this witness.

HIS HONOUR JUDGE STROYAN: Well, you may have three minutes Mr. Symonds. We don't want to lose anymore time.

Short Adjournment

HIS HONOUR JUDGE STROYAN: Anymore Mr. Symonds?

DEFENDANT SYMONDS: Your Honour, there are a few.

Q. Mr. Eley, may I ask you, what is the measured difference between bulk erase noise, and bias erase noise? - A. That depends on which machine it has been erased on.

Q. Apart from the 50 Hz hum and the 30 Hz hum ... To clarify one answer, when you were giving your opinion on how the 30 Hz tone burst came on to the tape recordings, I believe you said it was an erasing process on a Nagra, is that right? - A. I would believe so, yes.

Q. And, would that be a normal process, normal way you put the tape on the machine, and just run it through with the erase button pressed? - A. It is not abnormal.

Q. It is not abnormal? - A. No.

Q. On a perfectly normal erasure? - A. I have done it, myself.

Q. And have you, yourself, made 30 Hz tone bursts on to an erase tape? - A. The machine I did it on was not a Nagra.

Q. Was a Nagra? - A. It was not a Nagra.

Q. Not a Nagra? - A. But it is not an unusual thing to do if one wants to clean up a tape to the extent that it would appear to be virgin to all intents and purposes.

Q. And how would you do that? - A. Simply place it on the machine in the 'record' mode, with no input and run it through.

Q. And your answer to the measured difference between bulk erase and bias erase noise, your answer was: "It depends on which machine". May I ask you what the difference is if a Nagra machine had been used to erase? - A. I would expect it to be in the order of less than half a DB if it was EMI standard tape on a Nagra 3.

HIS HONOUR JUDGE STROYAN: Yes.

DEFENDANT SYMONDS:

Q. Now, I have asked you about 50 Hz hum and a 30 Hz tone burst. And I must

ask you if it was ever brought to your notice that editing marks had been found on certain of these tape recordings? - A. I think I would call them 'examination marks', rather than editing marks. There is no point in making editing marks on what is alleged to be a final copy. A final copy ... If the allegation is that it's a final copy, there's no point in putting editing marks on it.

Q. But if it was not the final copy, there would then be point? If, for example, the original had been edited, and the copy made of the original, and it was then discovered that there were certain other things to be removed or altered, could not that be described as a stage of editing? - A. Well, the only way I can answer that, Mr. Symonds, is if, on the one hand you say the man was an expert and performed miracles to generate these tapes, and then was a complete idiot and put the wrong copy in. You can't have it both ways.

Q. And whereabouts were those words said, that the man was an expert? You see, you are here as an expert now, you see, and you are not ... You are not a police technician, you see Mr. Eley, you are supposed to be an expert, giving the court the pearls of wisdom of your expert opinion.

HIS HONOUR JUDGE STROYAN: Now, now, now.

DEFENDANT SYMONDS:

Q. And I would like to ask you particularly to specify where and when these words were said that you have just attributed to me - that one minute I am saying it's an expert who performed miracles - now where was that said? - A. They may not be the exact words you used.

Q. You have just made it up, is that right? - A. No, I'm not making it up. It's the obvious inference from the defence that you are putting to these tapes.

Q. Well now you are guessing about obvious inferences of the defence? - A. If it will make you happy I'll withdraw it.

HIS HONOUR JUDGE STROYAN: Mr. Symonds, if you ask questions of a certain sort, you tend to get answers of a certain sort. Now, is there anything else of any importance?

DEFENDANT SYMONDS: Well, I still haven't finished on this business of what I call editing marks, and I believe Mr. Eley calls ... What did you call them?

WITNESS ELEY: Examination marks.

DEFENDANT SYMONDS: Examination marks.

HIS HONOUR JUDGE STROYAN: That's what he calls them. You call them editing marks. That's the difference.

DEFENDANT SYMONDS: And is it normal practice that when a person is examining tapes, to make such marks? - A. I have made marks like that in the past, yes.

Q. And have you made such marks on tape recordings which were known to you to be, or were going to be, exhibits in a court case? - A. I have, and made a note of it at the time.

Q. Now, turning to Page 24 of Exhibit 35D. Now, this is a transcript of what is described as Exhibit ME5? - A. That is correct.

Q. And that means, does it, that you made this transcript? - A. Initially, yes.

A

Q. And therefore, would it be right to say that the words: "Yeah, here you are. I may as well give you that now. I can't, I can't get fuck all. Cheers. Lately". That is your work, is it? - A. It is, yes.

Q. And were you present in court when Mr. Perry said that he thought the words were something else? - A. I was.

Q. And are you quite sure about all those words? - A. I am totally convinced.

B

Q. You are totally convinced. And do you have any qualifications in phonetics, for example, or linguistics?

HIS HONOUR JUDGE STROYAN: We have heard about his qualifications. We can safely assume he has told us about them all.

DEFENDANT SYMONDS:

C

Q. I suggest to you, for example, that the words for example: "I may as well", for example, don't exist; and that the other words are, at the best, a guess? - A. No, that is not correct.

DEFENDANT SYMONDS: Your Honour, I would like to play that part to this witness, as well, because they are what may be described as vital words, and this witness is the man who discovered them, as it were.

D

HIS HONOUR JUDGE STROYAN: Well, you have already heard what has been said about them by Mr. Penna. The jury have heard them more than once. I don't know whether the jury want to hear them again. It is for the jury to decide this case, not for this witness. I don't think we need hear them again at this stage. What this witness says about them is not binding on the jury in any event. They may think he is quite wrong.

DEFENDANT SYMONDS:

E

Q. And when you made this transcript, did you refer to The Times transcript, or the previously prepared police transcript? - A. I believe it was 35B which I basically used as an outline.

Q. Were you in court when we listened for the sound of the car door opening, for example? - A. I was.

F

Q. And would you agree, or not agree with Mr. Penna's suggestion, that there can be heard the sound of a car door opening? - A. What can be heard is, I suppose it is best described as a scraping noise, followed by: "How you doing Mickey?", and then the car door is closed. I would assume the scraping noise is the car door being opened.

Q. But were there not several scraping noises at that stage? - A. There were a few, yes.

G

Q. So would that be guess work?

HIS HONOUR JUDGE STROYAN: It's his opinion. It maybe right. It may be wrong.

DEFENDANT SYMONDS:

H

Q. And would you say that many of these passages gave you some difficulty in transcribing? That you had to play them over and over again, for

example? - A. There was some difficulty with them, yes. A lot of time was put in on them.

A Q. So, you had to play them over and over again to try to make some sense of the words? - A. No, some of them came to me immediately, but I played them over and over again to make sure that I had got them right.

Q. And were there some occasions where two voices were speaking at once? - A. There are many occasions where two voices are speaking at once.

Q. And were many of the occasions where you extracted words, where two people were speaking at once? - A. There were, yes.

B Q. So, would it be true to say, that if these words were only extracted by you with considerable difficulty, playing the recording over and over again; would it be true to say that any person sitting in that car would have had the same, if not more difficulty in hearing those words, and in fact, may not have heard them at all? - A. No, I wouldn't agree with that.

C Q. Is it your experience that when two people are speaking together, the one person speaking automatically hears the words being said against his words? - A. It would seem to me, in face to face conversation, people basically make enough noises until the other person understands what they are saying. It would seem to me, where you are both speaking at the same time: "Yeah, here you are, I might as well give you that now. I can't, I can't get fuck all". It would seem to me that whoever was sitting in the car, understood what had been said, because they then said: "Cheers".

D HIS HONOUR JUDGE STROYAN: Well, I don't think we need make too much of this. We all know what happens when we talk to each other. It's not a matter of technicality. Yes. Anything more?

DEFENDANT SYMONDS: I think not. I think that's all, thank you.

HIS HONOUR JUDGE STROYAN: Yes.

E MICHAEL ELEY

Re-examined by Mr. Rivlin:

F Q. Only one matter, Mr. Eley. There are occasions where we find, in this transcript, the word 'garbled'? - A. Yes.

Q. Are you permitted to commit yourself to transcribing words in a transcript on the basis of guess work? - A. No, I am not.

MR. RIVLIN: Yes, thank you very much indeed.

May it please Your Honour, members of the jury, that is the case for the prosecution.

G DEFENDANT SYMONDS: Your Honour, I would suggest that we may adjourn at this point, before commencing on the defence.

H HIS HONOUR JUDGE STROYAN: Now Mr. Symonds, to turn now to the defence part of the case, let me tell you in clear terms the courses which are open to you. I am sure you know them already, but it is my duty to tell you. You may give evidence yourself and call witnesses in support of your case; or, you may make a statement from the dock, which would not be evidence on oath, would not be subject to cross-examination, and would therefore,

no doubt, carry less weight with the jury than evidence on oath from the witness box which was cross-examined. The third course which is open to you, is simply to say nothing at all. Those are the courses which are open to you.

A So far as the first course is concerned, if you are going to give evidence, or if you are going to lead evidence for the defence, and you are going to give evidence yourself, well then you must be the first witness in your own case. That is the rule of law. If you are going to call witnesses, and give evidence yourself, you must be the first to go into the witness box.

Have you understood those courses which are open to you?

B DEFENDANT SYMONDS: I have, Your Honour.

HIS HONOUR JUDGE STROYAN: Very well, what is the course you are going to adopt?

DEFENDANT SYMONDS: Well, Your Honour, I would rather start tomorrow morning, quite honestly. I don't feel really fit to undertake any course at the moment, and I would like to discuss certain matters with my solicitor.

C HIS HONOUR JUDGE STROYAN: Yes, very well.

I must emphasise, should you wish to give evidence yourself - and you are not obliged to do so, as I have said, you are perfectly entitled to say nothing - but if you do give evidence yourself, well then you must be the first witness. Do you understand that?

D DEFENDANT SYMONDS: Yes Your Honour.

HIS HONOUR JUDGE STROYAN: If you choose not to give evidence yourself, you can of course call other witnesses.

Evening Adjournment

F I hereby certify that I took Shorthand Notes in the trial of Regina -v- Symonds, and that pages numbered 1 - 59 are a complete and correct transcript of my said Shorthand Notes to the best of my skill and ability.

G Signed: ..... *Laet R. ...* .....