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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2

Wednesday, 28th July 2004

B E F O R E:

LORD JUSTICE ROSE
(Vice President of the Court of Appeal, Criminal Division)

MR JUSTICE TREACY

SIR EDWIN JOWITT

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R E G I N A

-v-

DENNIS RAYMOND ALEXANDER AND GEORGE STEEN

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Computer Aided Transcript of the Stenograph Notes of
Smith Bernal Wordwave Limited
190 Fleet Street London EC4A 2AG
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(Official Shorthand Writers to the Court)

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MR P SINGER QC appeared on behalf of Alexander
THE APPLICANT STEEN appeared In Person
MR R LATHAM QC AND MR G POUNDER appeared on behalf of the Crown

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J U D G M E N T

1. THE VICE PRESIDENT: On 23rd June 2003 at Southwark Crown Court, following a five and a half month trial before His Honour Judge Goymer, three defendants, Alexander, Andrews and Steen, were convicted by the jury of conspiracy to defraud. Subsequently they were sentenced respectively to two, five and six years' imprisonment.

2. All three were given leave to appeal against conviction by the single judge on one ground arising out of a communication sent by the woman foreman of the jury to leading counsel for the prosecution 11 days after the jury's verdicts. They were refused leave to appeal by the single judge on all other grounds. Andrews has abandoned his appeal. Alexander and Steen seek leave before us to pursue other grounds on which leave was not granted by the single judge. Steen also seeks leave to appeal against sentence and that application has been referred to the Full Court by the Registrar.

3. The conspiracy alleged against the three defendants was an advance fee fraud. Alexander and Andrews were partners in a firm of finance brokers called Corporate Advances. The period covered by the indictment was from 1st January 1996 to 16th June 1999, on which latter date the three defendants were arrested. Alexander had resigned from the partnership on 31st October 1997, but he was shown after that time to have continued as a paid consultant to Corporate Advances and was still involved in the conduct of the firm's business. Steen ran a company called Peninsular Holdings whose purported business was to offer large commercial loans to would-be borrowers, to whom we shall refer as applicants. 90 per cent, or more, of the applicants to whom Peninsular Holdings were introduced came via Corporate Advances. Steen claimed to have access to substantial funds outside the jurisdiction of this Court, which were available to be lent on terms which met the criteria imposed by the lenders.

4. It was the prosecution case that applicants were to be persuaded to part with substantial fees in anticipation of a loan being made. But the defendants expected, and intended, that the loans would not be made, because of a requirement that an assignable collateral bond should be provided which guaranteed repayment of the loan and which could not be purchased out of the money loaned. The expectation of the defendants, according to the prosecution, was that the applicants would not be able to meet that condition. However, if an offer of a loan were made, and that condition was not met, the advance fees already paid by the applicants would not be returnable and would, effectively, be dishonest profit in the hands of the defendants.

5. Most, if not all, of the applicants, of whom 21 gave evidence before the jury, and many other applicants who did not give evidence, were not people who, in the ordinary way, would be regarded as blue chip borrowers. They needed to borrow the whole of the money which they wanted to promote their respective schemes. The security they had to offer consisted of the assets of the schemes, including any assets which already existed and were to become part of the scheme if it went ahead. They had no other significant assets. Interest rates were higher than for a loan made by a bank to a borrower with a sounder scheme who was not seeking a 100 per cent loan. There was nothing sinister or unusual about this. Some of the schemes were said by the defence to be ill-thought out, or hopeless, with no prospect of ever coming to fruition, or of raising the finance required, and no doubt that was so. Some applications were rejected as

hopeless by Corporate Advances, or Peninsular Holdings, with no fees being paid beyond an administration fee.

6. The first fee, a reading fee, was payable to Corporate Advances by an applicant before ever the applicant's proposals were considered at all. There was also an administration fee, initially £5950, raised later to £6950. If Corporate Advances told an applicant it thought a loan could be obtained, his application would be referred to Peninsular Holdings, and, in due course, if all went well, a letter would be sent to him to that effect. The next stage was for the applicant to pay a due diligence fee on a sliding scale which might run to tens of thousands of pounds according to the amount of the loan sought. This was payable before any commitment was made by Peninsular Holdings offering a loan. Until it was paid, applicants would not receive a commitment letter. The purpose of the due diligence fee was to cover the costs of the investigations which would have to be made into the bona fides of the scheme and of the applicant, in particular in relation to his ability to service the loan. Investigation of the due diligence aspect would not begin until a loan offer had been made by commitment letter and the requirements in relation to the collateral bond complied with by the applicant. Applicants, on the evidence, often did not know about any requirement for a collateral bond until they received the commitment letter, by which time, as we have said, they would have spent substantial sums of money by way of the three fees which we have identified.

7. The security provided by the required collateral bond was to be in addition to any other security provided. We have already referred to the further condition that no part of the borrowing could be used for the purchase of the collateral bond. The cost of such a bond varied between 23 per cent and 40 per cent of the money to be borrowed, depending upon the credit rating of the bond and its terms. It is apparent that it would be impossible for applicants to comply with the combination of these two conditions. As a number of the applicants said in evidence, they made no commercial sense, and they would never have handed over any money to Corporate Advances or Peninsular Holdings had they known about the conditions from the outset, or that they would be required to comply with them. If they had assets with which to purchase the required collateral bond, they would never have needed to borrow money on the market which the defendants were purporting to operate.

8. The jury were entitled to ask, as it seems to us, whether any business man would think it was an honest business if he took fees from applicants in return for an offer of a loan which he knew the applicants would never be able to take up. One applicant, by way of example, Mr Delucca, said that when the defendant Steen refused to waive the requirement for a collateral bond, and he asked him and Corporate Advances if they could help him to find a finance house from which he could purchase such a warranty, he was given no assistance or advice at all. If the jury accepted that evidence, it must have spoken volumes about the dishonesty of the business conducted by the two firms.

9. We have said that some applicants learned for the first time of the requirement of a collateral bond after they had paid the due diligence fee. This did not continue to be the case throughout the period alleged in the indictment, and, when he was cross-examined by the Crown, Steen said that none of the applications he received through Corporate

Advances ever proceeded to completion. He accepted he must have asked himself what was going wrong, and he realised the applications had foundered because the applicants did not have funds available. Steen said he realised something had to be done, but the lender's conditions were outside his control and did not permit him to dispense with the need for a bond. So, he said, he did nothing. But he had also said that sometimes, in the early stages, specimen letters, setting out terms, were provided. Then he adopted the practice of sending, in advance of payment of the due diligence fee, a specimen commitment letter so that borrowers would know what the terms were.

10. The evidence was that it was Andrews who dealt with the individual applicants. If they queried the requirement for a collateral bond, Andrews explained the requirement away, saying, variously, that it would not be insisted upon, or what would, in effect, be a promissory note would suffice, and what they had been shown was a document which set out terms which did not all have to be part of the terms offered in their particular case. He told them there was no cause for anxiety, and those who succumbed to his blandishments and paid the due diligence fee discovered to their cost, when they received the letter of commitment, that the conditions relating to the collateral bond formed part of the offer and were not negotiable.

11. Steen said his business held 3 million dollars in off-shore accounts on behalf of applicants, though he had never written to any of them to tell them that. Corporate Advances had sent hundreds of application to him, but all turned out to be completely the wrong sort. He accepted, however, that these applications were producing an income for him, and that an explanation of what was involved would have weeded out more applications at the beginning. He said that he had asked himself many times why it was all going wrong.

12. It is to be noted that the conspiracy alleged by the prosecution did not require that there should be any lender in the background ready and able to lend money.

13. Steen in the course of the trial did not produce any documents, although he claimed they existed out of the jurisdiction, to show that there were lending sources ready to lend money. Once Steen went into the witness box he was clearly vulnerable to adverse comment arising from his failure to produce any of the relevant paperwork.

14. As we have said, the applicants' main contact among the defendants was Andrews. Indeed, there was no evidence of any meetings between Alexander and the applicants, or, indeed, of any communication directly between Alexander and the applicants. He told the police that Corporate Advances received a share of the due diligence fees from Steen. The evidence also connected very few of the applicants by way of direct dealings with Steen. When Andrews was interviewed by the police, he chose to say nothing. He did not give evidence before the jury, nor did Alexander, although he had answered questions when he was interviewed, and to those interviews we shall later return.

15. Alexander's case was that he had no knowledge of any deceptions being practised upon applicants by Andrews; that also was Steen's case. He and Alexander said they had no

knowledge of any fraud and were not part of a conspiracy. Steen said he had trusted Corporate Advances and was carrying on an honest and legitimate business.

16. Against that background we turn, first, to consider the grounds of appeal which Mr Singer QC, on behalf of Alexander, now seeks leave to pursue. The first of those grounds asserts that there was no evidence upon which a reasonable jury properly directed could have convicted him and the judge was wrong not to stop the case at the close of the prosecution. Mr Singer points out that the allegations against the defendants, as reflected by amendments to the indictment, narrowed as time went on. He is critical of the terms of the summing-up, which, he claims, was inadequately structured and failed properly to deal with issues raised by the defence, particularly in relation to Alexander's interviews, which, Mr Singer complains, ought to have received from the judge highlighting in five particular respects, which it is unnecessary to rehearse.

17. As we have said, Alexander did not give evidence. It is to be noted that the jury had transcripts of the interviews and a detailed index to each of the matters with which they dealt. The jury had also heard tape recordings of parts of the interviews, and, indeed, a recording of part of one of the interviews was played by Mr Singer as part of his closing speech.

18. The nub of Mr Singer's argument is that the applicants who gave evidence were induced by lies told by Andrews in relation to the requirement of a collateral bond. But, Mr Singer submits, unless Alexander knew of those deceptions he could not be convicted. The judge should have so directed the jury, but did not do so, and there was no evidence that Alexander had any contemporaneous knowledge of the deceptions. Mr Singer seeks to sustain that argument by virtue of the fact that the judge told the jury in clear terms, more than once, that, unless they were sure Steen knew of the kinds of deceptions being practised by Andrews upon applicants, they must acquit him.

19. The need for that direction in relation to Steen clearly lies in two aspects of the evidence in relation to him. First, he was not a member of Corporate Advances and there was no evidence that he was privy to the initial discussions between Andrews and the applicants, which would, had he been aware of them, have alerted him to the fact that they would never be able to provide a collateral bond. Secondly, once advance notice of the requirement of a collateral bond was given to many of the applicants, it was open to Steen to say that they were not tricked into paying the due diligence fee at a time when they had no knowledge of this requirement and with which they would find it impossible to comply.

20. A conspiracy to defraud does not include as an essential element that lies be told to the victims. But, because of those two aspects of the evidence in relation to Steen which we have identified, it was necessary for the Crown to prove that he knew of the nature of the deceptions being practised upon applicants so as to obtain fees. In the case of Alexander, however, the prosecution did not have to surmount those hurdles, for he was a partner in Corporate Advances, a very small business in terms of geographical space and membership, until he withdrew from the partnership and, thereafter, he was still actively involved in running the business. It was not necessary for the prosecution to

prove that he knew of the lies being told by Andrews. If he did, that clearly strengthened the case against him, but, if there was other evidence of Alexander's guilt, the issue of whether or not he knew of those lies was not, by any means, central to proof of his guilt.

21. There was other evidence against Alexander. It came in a variety of forms. We do not need to rehearse it in detail. It was dealt with by the judge in his ruling at volume 1 pages 85 to 92 and in the summing-up at volume 4A at pages 44 to 46, and it is set out in the skeleton argument for this Court of Mr Latham QC for the prosecution at pages 10 and 11. In essence it was that Alexander prepared in his own hand dozens and dozens of bank movement sheets, as they were referred to, which he could not have prepared without knowing details of the income and expenditure of the business. He also knew that no loans were ever made and that there were complaints made by applicants. The business premises, as we have said, consisted of a tiny office, in which, intermittently, throughout a two and a half year period, he and Andrews had been sitting together. From January 1996 the business was a total failure in achieving the objective of procuring loans, yet it was one which produced a substantial income from the introductory fees. With that knowledge, the prosecution said, Alexander must have known the business was dishonest and he continued to participate in it with that knowledge, making him a participant in the conspiracy to defraud.

22. The other ground on which Mr Singer seeks leave is based on the judge's refusal to discharge the jury following Mr Latham's cross-examination of Steen. It is said that Mr Latham repeatedly, over a number of days, endeavoured to move back the starting date of the conspiracy to a point two years before the indictment identified it as beginning. The effect of that cross-examination is said to have been so unfairly destructive of the defendants' chance of a fair trial that the judge should have acceded to the application, when it ultimately came, to discharge the jury.

23. It is to be observed that there were three teams of leading and junior counsel defending the three defendants in this case. At no time during the cross-examination was any significant protest made during the many intervals when the jury were not present, or, indeed, at any other time, that Mr Latham was transgressing the bounds of fairness. In fact, as it seems to us, the objection to his cross-examination is based on a misunderstanding of the way in which conspiracy can be proved, when, as in the present case, it depends on circumstantial evidence. It was legitimate for the prosecution to explore the unsuccessful history of loan applications during the period prior to the initial date of the conspiracy, as alleged in the indictment, in order to demonstrate that those charged had not come freshly to the situation, but already had enough experience to know that applicants of the kind we have described would be unlikely ever to be able to meet the terms on which a loan would be offered and so would be paying fees in a hopeless cause. The jury were entitled to consider, if they were satisfied the defendants knew this, whether, in carrying on the business in the same way, they were behaving dishonestly in pursuit of a conspiracy to defraud and to conclude that they were.

24. In our judgment, the judge was entitled to exercise his discretion against discharging the jury and there were grounds justifying that decision. He also, in due course, gave

appropriate directions to the jury on this aspect of the case. In our judgment, there is no arguable substance in the additional grounds sought to be advanced by Mr Singer on behalf of Alexander, and we refuse leave to appeal in relation to those grounds.

25. Steen in written grounds of his own composition, submitted over the period between 20th October 2003 and 16th July 2004, makes essentially five complaints. First, it is said there was inequality of arms between prosecution and defence because of inadequate disclosure by the prosecution, inadequate time and facilities to prepare the defence and the failure of the Serious Fraud Office to pursue, with the same diligence which they devoted to eliciting evidence supporting the prosecution, matters which might have assisted the defence. Also, it is said the prosecution have withheld material from Steen which might help his appeal.

26. There are, as it seems to us, several difficulties in these contentions. There were three years between the date of Steen's arrest and his trial. He must have known what his sources of funds available for lending were, and yet in his police interviews he was, to put it no higher, extremely vague about them. He did not, at trial, as we have already said, produce the paperwork which he now claims would have supported his defence. And, pending his trial, it is to be noted that there were no restrictions on the inter-continental movement of his wife. He also declined to pay, when offered the opportunity, for the photocopying of documents by others. The prosecution disclosed to those defending Steen all the documents which were in their possession and power.

27. The court during the trial sat what are called Maxwell hours, whereby the afternoons were free for appropriate investigations and perusal and assimilation of documents to take place. There was unfettered defence access to the documents throughout the trial. When adjournments were sought by the defence, they were granted; sometimes for substantial periods. Throughout his trial, Steen was represented by highly experienced leading counsel and by junior counsel and solicitors. No complaint was made by them during the trial about the supposed inadequacies of the opportunity for access to documentation. That first ground is, accordingly, without merit.

28. Secondly, it is said that inadmissible material, the so called "Dooley letter", was improperly introduced during the trial and, thirdly, that the judge should, in consequence, have discharged the jury.

29. A letter from a firm of Liverpool solicitors, called Dooley and Co, confirming a loan from Philippine Finance to Minter Construction, was, in edited form, in the jury bundle throughout the trial by agreement with, among others, those representing Steen. The original letter had been recovered from Steen's office and had initially formed part of the unused material. Steen in his evidence-in-chief accepted that copies of it had been distributed to the loan applicants, but he said that this was without his authority.

30. In cross-examination the prosecution sought to show that the letter had nothing to do with the loan scheme operated by the defendants. The court adjourned to allow Steen to familiarise himself with the file. The judge said it would have been better had such cross-examination first been canvassed in the absence of the jury, but he refused to discharge the jury. He ruled that there had been no prejudice sufficient to justify that

course, and, in any event, the issue had arisen because of the evasion, or lack of co-operation, of Steen himself.

31. In our judgment, the judge applied the proper test as to whether or not the jury should be discharged, and the exercise of his discretion in refusing so to order is not susceptible to effective challenge. We have dealt at an earlier stage in relation to Alexander with other aspects of the application to discharge the jury. There is, in our judgment, nothing in these second and third grounds.

32. Fourthly, criticism is made of the summing-up for being selective in relation to the evidence. Following a five and a half month trial this is unsurprising. But, in any event, at the behest of Steen's counsel, the judge rehearsed in his summing-up a list of points derived from cross-examination on which Steen's defence relied. The summing-up was not, in our judgment, unfair or inadequate in the way in which it put Steen's defence. Bearing in mind that Steen chose to absent himself from the summing-up by going abroad in breach of his bail conditions, this ground is deeply unattractive. Further, it is devoid of substance.

33. Steen's fifth ground relates to the jury foreman. It was argued on his behalf, as well as on behalf of Alexander by Mr Singer. Before turning to Mr Singer's submissions, we make the observation that the physical assault unhappily made on leading counsel for the Crown towards the end of April 2003 and the disagreements between counsel, sometimes in the absence of the jury and sometimes in the jury's presence, add nothing of substance to the allegation in relation to the alleged bias point in relation to the jury to which we now turn.

34. On behalf of both appellants, Mr Singer QC submits, rightly, that the relevant test to be applied is that enunciated by the Master of the Rolls in In re Medicaments [2001] 1 WLR 700 at page 727, paragraph 85 of the judgment:

> "The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased."

35. The ground arises, as we have said, in the present case because of communications, by e-mail and handwriting, on 4th July, that is to say 11 days after the jury's verdict, from the woman who was the foreman of the jury to leading counsel for the Crown. The e-mail was headed "summons to attend", and it identifies, as the witness to whom it was addressed, leading counsel for the Crown. It said:

> "You are required to attend: a dinner date.
>
> Date: On or around 26th of July 2003.
>
> Time: 7.30 p.m. onwards.
>
> Prosecutor: [the name of the juror was given].

Case outline: To answer the following question:

What does a lady need to do to attract your attention?

1. Attend court.

2. Give sustained eye contact.

3. Be patient (5.5 months).

4. Wait until the case has finished.

5. Let the man know that she's interested.

To start deliberations ring: [and a telephone number is given]

Or e-mail: [and an e-mail address, starting with the word 'champagne', is given]."

36. There was a bottle of champagne delivered, together with a handwritten note, dated Friday 4th July 2003, in these terms:

> "Richard.
>
> I really enjoyed the past five and a half months. Your delivery was superb -- really outstanding. You deserve to crack open a bottle of champagne -- hope you enjoy it!"

And it was signed in the first name of the woman foreman.

37. Mr Latham, understandably and properly, wrote immediately to Mr Singer QC, indicating what had happened, and confirming, as one would expect, that he had never at any stage, during the trial or since, spoken to the juror. Furthermore, Mr Latham's clerk sent an e-mail to the e-mail address provided, seeking an address to which the bottle of champagne could be returned.

38. In response to that e-mail there was a further e-mail on the afternoon of the same day, 4th July, from the woman juror, giving her address, the e-mail going to Mr Latham's clerk, and saying:

> "I was unaware of the Bar code of conduct -- sending and receiving gifts even after the trial has ended. I appreciate that acceptance of a gift could have the potential to be misconstrued by others. Sincere apologises. You can return the champagne to the following address."

39. In the light of the decision of the House of Lords in Mirza [2004] 1 AC 1118, this Court earlier this year directed that no enquiries should be made of any member of the jury in relation to these matters.

40. Mr Singer sought to distinguish three decisions of this Court, to which, a little later, we shall come. Cunningham [2003] EWCA Crim 1769, was, as Mr Singer points out, a case involving a note after verdict in a one week case. He submitted that observations in paragraph 20 of the judgment, which we shall a little later rehearse, should be viewed with circumspection, because, on their face, as Mr Singer recognised, they present him with something of a difficulty. As to Nickerson, Court of Appeal Criminal Division transcript of 25th January 1993, Mr Singer pointed out that the trial in that case was short, the juror involved was not the foreman, and the only form of social contact there sought was conversation or a drink. As to Godfrey and Hardiman, Court of Appeal Criminal Division transcript of 1st July 1994, Mr Singer said that the circumstances there, which involved a communication to one of the defending counsel were different from those in the present case. Furthermore, Mr Singer submitted, rightly, that, so far as Nickerson and Godfrey and Hardiman are concerned, those cases were decided before the coming into force of the Human Rights Act and before the decision of the House of Lords in Gough was, to a small extent, modified by the judgment of the Master of the Rolls in In Re Medicaments. Therefore, submits Mr Singer, Nickerson and Godfrey and Hardiman should be viewed with even more circumspection.

41. His submission is that the foreman, who sent these communications, was clearly the most prolific note taker on the jury and was clearly paying close attention to what went on. He submits that the proper construction of the documents emanating from the juror was that she regarded guilty verdicts as a cause for congratulation; that she was attracted to the prosecutor, and had, perhaps, been so attracted throughout the course of this lengthy trial; that she had sought unsuccessfully to communicate her interest; and that her objective was plainly to initiate a relationship with leading counsel for the Crown. Therefore, submits Mr Singer, she displayed a great deal of partiality towards the person of the prosecutor. The question which arises, Mr Singer submits, is, did that partiality infect her view of the case? The congratulatory element, as Mr Singer identified it, in the communication in handwriting is not to be found in any of the other authorities to which we have referred. Mr Singer accepts that it is a serious matter to impugn the verdict of a jury on this sort of basis. But, he says, it is difficult to see why the circumstances of this case do not give rise to a breach of the appellants' Article 6 Convention rights to a fair trial.

42. On behalf of the Crown, Mr Latham QC submits that there was a very strong case against all three defendants, two of whom, as we have said, and as he emphasises, did not choose to give evidence. He submits, as to the law, that the court must investigate the relevant circumstances. For that purpose the court personifies the reasonable man, and the court must find, before quashing the conviction, a danger of bias, and that such bias created an unfair trial, or unsafe verdicts, and that danger, or risk, must be more than a merely minimal risk.

43. In addressing these rivals contentions it is, in our view, helpful to cite a number of passages from the three pertinent authorities which we have identified. So far as the first two of them are concerned, we bear well in mind the health warning of Mr Singer, that they were decided before the Human Rights Act and before the present applicable test was adumbrated by the Master of Rolls in In re Medicaments.

44. In Nickerson the judgment of the Court, in which Lloyd LJ, as he then was, presided, was given by Potter J, as he then was. The appellant had been convicted of unlawful wounding by a majority of ten to two. Some days after the trial, as he properly disclosed to counsel for the defence, counsel for the prosecution received a note from one of the female jurors in the case, which introduced the writer as a juror on the case and sought social contact with prosecuting counsel in the form of lunch or a drink. At page 3B of the transcript Potter J said this:

> "Perhaps the first thing to be observed is that this court is invariably reluctant to interfere with the verdict of any jury in circumstances which either directly or implicitly involve speculating on the course or nature of the jury's deliberations, the secrecy of the jury room having been a jealously guarded principle of our law for centuries."

We interpose there, that that principle is, of course, maintained by the recent decision of the House of Lords in Mirza to which we have already referred.

45. Potter J went on:

> "A relatively modern expression of that principle is to be found in section 8 of the Contempt of Court Act 1981."

46. He continued at just above 3F:

> "It is an associated principle of our law that, while jurors may be challenged for cause prior to being sworn if bias or other suitability is reasonably suspected, and may be discharged by the judge at any time before verdict if misconduct or bias become apparent, after verdict no judgment in any trial by jury in any court may be reversed on the grounds that any juror was unfit to serve. That is a provision of section 18(1) of is the Jurors act 1974.
>
> This subsection, together with its proviso that it does not apply to any objection to a verdict on grounds of impersonation of a juror, embodies another longstanding principle of common law. Such principle has, for instance, led this court to refuse to set aside a verdict on subsequent discovery that a juror was too deaf to have heard more than half the evidence (see Chapman (1976) 63 Cr App R 75).
>
> It is apparent from decided cases that the statutory rule concerning unfit jurors is not applied so as to exclude this court from considering questions of bias when reviewing the exercise of a trial judge's discretion in deciding whether or not to discharge a juror or jury for alleged bias in respect of matters emerging in the course of trial. However, where knowledge of circumstances giving rise to suggestions of possible bias have only arisen, after verdict and are raised for the first time on appeal, the ability and willingness of the court to interfere are more circumscribed."

47. At 5H Potter J went on:

> "Thus, allegations, suspicion and inference of bias on the part of a juror without more cannot be enough, at least in a case where the matter of which complaint is made is raised only after verdict and has not been the subject of the judge's discretion in relation to an application for discharge of the juror in the course of the trial."

48. Then at page 7A Potter J said:

> "The matter seems to us quite clear. The note concerned, from which an inference of bias is invited to be drawn, did not and could not have come to the attention of anyone before verdict because it was not written until a week after. Again it does not and cannot indicate bias in the sense of a determination to come to a particular result from the outset of the trial because it can scarcely be suggested that, even before he rose to his feet to open the case, the qualities of prosecuting counsel had so impressed themselves upon the juror that they were likely to influence her in her task, regardless of the weight of the evidence.
>
> But that is to put the matter on too limited a basis. Both observations presuppose, as counsel for the appellant has submitted, that the terms of the note itself are to be properly regarded as indicative, or at least raise an inference, of prejudice in favour of the prosecution.
>
> We do not accept that submission. The terms of the note itself were not such as to suggest that the juror concerned did not adequately or conscientiously perform her task from start to finish in the context of the jury room, nor do we think, as counsel submits, that it is an indication that she would have allowed her attention unduly to wander in court, or to seek to influence her fellow jurors to any view based on other than the evidence.
>
> To suggest the contrary is to attribute to the author of the note an inability to distinguish between the personal characteristics of the prosecutor and the weight of the evidence, as well as willingness to ignore the terms of her juror's oath. That is not an inference we consider can or should be drawn from a note written several days after the verdict with a view to social contact quite independent of the courtroom and the case."

49. In Godfrey and Hardiman, after the jury had unanimously convicted one of three defendants and unanimously acquitted a second of murder, the judge gave the jury a majority direction in relation to the third defendant. As the jury were returning to their retiring room after that direction had been given, a letter was handed to one of the ushers by a female member of the jury. It was marked "private and confidential" and addressed to leading counsel for the defendant who had by then been acquitted. After hearing from counsel, the judge opened the letter, which was addressed to leading counsel and included the following:

> "Would it be at all possible for you to consider an invitation for a drink with me ... I do not wish to place you in an embarrassing situation ... but just in case there is a slight possibility of you accepting ..."

The juror's home telephone number was appended.

50. When all counsel in the case had read the note, the judge said that he did not propose to do anything in relation to the juror, subject to counsels' views. Counsel did not suggest that the judge did anything. Within a very short time the jury returned and convicted the third defendant by a majority.

51. The basis of the appeal, which was then launched on behalf of the two defendants convicted of murder, was that the letter having been written by the female juror to counsel for the defendant who had been acquitted, and there having been a considerable dispute during the case between the acquitted defendant's account and the accounts of the two convicted defendants of a cut throat character, the verdicts were unsafe.

52. Roch LJ, giving the judgment of the Court, said at page 28 of the transcript, having referred to Gough 97 Cr App R 188 and to Nickerson:

> "In our judgment, in the circumstances of this case, a real danger that this juror was biased against the appellants and participated in guilty verdicts against them by reason of bias is not a possibility."

53. At 29E, having considered the evidence in the case, Roch LJ said:

> "There is no need to postulate that a juror must have been biased in [the acquitted defendant's] favour.
>
> We consider it must unlikely that this juror communicated her liking for leading counsel [for the acquitted defendant] to other jurors, and still less likely that had she done so the other jurors would have allowed their judgments to be swayed by that disclosure. In the circumstances of this case, we think that there is no real danger that this juror allowed her liking for [the acquitted defendant's] counsel to transfer itself to [the defendant] and his case, and still less that she would have allowed such feeling to prejudice her judgment against [the other defendants], and lead her to disregard her oath and the judge's direction."

The Court pointed out that the different verdicts in that case were entirely explicable, having regard to the evidence, without postulating any sort of bias.

54. In Cunningham the appellant had been convicted by a unanimous jury of unlawful wounding. What happened then appears from the judgment of the Court given by Grigson J at paragraph 11:

> "... after the verdict had been returned and whilst the jury were in the process of dispersing a woman juror asked the usher if prosecuting counsel was married. The usher did not know. The juror then asked the

> usher to hand to prosecuting counsel a note. The usher accepted the note but was concerned as to the propriety of the request and read the note. The note contained an invitation to dinner and information to enable prosecuting counsel to identify the author of the note and accept the invitation if he so chose. He did not."

55. The judgment then referred to the In re Medicaments test, and said at the conclusion of paragraph 16:

> "It is apparent that the test to be applied here is ... Do the facts here give rise to a legitimate fear that the judge might not have been impartial? The word 'judge' includes, of course, juror in this context.
>
> 17. Any fact finding tribunal may find one advocate more or less attractive than another. It does not follow that he or she will allow that factor to influence their decision. Jurors take an oath to try the defendant on the evidence and to give true verdicts. It is the experience of the courts that jurors take both the oath and duty with great seriousness."

The judgment then went on to refer to Nickerson and to Godfrey and Hardiman.

56. Then the concluding three paragraphs of the judgment, starting at paragraph 19, are in these terms:

> "We recognise that the decisions of the Court in Nickerson and Godfrey and Hardiman must be read in the light of the test set out by the Master of the Rolls in the Medicament case, which we have referred above, a test described as a slightly amended Gough test.
>
> 20. We are quite satisfied that on an objective appraisal of the facts here there is no legitimate fear that the juror would not have been impartial. Of course, the test that we have to apply is whether the conviction is shown to be unsafe. An alternative approach to the problem is to ask: had this happened during trial would the judge have discharged the whole jury?
>
> 21. In our judgment, whilst she may have thought it prudent to discharge the author of the note, she would not been persuaded to discharge the whole jury. Inevitably, the verdict that would have been returned would have been one of guilty but by 11 rather than 12. It follows that we reject this ground of appeal also. We regard the conviction as safe, and the appeal is dismissed."

57. It is to be pointed out in the present case, so far as this jury is concerned, that, by reason of what had happened at an earlier stage in the trial, the jury were well aware of their ability to object to the presence of one of their number. One of their number had been discharged, so that there were only 11 jurors considering their verdicts, because the other jurors complained that he smelt. They complained to the judge and he discharged

that juror. Clearly, as Mr Latham points out, this was a jury alive to its rights and to the procedures for asserting them if necessary.

58. This was, as we have already said, a very long trial, during which, as is the experience of all those concerned in criminal trials, that juries tend to bond together and to increase in confidence. There is nothing in the evidence against each of the defendants in the present case to suggest that the verdicts of guilty were in any sense perverse. On the contrary, without weighing the precise strength of the case against each defendant, it suffices to say that there was ample evidence justifying the jury's verdicts in relation to each of them. The 11 jurors who remained were unanimous in all their verdicts. Also it has to be borne in mind, as it seems to us, that, even if it were the case that the communications from this juror were capable of the construction that they displayed partiality to the prosecution case, as distinct from partiality to the prosecutor, there were ten other members of the jury, a number of whom, as Mr Singer told us, apart from the foreman, were making copious notes and displaying a keen interest in what went on.

59. At that point, it is convenient to refer to a passage in the speech of Lord Rodger of Earlsferry in the Mirza case, starting at paragraph 151 of the judgment, at page 1174 of the report, just below letter F:

> "Since jurors are drawn from a cross-section of the population, we must therefore suppose that in their everyday lives some may indeed be racially prejudiced, whether against black people or against white people, or against particular racial groups. But, unhappily too, this is just one of many prejudices which may be found, we must also suppose, in the pool of people summoned for jury service. Some may be affected by religious bias, others may make it a rule always to believe an Irishman but never to trust a Scotsman, others again will never trust a man in a suit or a woman in trousers, while still others may be predisposed to believe anything -- or nothing -- that a police officer says. Except to the extent that the law forbids it, people are free to hold, and to run their lives by, such prejudices -- however irrational, unattractive or downright pernicious. Not so, however, when the same people deliberate as jurors since, if given free rein, any of these prejudices might make for a partial verdict. The point goes deeper. Even jurors who harbour no such particular antecedent prejudices will usually identify more readily with people whose way of life is similar to their own and, correspondingly, look askance at those with very different, and apparently inferior, lifestyles. Yet, more than often than not, jurors from ordinary respectable backgrounds have to judge those who, the evidence in the trial shows, lead very different lives -- not working, ruthlessly exploiting the social security system, taking drugs, regularly drinking to gross excess and generally acting in an antisocial fashion. There is an obvious risk that, hearing this kind of evidence, jurors may be biased against such a defendant. What matters therefore is not the particular type or source of prejudice but the risk that it may result in a partial verdict.
>
> 152. The risk that those chosen as jurors may be prejudiced in various

> ways is, and always has been, inherent in trial by jury. Indeed, only the most foolish would deny that judges too may be prejudiced, whether, for example, in favour of a pretty woman or a handsome man, or against one whose dress, general demeanour or lifestyle offends. The legal system does not ignore these risks: indeed it constantly guards against them. It works, however, on the basis that, in general, the training of professional judges and the judicial oath that they take mean that they can and do set their prejudices on one side when judging a case. Similarly, the law supposes that, when called upon to exercise judgment in the special circumstances of a trial, in general, jurors can and do set their prejudices aside and act impartially. The recognised starting-point is, therefore, that all the individual members of a jury are presumed to be impartial until there is proof to the contrary."

60. In our judgment, in the present case, there is no proof to the contrary. There is no reason for believing that the verdicts against either appellant were reached by reason of partiality, or bias, on the part of the jury foreman, or on the part of the jury as a whole. Applying the Medicament test, which we earlier adumbrated, a fair minded and informed observer would not, in the circumstances which we have described, conclude that there was a real possibility, or real danger, that this jury was biased. That being so, despite Mr Singer's attractive submissions, the appeals against conviction are dismissed.

61. We turn to Steen's sentence. He contends that the judge paid insufficient regard to his background, good character and age and to his mother's state of health; sadly she has died since the trial. It is also said that the judge misapprehended the true extent of the fraud and sentenced Steen excessively in comparison with his co-defendants.

62. In our judgment, none of these points is arguable. Following a trial of this length, the judge was very well placed to assess the degree of criminality and the relative culpability of the three defendants. He expressly took into account Steen's good character and his age. This was fraud on a major scale, unmitigated by any sign of remorse. The judge described Steen as the most culpable of three ruthless, cynical and greedy fraudsters, who had sought to blame everyone but himself, and was thoroughly unscrupulous, manipulative and dishonest. The sentence of six years on Steen was, in our judgment, correct. Leave to appeal against it is, accordingly, refused.