

<p>1 (2.28 pm)</p> <p>2 IN PRIVATE</p> <p>3 SIR MARTIN MOORE-BICK: Right, Ms Clarke. Before you make</p> <p>4 your submissions, I am going to reiterate for the</p> <p>5 benefit of everyone in the room that there is to be no</p> <p>6 reporting of this part of the proceedings until further</p> <p>7 order.</p> <p>8 The proceedings will be recorded, both video and</p> <p>9 oral, and the transcript will be taken as usual, but</p> <p>10 they won't be released until I say they can be.</p> <p>11 Right. Now, Ms Clarke.</p> <p>12 MS CLARKE: Mr Chairman, can I start by apologising, first</p> <p>13 of all, for the late notice of this application.</p> <p>14 SIR MARTIN MOORE-BICK: It shouldn't have happened as late</p> <p>15 as this, should it?</p> <p>16 MS CLARKE: It should not have, no, and I can only apologise</p> <p>17 for that. If we could've made this application any</p> <p>18 sooner, we would've done. I entirely appreciate the</p> <p>19 position this puts not only you, sir, in, but also your</p> <p>20 entire legal team, and of course the position that it</p> <p>21 puts the other legal teams in. The decision to make the</p> <p>22 application at such short notice was not one that was</p> <p>23 taken lightly, and has arisen from what we consider to</p> <p>24 be an urgent situation. It's certainly not something</p> <p>25 I would intend to repeat again. I would like to</p> <p style="text-align: center;">Page 1</p>	<p>1 proceedings to give their evidence as early as possible</p> <p>2 during the criminal trial.</p> <p>3 SIR MARTIN MOORE-BICK: All right. Can I just ask you, who</p> <p>4 are you instructed by?</p> <p>5 MS CLARKE: I am instructed by the Metropolitan Police</p> <p>6 Service, sir.</p> <p>7 SIR MARTIN MOORE-BICK: Is this not a matter for the Crown</p> <p>8 Prosecution Service?</p> <p>9 MS CLARKE: Well, sir, on a strict reading of the matter,</p> <p>10 perhaps.</p> <p>11 SIR MARTIN MOORE-BICK: Well --</p> <p>12 MS CLARKE: The reality is, sir, that we are a partner</p> <p>13 agency of the Crown Prosecution Service.</p> <p>14 SIR MARTIN MOORE-BICK: Maybe you are, but, you see, the</p> <p>15 application, so far as I have been able to consider it,</p> <p>16 raises a number of questions, at least in my mind, about</p> <p>17 the nature of the evidence that either of these two</p> <p>18 witnesses may give here, their relevance to the criminal</p> <p>19 proceedings, the nature of the concerns which someone</p> <p>20 has about the criminal proceedings --</p> <p>21 MS CLARKE: Yes.</p> <p>22 SIR MARTIN MOORE-BICK: -- and it seems to me that this is</p> <p>23 something which the CPS ought to be shouldering. I am</p> <p>24 not at all persuaded it's for the police to make</p> <p>25 an application of this kind.</p> <p style="text-align: center;">Page 3</p>
<p>1 unreservedly apologise for that, sir.</p> <p>2 SIR MARTIN MOORE-BICK: All right, thank you.</p> <p>3 Just help me with this though: this application is</p> <p>4 directly made in relation to Mrs Wahabi's evidence?</p> <p>5 MS CLARKE: It is, yes.</p> <p>6 SIR MARTIN MOORE-BICK: But it's of equal relevance to the</p> <p>7 evidence of Mr Gomes, isn't it?</p> <p>8 MS CLARKE: It may well be equally relevant to the evidence</p> <p>9 of Mr Gomes. That rather depends, sir, on when the</p> <p>10 criminal trial that I'll come to address you about</p> <p>11 happens and when Mr Gomes's evidence happens within that</p> <p>12 criminal trial.</p> <p>13 Because the nub of the issue is evidence in the</p> <p>14 public inquiry being broadcast before either of those</p> <p>15 individuals give evidence in the criminal trial. That's</p> <p>16 the nub of the application. If the criminal trial runs</p> <p>17 as is planned, which is to start on Monday, it may well</p> <p>18 be that Mr Gomes's evidence is heard in that trial</p> <p>19 before he is due to come to the public inquiry.</p> <p>20 I don't want to cause Mr Gomes any alarm, because</p> <p>21 I understand he hasn't been told when he is going to be</p> <p>22 giving evidence in the criminal trial yet either. So</p> <p>23 I don't want to set hares running about that. But it's</p> <p>24 certainly our understanding that the intention is for</p> <p>25 the witnesses who are giving evidence in these</p> <p style="text-align: center;">Page 2</p>	<p>1 MS CLARKE: Sir, the reason why I make an application on</p> <p>2 behalf of the Metropolitan Police Service is -- we're</p> <p>3 certainly making it at the request of the Crown</p> <p>4 Prosecution Service.</p> <p>5 SIR MARTIN MOORE-BICK: To put it bluntly, why does it</p> <p>6 matter to the police? It's a matter for the</p> <p>7 prosecution.</p> <p>8 MS CLARKE: Well, sir, because the police have a profound</p> <p>9 interest in the administration of justice as well and</p> <p>10 ensuring we do all we can to try and safeguard the</p> <p>11 criminal proceedings and to make sure that, where</p> <p>12 matters come to our attention that potentially prejudice</p> <p>13 those criminal proceedings, we do what is appropriate</p> <p>14 and what we can in order to raise those concerns.</p> <p>15 Of course, we have status as a CP and the CPS don't.</p> <p>16 SIR MARTIN MOORE-BICK: Yes. But, again, that isn't</p> <p>17 relevant, is it, to the course of conduct which is said</p> <p>18 to be a potential at least to undermine the</p> <p>19 administration of justice?</p> <p>20 MS CLARKE: Sir, I can entirely appreciate that.</p> <p>21 SIR MARTIN MOORE-BICK: I understand why you're here and</p> <p>22 I am grateful for your assistance, but I really think</p> <p>23 this is something which the CPS ought to be putting</p> <p>24 forward on their own behalf, as I see it at the moment</p> <p>25 at least.</p> <p style="text-align: center;">Page 4</p>

<p>1 MS CLARKE: Sir, can I also add a different logistical 2 dimension to that, which is that the application is 3 being made at extremely short order. The risk of 4 seeking for the CPS to make this application would have 5 potentially meant a further delay in that happening, and 6 given that the Metropolitan Police Service are here, 7 sir, and you are due to hear from this witness at 8 2 o'clock, we were mindful not to encourage any further 9 delay in this particular matter being determined. 10 So we find ourselves in the position where we are 11 here and able to make representations, sir, insofar as 12 you're willing to hear from me about it, but I entirely 13 appreciate the position about the CPS being the 14 prosecuting authority, but the Metropolitan Police 15 Service do have an interest in that as well for the 16 reasons I've outlined. 17 SIR MARTIN MOORE-BICK: All right, thank you. 18 MS CLARKE: Sir, if it's of any assistance whatsoever, 19 I would be willing to characterise the application as 20 a joint application. 21 SIR MARTIN MOORE-BICK: You mean you are now instructed by 22 the CPS as well? 23 MS CLARKE: Well, sir, I'm instructed by the -- 24 SIR MARTIN MOORE-BICK: You are not, Ms Clarke; you are 25 instructed by the MPS.</p> <p style="text-align: center;">Page 5</p>	<p>1 MS CLARKE: Yes. 2 SIR MARTIN MOORE-BICK: Go on. 3 MS CLARKE: I'm reluctant to reveal any particular details 4 about that individual because I'm not sure it's 5 necessary in these proceedings or this application. 6 SIR MARTIN MOORE-BICK: Well, the long and short of it is 7 that he's being prosecuted for fraudulently representing 8 that he was resident in flat 182; is that right? 9 MS CLARKE: Yes, that's right, sir. 10 SIR MARTIN MOORE-BICK: On that basis, obtaining very 11 substantial benefits in cash and kind. 12 MS CLARKE: Absolutely, sir, yes. 13 SIR MARTIN MOORE-BICK: Right. 14 MS CLARKE: It's one of the number of fraud cases that have 15 received widespread press attention -- quite rightly -- 16 following on from of course the terrible events of June 17 last year. 18 This is another fraud trial within those 19 investigations and, of course, this relates to 20 Ms Wahabi. Ms Wahabi has provided evidence to the fraud 21 investigation and, indeed, is intended to be called as 22 a witness at that trial. 23 The concern that arises from the CPS is that any 24 publication of her evidence may give rise to arguments 25 about the defendant in those proceedings being</p> <p style="text-align: center;">Page 7</p>
<p>1 MS CLARKE: I am. I am. 2 SIR MARTIN MOORE-BICK: For better or worse, that's the 3 basis on which the application will be. 4 MS CLARKE: It is, sir. It's joint not in terms of 5 instructions, but certainly the Metropolitan Police 6 fully support the application. 7 SIR MARTIN MOORE-BICK: All right. Shall we get to the nub 8 of it? 9 MS CLARKE: Sir, yes. 10 So the nub of it is that I apply for a restriction 11 order in respect of Ms Wahabi's evidence to the public 12 inquiry. I seek a restriction on the publication and 13 broadcast of her evidence until the conclusion of 14 a criminal trial that is taking place next Monday. The 15 criminal trial is due to run for an estimated four to 16 five days and, therefore, I ask for a restriction simply 17 until the conclusion of those proceedings. 18 If I may set out some background about those 19 particular proceedings. 20 The trial is a fraud trial relating to an allegation 21 of fraud by misrepresentation of an individual who is 22 said to have falsely and fraudulently claimed to have 23 been a resident at flat 182 in Grenfell Tower. 24 SIR MARTIN MOORE-BICK: I think I have seen the indictment 25 somewhere, yes.</p> <p style="text-align: center;">Page 6</p>	<p>1 prejudiced in advance of that trial. That is really the 2 issue: her evidence being broadcast or reported on 3 before the outcome of that trial. 4 The risk arises because of the potential for any 5 such argument being made by that defendant that might 6 derail the listing for that trial. 7 There are statutory time limits that are imposed 8 about an individual's custody, and if this trial doesn't 9 go ahead, the time that the authorities have to detain 10 this particular defendant will run out and he will need 11 to be released at the end of December. 12 There is considerable concern that therefore 13 jeopardising the trial window will potentially give rise 14 to the frustration of these proceedings, because there 15 is a real concern that, if the matter were put off and 16 if this individual had to be released, an application 17 for bail would be made. If this individual were allowed 18 to be at liberty pending any criminal trial taking 19 place, there is a serious concern that he would abscond 20 and, therefore, the entire process would be frustrated. 21 This isn't, sir, an application about the 22 Metropolitan Police Service suggesting from our 23 perspective that there is an inherent prejudice in 24 Ms Wahabi's evidence being reported because of the 25 different character of the evidence to the inquiry</p> <p style="text-align: center;">Page 8</p>

<p>1 versus the character of the evidence in the criminal 2 proceedings. The problem is that there could be 3 arguments made that could jeopardise the listing, and 4 that's really the fundamental problem.</p> <p>5 Given that the restriction sought is for a very 6 limited amount of time, we would ask for it, as I've 7 said, until Monday, 12 November, just to allow for late 8 running of proceedings on Friday or perhaps jury 9 deliberations tipping over into the Monday.</p> <p>10 If, of course, matters outside of my control take 11 over and for any other reason the listing is 12 jeopardised, then we would of course need to consider 13 our position about any length of time for any reporting 14 restrictions.</p> <p>15 But, sir, in essence, that is why we make the 16 application.</p> <p>17 SIR MARTIN MOORE-BICK: Well, this is something I'm finding 18 a little difficult to understand.</p> <p>19 In the ordinary way one would expect an application 20 of this sort to be based on the premise that the witness 21 in question might say something in the course of the 22 inquiry that, if reported, might influence the jury.</p> <p>23 But that's not, I think, the basis upon which you put 24 this.</p> <p>25 MS CLARKE: No, it's a slightly different basis.</p> <p style="text-align: center;">Page 9</p>	<p>1 SIR MARTIN MOORE-BICK: That's a notoriously difficult 2 application to succeed on, isn't it?</p> <p>3 MS CLARKE: It is, and I can't possibly make any positive 4 submissions about whether such application would or 5 wouldn't succeed. The issue is, in my submission, 6 preventing that opportunity in the first place, when the 7 way to prevent it and to ring-fence that evidence is 8 simply to publish the evidence from the inquiry a week 9 later.</p> <p>10 SIR MARTIN MOORE-BICK: Have you given any consideration to 11 section 4.2 of the Contempt of Court Act? Not because 12 I'm suggesting it's perhaps directly applicable, but it 13 does seem to me that the principles underlying it and 14 the case law based on it are apposite to the inquiry.</p> <p>15 MS CLARKE: Well, sir, I would say that you are entitled to 16 rely on section 4.2 of the Contempt of Court Act. The 17 primary legislation, of course, that is the guiding 18 principle is section 19 of the Inquiries Act.</p> <p>19 SIR MARTIN MOORE-BICK: That is what gives me my power to 20 restrict reporting.</p> <p>21 MS CLARKE: Yes.</p> <p>22 SIR MARTIN MOORE-BICK: But isn't the problem one of 23 balancing freedom of speech against the risk to the 24 administration of justice?</p> <p>25 MS CLARKE: Of course.</p> <p style="text-align: center;">Page 11</p>
<p>1 SIR MARTIN MOORE-BICK: Does that mean whatever she says, in 2 a sense the fact of giving evidence is itself a problem?</p> <p>3 MS CLARKE: Yes, sir, to put it shortly.</p> <p>4 SIR MARTIN MOORE-BICK: Why should that be so?</p> <p>5 MS CLARKE: Because an argument could be made that the 6 widespread publication and reporting of Ms Wahabi's 7 evidence may well influence a jury.</p> <p>8 SIR MARTIN MOORE-BICK: In what way?</p> <p>9 MS CLARKE: To the extent that it would prejudice the 10 defendant, because if jurors were to have considered 11 Ms Wahabi's evidence and drawn any conclusions about 12 her, or, for example, any particular positive feelings 13 towards Ms Wahabi as a consequence of viewing her 14 evidence, the defendant may say that he can't possibly 15 have a fair trial when the jury have already seen this 16 individual giving their evidence live at the public 17 inquiry about matters that are particularly emotive and 18 distressing.</p> <p>19 SIR MARTIN MOORE-BICK: Right.</p> <p>20 What sort of application are you worried about on 21 the part of the defendant?</p> <p>22 MS CLARKE: I appreciate, sir, that --</p> <p>23 SIR MARTIN MOORE-BICK: I mean, he would have to apply to 24 stay the indictment, wouldn't he?</p> <p>25 MS CLARKE: He would.</p> <p style="text-align: center;">Page 10</p>	<p>1 SIR MARTIN MOORE-BICK: So the tests that have been applied 2 in relation to section 4.2 -- well, contained in 3 section 4.2 -- would seem to me at least to be 4 potentially relevant to the exercise that I am being 5 asked to undertake.</p> <p>6 MS CLARKE: No, sir, I'm seeking for you, sir, to make that 7 balance of the administration of justice versus freedom 8 of speech.</p> <p>9 I'm effectively asking for the right to freedom of 10 speech and for these matters to be publicised and 11 reported on simply to take place after Ms Wahabi has 12 given evidence in the criminal trial. It isn't 13 a wholesale restriction forever, it's on a very limited 14 basis.</p> <p>15 SIR MARTIN MOORE-BICK: Well, Ms Clarke, I'm very concerned 16 about this application and I think it requires more 17 careful argument and deliberation than we really have 18 time to undertake at this moment. I mean, in one sense, 19 I'm afraid, you're going to succeed in your design 20 because it's not now going to be really feasible to take 21 Mrs Wahabi's evidence this afternoon.</p> <p>22 MS CLARKE: Well, sir --</p> <p>23 SIR MARTIN MOORE-BICK: But there is still Mr Gomes coming 24 along next week and I think the same principles are 25 going to apply in relation to him, aren't they?</p> <p style="text-align: center;">Page 12</p>

<p>1 MS CLARKE: They may well do, but it will depend, as I say,  2 on the progress of the trial. There is of course the  3 possibility -- at the moment the defendant in that trial  4 has pleaded not guilty. If the defendant were to plead  5 guilty, that would add a slightly different dimension to  6 matters.  7 SIR MARTIN MOORE-BICK: A wholly different dimension.  8 MS CLARKE: Sorry, sir?  9 SIR MARTIN MOORE-BICK: A wholly different dimension.  10 MS CLARKE: Yes. So, again, there are unpredictable matters  11 that I can't responsibly make submissions about.  12 Can I say on the issue of frustrating this  13 afternoon's proceedings, it was absolutely not our  14 intention to do that, and I want to apologise if that  15 causes Ms Wahabi any distress, because it certainly was  16 not our intention to prevent her from giving her  17 evidence this afternoon.  18 SIR MARTIN MOORE-BICK: Well, I think others in the room --  19 I am thinking principally, of course, of the legal  20 representatives of the core participants -- ought to be  21 better informed about this application, and what I am  22 minded to do -- I also think, if I may say so, that the  23 press ought to have an opportunity to be heard if they  24 wish on it at some length. It's a bit difficult to  25 expect the representatives from the Press Association,</p> <p style="text-align: center;">Page 13</p>	<p>1 been allowing the public to have access is through the  2 streaming and so forth -- subject to an application for  3 a restriction order under section 19, and the criteria  4 under section 19 is fairly stringent.  5 SIR MARTIN MOORE-BICK: Mr Thomas, I can assure you that  6 I've been looking at both sections 18 and section 19.  7 Section 19, as you will know yourself, is worded in ways  8 that might admit of different interpretations, and I'm  9 not prepared to say here and now that this does not come  10 within section 19, but it's a point which it's perfectly  11 right to consider, and I hope Ms Clarke has taken it on  12 board. I suspect she has.  13 MR THOMAS: The point I make, so that I'm not misunderstood,  14 is so far, the application has not been phrased with any  15 reference to section 19.  16 SIR MARTIN MOORE-BICK: Well, that's not quite right. You  17 haven't seen the written note that I have, have you?  18 When you get it -- because I am going to direct that you  19 should get it -- you'll see that there is reliance  20 placed on section 19.  21 But I think if this application is going to be  22 pursued, notwithstanding the fact that we're now not  23 going to hear evidence from Ms Wahabi this afternoon,  24 it's got to be pursued properly, and my present view is  25 it ought to be pursued by the CPS in their own right,</p> <p style="text-align: center;">Page 15</p>
<p>1 who may not have too much familiarity with these sorts  2 of legal proceedings, to argue the press's interest on  3 the hoof like this.  4 What I am minded to do is to say that we'll adjourn  5 this application to be heard on Friday.  6 I'm waiting, there is a question mark in my voice,  7 inviting people to stand up and object to Friday.  8 Yes, someone has.  9 MR THOMAS: Sir, can I raise one thing before you finalise  10 your decision as to when you are going to hear this  11 application. It may well be of assistance to you and,  12 indeed, the applicant making this application.  13 What is surprising is that there is a -- bearing in  14 mind what has been asked for is a restriction order, and  15 that is dealt with in section 19 of the Inquiries Act,  16 it's somewhat surprising that this application has been  17 made with no reference to section 19 and whether or not  18 the application actually falls appropriately within  19 section 19.  20 The reason why I stand to my feet -- I'm neutral on  21 this because it doesn't affect my clients, but with  22 assistance to you, sir, the fundamental principle is  23 firstly set out in section 18, which gives a presumption  24 that these hearings should be heard in public, and the  25 public should have access -- and the way, sir, you have</p> <p style="text-align: center;">Page 14</p>	<p>1 not by the Metropolitan Police Service.  2 Yes, Mr Mansfield.  3 MR MANSFIELD: Yes, I'm obliged. I wonder whether I might,  4 on behalf of Ms Wahabi -- she's sitting right here.  5 SIR MARTIN MOORE-BICK: I am sorry she's been so  6 inconvenienced. It is very unsatisfactory.  7 MR MANSFIELD: I'm very concerned about her welfare as  8 a witness, because there are two sets of proceedings,  9 this one and the other one. We haven't been told  10 whether it's a fixture -- I was told informally it is  11 a fixture for Monday.  12 I wonder whether we might be given a little time  13 now, because obviously one way round, having a hearing  14 on Friday when she is supposed to be giving evidence on  15 Monday, may be prolix to say the least of it. It may  16 be possible to resolve this this afternoon if, for  17 example -- I haven't discussed it with anyone -- if  18 she's due to give evidence on Monday, she goes and gives  19 evidence on Monday and not here until after she's given  20 evidence there.  21 SIR MARTIN MOORE-BICK: That may well be the case, and I see  22 the force of that, and this is why I said I thought  23 Ms Clarke had achieved her object by getting this  24 application on rather late so that we can't hear  25 Mrs Wahabi now. But --</p> <p style="text-align: center;">Page 16</p>

1 MR MANSFIELD: Well, there is another point here. I don't  
 2 wish to necessarily espouse the possibility that it's  
 3 been done on purpose, but nothing has been said in this  
 4 application to indicate why today. What's the urgency  
 5 today, other than somebody has woken up to maybe custody  
 6 time limits? It could've been done two weeks, three  
 7 weeks, four weeks ago, because her evidence has been  
 8 known in both, and it's really very unfortunate, and it  
 9 may be you have something to say to the Metropolitan  
 10 Police or whoever else about why it's come on now. But  
 11 we are dealing with a situation where I would ask for  
 12 some consideration for the witness.

13 SIR MARTIN MOORE-BICK: You don't need to persuade me that  
 14 it's deeply unsatisfactory that the first I knew of this  
 15 was after the close of play yesterday afternoon, and  
 16 I do think that, as I said already, this is a matter  
 17 that the Crown Prosecution Service should come along and  
 18 deal with in its own capacity. I would expect, if the  
 19 application is pursued, as it may be because of the  
 20 position of Mr Gomes --

21 MR MANSFIELD: Well, that's true.

22 SIR MARTIN MOORE-BICK: -- that I shall want to be helped on  
 23 things like custody time limits, what the opportunities  
 24 are for extending custody time limits, what are the  
 25 prospects for the trial, and a number of things of that

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1 kind, not excluding some of the points I've already  
 2 raised about the balancing act and so on, and I think  
 3 the press ought to be heard as well. And I'll hear  
 4 other CP representatives if they want to be heard on it.

5 MR FRIEDMAN: Can I just briefly -- particularly because  
 6 I act for other members of this extended family.

7 SIR MARTIN MOORE-BICK: Yes, I know.

8 MR FRIEDMAN: Having not had notice of the application, they  
 9 came up to me before they went on and said, "We've been  
 10 seen by police liaison officers and we know what this is  
 11 about, it's a case about fraud", which rather takes us  
 12 to where we should go right now, because respectfully,  
 13 if you are thinking of adjourning this, I haven't heard  
 14 anything now that takes this beyond, with respect, the  
 15 bog-standard situation where you make the application in  
 16 open court and the judge holds the ring until it's  
 17 ultimately determined by saying: I will make a reporting  
 18 order on the application itself, but there seems no  
 19 reason why the people out there shouldn't know what is  
 20 in its outline a standard application.

21 Before I sit down, I can't stop myself from saying  
 22 that on this side and over there, there are barristers  
 23 that have never got anywhere near getting a stay or  
 24 an adjourned trial on what has been very eloquently  
 25 outlined. I wish the police came all the time and

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1 supported us in these kind of applications, but they  
 2 don't!

3 So as a multiple loser in this area, particularly  
 4 for terrorist trials, it might be said in all  
 5 seriousness we understand that Mr Gomes and Ms Wahabi  
 6 will talk about flat 182, and that's what has brought  
 7 you here late. But what's the difference with Roy Smith  
 8 this morning, or Nadia Jafari last week? That's there,  
 9 that's the fraud trial next week, it's not the same.

10 But, sir, if you're minded to adjourn this, all  
 11 I would say is what needs to happen very quickly is that  
 12 we are free, one way or another, perhaps through you,  
 13 for you to explain exactly what this is about and  
 14 consider an interim reporting restriction so that  
 15 everyone out there is included in the current  
 16 (inaudible).

17 I would make a plea for it not to be on Friday  
 18 because there is so much work that goes on on Friday, as  
 19 you know.

20 SIR MARTIN MOORE-BICK: The trouble is finding a date when  
 21 we can do it without interfering with a very tight  
 22 timetable.

23 MR FRIEDMAN: One is obviously concerned about both the  
 24 witnesses who are willing and able to give evidence as  
 25 soon as possible. So that's all I wanted to add.

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1 SIR MARTIN MOORE-BICK: All right, thank you. Well, it's  
 2 obvious that you don't think I overestimated the  
 3 prospect of succeeding on any application to discharge  
 4 the indictment.

5 MR FRIEDMAN: Well, I stand amongst a group of very  
 6 experienced losers, where we have had far more prejudice  
 7 to put before the courts and we've lost these cases in  
 8 the European Court of Human Rights as well. So --

9 SIR MARTIN MOORE-BICK: That's all right, Mr Friedman, don't  
 10 worry.

11 MR FRIEDMAN: It's not custody time limits, it's about the  
 12 due diligence of the prosecuting authority, and not  
 13 about some prejudice that came out beyond their control.  
 14 So it wouldn't for a moment, in my respectful  
 15 submission, even if there was an application to adjourn  
 16 the trial, to the trial judge in the Crown Court next  
 17 week, get anywhere on custody time limits. That's my  
 18 stance on it.

19 SIR MARTIN MOORE-BICK: Thank you.

20 Yes, Mr Stein.

21 MR STEIN: My bite of the cherry in relation to the basic  
 22 law, it's an exceptional jurisdiction to stay, very  
 23 rarely applied.

24 In terms of the question of custody time limits,  
 25 what we've heard today would actually be evidence that

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5 (Pages 17 to 20)

<p>1 would not support an application to extend. This is</p> <p>2 actually a demonstration of failure of due diligence on</p> <p>3 what we have heard in the way the CPS have not acted.</p> <p>4 So that's that at the moment.</p> <p>5 The more direct problem we have is on behalf of</p> <p>6 Mr Gomes. What we are currently experiencing is going</p> <p>7 to be the potential for putting it over to Friday, which</p> <p>8 would have certainly for him and his family a knock-on</p> <p>9 effect of the question of: will he be giving evidence on</p> <p>10 the Monday? Will he also be giving evidence on the</p> <p>11 Tuesday? And so on.</p> <p>12 What we respectfully invite you to do today, sir, is</p> <p>13 this: see what we can do today in relation to this</p> <p>14 application. The first step for that is for us to see</p> <p>15 the written application.</p> <p>16 SIR MARTIN MOORE-BICK: Yes.</p> <p>17 MR STEIN: Then we can return back and make some rather more</p> <p>18 sensible submissions as to the further progress of this</p> <p>19 application once we have sight of it. It may be that we</p> <p>20 can persuade you, sir, to in fact deal with it today and</p> <p>21 get rid of it. If so --</p> <p>22 SIR MARTIN MOORE-BICK: Well, I think there's more to this</p> <p>23 than I ought to deal with, if possible, just on the</p> <p>24 hoof, because it does raise, in my view, at least some</p> <p>25 quite important questions in relation to the balance</p> <p style="text-align: center;">Page 21</p>	<p>1 driving a coach and horses through the remainder of the</p> <p>2 timetable -- at 10 o'clock, unless other arrangements</p> <p>3 have been made of a kind that mean that's it's not</p> <p>4 pursued, and that's possible.</p> <p>5 MR STEIN: Sir, would you allow this possibility: that we be</p> <p>6 provided copies of the application as soon as possible,</p> <p>7 in other words this afternoon --</p> <p>8 SIR MARTIN MOORE-BICK: I thought I indicated that.</p> <p>9 MR STEIN: -- and then if, sir, you are available, if there</p> <p>10 are representations that we believe can properly be made</p> <p>11 today, that we could return to it this afternoon?</p> <p>12 SIR MARTIN MOORE-BICK: Let's see how we go. I think</p> <p>13 certainly the first step, you must have copies of the --</p> <p>14 I think you'll need the indictment and the written</p> <p>15 application. Is there anything else you think you might</p> <p>16 need that I have?</p> <p>17 MR STEIN: Case summary may be of assistance.</p> <p>18 SIR MARTIN MOORE-BICK: I don't have that.</p> <p>19 MS CLARKE: I don't personally have that either, sir.</p> <p>20 SIR MARTIN MOORE-BICK: Right.</p> <p>21 Well, Ms Clarke, you have that, have you? You can</p> <p>22 serve all this material? It's not very bulky.</p> <p>23 MS CLARKE: It's not.</p> <p>24 SIR MARTIN MOORE-BICK: Straight away, as soon as possible.</p> <p>25 MR STEIN: Thank you.</p> <p style="text-align: center;">Page 23</p>
<p>1 between open justice and prejudicing current</p> <p>2 proceedings.</p> <p>3 I am concerned about the position of the press as</p> <p>4 well, because they're the people who are as affected as</p> <p>5 anyone on behalf of the public.</p> <p>6 So I'm sorry, Mr Stein --</p> <p>7 MR STEIN: We would ask, though, sight of the application</p> <p>8 being the starting point.</p> <p>9 SIR MARTIN MOORE-BICK: Yes.</p> <p>10 MR STEIN: Then the possibility of making further</p> <p>11 representations today before we all depart, so at least</p> <p>12 we can take stock as to what we've heard so far.</p> <p>13 SIR MARTIN MOORE-BICK: What I am going to say is I am going</p> <p>14 to adjourn this application. I am going to treat</p> <p>15 Ms Clarke as appearing on behalf of the CPS as a sort of</p> <p>16 deputy, I don't know quite how we put it.</p> <p>17 MR STEIN: Agent, proxy, yes.</p> <p>18 SIR MARTIN MOORE-BICK: All right.</p> <p>19 I've already said I think the CPS ought to make this</p> <p>20 application in their own right. It ought to be served</p> <p>21 on all the legal representatives for the witnesses and</p> <p>22 the other BSRs core participants.</p> <p>23 I will adjourn it on that basis and continue the</p> <p>24 hearing on Friday -- I'm sorry about that, but I think</p> <p>25 it's the only sensible thing to do without really</p> <p style="text-align: center;">Page 22</p>	<p>1 SIR MARTIN MOORE-BICK: We'll return to this on Friday at</p> <p>2 10 o'clock.</p> <p>3 At that stage, either you will appear on behalf of</p> <p>4 the CPS or someone else will appear on behalf of the CPS</p> <p>5 in your place, and be prepared to deal with all the</p> <p>6 information we may need in relation to the trial and</p> <p>7 other matters regarding this defendant.</p> <p>8 MS CLARKE: Certainly.</p> <p>9 SIR MARTIN MOORE-BICK: All right?</p> <p>10 MS CLARKE: Thank you, sir.</p> <p>11 MR FRIEDMAN: Sir, in terms of the interim position, would</p> <p>12 you feel that you are in a position today to tell the</p> <p>13 people here what the application is about, but make</p> <p>14 an interim order pending its resolution hopefully on</p> <p>15 Friday?</p> <p>16 SIR MARTIN MOORE-BICK: An interim order of what kind?</p> <p>17 MR FRIEDMAN: The fact is we've been in closed session here.</p> <p>18 That's not a situation that we would want to maintain</p> <p>19 unless absolutely necessary. Therefore, what I am</p> <p>20 asking for is that you tell the members of the public</p> <p>21 when they return effectively what the application is</p> <p>22 about. There's nothing that has been said here that in</p> <p>23 my respectful submission can't be said in public, but</p> <p>24 that you make a reporting order about it so it's not</p> <p>25 reported beyond open court.</p> <p style="text-align: center;">Page 24</p>

1 I say that because I've never been in a situation in  
 2 a criminal Crown Court, where an application like this  
 3 has been made, where it hasn't been made in open court  
 4 but that there's been an order to hold the ring. And  
 5 I think probably all my learned friends would agree (a)  
 6 that that's the norm -- no. Well, Mr Mansfield would  
 7 want a say. Whether it's the norm or not, that's my  
 8 application, that effectively you allow this application  
 9 and what has gone on this afternoon to be made public,  
 10 and you can summarise the position when it comes in. We  
 11 can be in a position to explain to any client that asks  
 12 what it's about, but that you make a reporting order, an  
 13 interim one, that will then be reviewed.  
 14 That is my application arising out of what's gone on  
 15 this afternoon.  
 16 SIR MARTIN MOORE-BICK: All right. Do you want to say  
 17 anything about that, Ms Clarke?  
 18 MS CLARKE: Well, sir, I think it's a matter for you to deal  
 19 with whether it would be an interim reporting  
 20 restriction or whether it's just a reporting restriction  
 21 actually for the time period I've requested. I'm not  
 22 sure if that's just semantics.  
 23 SIR MARTIN MOORE-BICK: I mean, in a sense your substantive  
 24 application doesn't have any content because Mrs Wahabi  
 25 is not going to give her evidence this afternoon.

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1 MS CLARKE: No.  
 2 SIR MARTIN MOORE-BICK: She's not going to give it before  
 3 Friday because of our existing timetable.  
 4 MS CLARKE: Yes.  
 5 SIR MARTIN MOORE-BICK: When the application resumes on  
 6 Friday, we'll see where it takes us.  
 7 MS CLARKE: Yes.  
 8 SIR MARTIN MOORE-BICK: The only question is whether  
 9 I maintain a reporting restriction on the proceedings on  
 10 your application so far.  
 11 MS CLARKE: Yes, yes.  
 12 SIR MARTIN MOORE-BICK: I think what Mr Friedman is  
 13 suggesting is that I should at least make an open order  
 14 that this part of our proceedings not be reported, and  
 15 tell people that it's because an application was made in  
 16 relation to certain evidence on the basis that it might  
 17 interfere with proceedings elsewhere.  
 18 Now, are you going to object to that?  
 19 MR MANSFIELD: Yes --  
 20 SIR MARTIN MOORE-BICK: Mr Mansfield, I'll come to that in  
 21 a moment.  
 22 MS CLARKE: Sorry, sir, I'm trying to listen in two  
 23 directions at once.  
 24 Yes, that would be appropriate as long as the  
 25 reporting restrictions stayed in force in terms of the

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1 substance of the application, but that it was described  
 2 in the terms that you just set out, sir.  
 3 SIR MARTIN MOORE-BICK: There is nothing in the substance of  
 4 the application yet, is there? It's still part heard.  
 5 MS CLARKE: Not having gone through this process now, sir,  
 6 no.  
 7 SIR MARTIN MOORE-BICK: Yes, Mr Mansfield.  
 8 MR MANSFIELD: Sorry to make it slightly more difficult.  
 9 Again, I'm concerned with Ms Wahabi's particular  
 10 interests here, and that is that if an interim order is  
 11 made which doesn't really reveal what it's all about  
 12 other than it's to do with evidence that would've been  
 13 heard today that might influence other proceedings, it's  
 14 not going to be difficult for people to work out who is  
 15 at the centre of this.  
 16 I would submit that there's risk of disproportionate  
 17 prejudice being attached to somebody who is perfectly  
 18 innocent; in other words, what is the problem that  
 19 surrounds her in her giving evidence? In fact, you've  
 20 already, if I may say so, hit the nail on the head:  
 21 there isn't any prejudice, in fact, in giving evidence  
 22 here, merely the fact, we've seen it many times --  
 23 SIR MARTIN MOORE-BICK: Well, I think, to put it in  
 24 a nutshell, the suggestion is that if she gives evidence  
 25 and appears to be a very sound and credible witness, it

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1 will be said that that will somehow prejudice the  
 2 defendant, because the jury, all of whom will no doubt  
 3 have been watching the live streaming of this inquiry,  
 4 will say, "Oh, it's this lady again, we know how  
 5 brilliant she was on the last occasion", or whatever it  
 6 might be.  
 7 I have put it perhaps rather unkindly, but I think  
 8 that's the nature of the complaint, isn't it?  
 9 MR MANSFIELD: And of course that --  
 10 SIR MARTIN MOORE-BICK: In my experience, that's a novel --  
 11 but still --  
 12 MR MANSFIELD: -- doesn't reflect on the witness at all, but  
 13 if in fact it's all shrouded by the interim order, and  
 14 obviously it would be, we would be very concerned about  
 15 that disproportionate prejudice to her for both  
 16 proceedings, as it now turns out.  
 17 SIR MARTIN MOORE-BICK: Well, maybe. I find it a bit  
 18 difficult to see how it could prejudice her, but still,  
 19 I wouldn't want to do that.  
 20 MS CLARKE: Sir, may I add one further matter? That if any  
 21 interim order is to be in place, it will also cover  
 22 publication of the application document itself and any  
 23 documents that we supply as directed by you, sir, so the  
 24 further publication of the application itself and the  
 25 indictment.

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7 (Pages 25 to 28)

<p>1 SIR MARTIN MOORE-BICK: Why the indictment, for heaven's 2 sake?</p> <p>3 MS CLARKE: Well, I'm not sure if the indictment is a matter 4 of public record yet. I'm acting on fairly limited 5 instructions --</p> <p>6 SIR MARTIN MOORE-BICK: Has there been a plea and directions 7 hearing yet?</p> <p>8 MS CLARKE: I presume so, but not being CPS counsel --</p> <p>9 SIR MARTIN MOORE-BICK: If there's a trial on Monday, I hope 10 there has, that's all I can say.</p> <p>11 MS CLARKE: I appreciate the point, but I'm in a difficult 12 position about what I am being asked to do at this 13 particular point.</p> <p>14 SIR MARTIN MOORE-BICK: Well, given the fact that I've 15 directed that the proceedings thus far not be reported 16 until further order, I think it would be right to say 17 that you should give copies of the relevant documents to 18 the legal representatives of the BSRs in confidence so 19 that they are not distributed more widely until the 20 application has been completed. At that point, we'll 21 see where we are.</p> <p>22 All right? I won't say is everybody happy with 23 that, but has everyone got that?</p> <p>24 MR MILLETT: Mr Chairman, can I take instructions?</p> <p>25 SIR MARTIN MOORE-BICK: Yes, please do.</p> <p style="text-align: center;">Page 29</p>	<p>1 position of the press because the press are the nearest 2 we've got to the public for these purposes.</p> <p>3 MR MILLETT: Yes.</p> <p>4 SIR MARTIN MOORE-BICK: Who have a clear interest in the 5 reporting of the proceedings.</p> <p>6 MR MILLETT: Yes.</p> <p>7 SIR MARTIN MOORE-BICK: All right?</p> <p>8 MR MILLETT: The other thing is I'm concerned, as I stand 9 here, about the position of the RLRS as opposed to their 10 clients. It may be difficult to police a reporting 11 restriction once the community of BSRs knows about the 12 substance of the application.</p> <p>13 It's not a point that Ms Clarke has made, and I'm 14 not making it for her, I'm just trying to steer 15 a neutral course. But there is of course a difficulty 16 because one does not want to make orders, and you don't 17 want to make orders, in vain. So in the first instance 18 perhaps we should consider whether or not it goes beyond 19 those in this room who have heard what has happened so 20 far. Clearly there is a process, and clearly people 21 have to see what is being put in the application.</p> <p>22 One way round that -- and I don't want to get in the 23 way and spoil an already lengthy afternoon -- is for 24 Ms Clarke to reconfigure the application into a part A 25 and a part B, part A being those matters which she and</p> <p style="text-align: center;">Page 31</p>
<p>1 (Pause)</p> <p>2 MR MILLETT: Mr Chairman, if the media, whoever they are, 3 are going to make representations at the hearing on 4 Friday, then obviously they need the application as 5 well, the formal application in writing.</p> <p>6 SIR MARTIN MOORE-BICK: They will.</p> <p>7 MR MILLETT: They also need to be subject to that 8 restriction pro tem.</p> <p>9 Rather than it being "the media", it should be 10 limited to an identified person. I don't know who that 11 is at the moment.</p> <p>12 I'm instructed that the Media Lawyers Group is 13 a sufficiently identifiable person to be bound by the 14 order to whom the application will be given.</p> <p>15 SIR MARTIN MOORE-BICK: Right. Well, then, it seems to me 16 then the material shall be served on the Media Lawyers 17 Group on similar terms of confidence. All right?</p> <p>18 MR MILLETT: I'm told so.</p> <p>19 The other thing is this: obviously the reporting 20 restriction which you've imposed will apply not just to 21 the press but also to any bloggers or people who use 22 social media to communicate.</p> <p>23 SIR MARTIN MOORE-BICK: Yes.</p> <p>24 MR MILLETT: Yes, yes.</p> <p>25 SIR MARTIN MOORE-BICK: No, I've only concentrated on the</p> <p style="text-align: center;">Page 30</p>	<p>1 her client (whoever that is) doesn't object to being 2 seen by the wider community of core participants, and 3 those parts which she would insist on being restricted 4 to and has a case for restricting to those who are in 5 this room.</p> <p>6 I anticipate that one of the difficulties is that 7 not all BSRs are here, and certainly not all CPs are 8 here, and I am concerned that we are creating 9 a two-speed or three-speed group of core participants 10 generally. I only raise that because -- and I suppose 11 it is my job to spoil things a bit -- but these things 12 need a bit more thought.</p> <p>13 So perhaps in the first instance, rather than simply 14 acceding to Mr Friedman's application that we tell 15 everyone who comes in what's been going on, which is 16 unhelpful and too vague and dangerous, we take it 17 a little bit more slowly. And the application document 18 is reconfigured, it gets circulated to the RLRS who can 19 then perhaps have some written submissions as to whether 20 that should go more widely to the clients and the core 21 participants and then take it from there at the Friday 22 hearing.</p> <p>23 SIR MARTIN MOORE-BICK: Yes. All right.</p> <p>24 MR MILLETT: Mr Chairman, I think that is probably 25 unhelpful, I have rather got in the way, but I hope that</p> <p style="text-align: center;">Page 32</p>



1 assists in some way.  
 2 SIR MARTIN MOORE-BICK: Mr Stein is going to tell me why  
 3 it's very helpful.  
 4 MR STEIN: Well, the difficulty we have at the moment is not  
 5 having sight of it we don't know whether there's  
 6 anything objectionable at all in the application so far  
 7 that has been made by the police.  
 8 So, Mr Chairman, you do have that, you would be able  
 9 to look at it now and be able to come to a conclusion as  
 10 to whether or not it cannot just be given to us  
 11 immediately. So that's the first thing.  
 12 Secondly, on what can be said when we regroup in  
 13 public, there seems to us to be no harm in saying  
 14 generally there are other proceedings that may take  
 15 place next week and there have been discussions about  
 16 that. There does not need to be an in-depth examination  
 17 of what has happened here.  
 18 Thirdly, we would be assisted by a copy of the  
 19 transcript of this afternoon's proceedings so that we  
 20 can reflect on what has been said so far. All of this  
 21 has been gathering pace this afternoon.  
 22 Finally, would you please order that if the CPS are  
 23 to make an application that they do so within  
 24 a particular timescale. That may be by 1 o'clock  
 25 tomorrow afternoon.

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1 SIR MARTIN MOORE-BICK: Well, I had rather taken it that the  
 2 existing application would stand as the CPS application,  
 3 and I think it should, unless and for good reason to the  
 4 contrary.  
 5 MR STEIN: Well, bear in mind that there is no  
 6 representative here. We have to an extent considered  
 7 a little lightly the position of counsel who is  
 8 representing the police today, but there is in fact no  
 9 representation from the CPS here today making any points  
 10 on their behalf. We are anticipating the potential for  
 11 an application, it will be a CPS application, not  
 12 Ms Clarke. So the position we would respectfully invite  
 13 you, sir, to come to is that they should, if they are  
 14 making the application -- they may, after having  
 15 consideration of what's been said today, and indeed  
 16 perhaps the obvious difficulties with the nature of this  
 17 application that it's all based upon a fairly unlikely  
 18 series of circumstances all coming together, they may  
 19 reflect on it and, for good reason, not make the  
 20 application. But, if they are, can we not have it by  
 21 1 o'clock tomorrow?  
 22 SIR MARTIN MOORE-BICK: Yes, you are going to need it by  
 23 1 o'clock tomorrow if we're going to come back here on  
 24 Friday.  
 25 MR STEIN: I was tempted to say 10 o'clock, but --

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1 SIR MARTIN MOORE-BICK: No, no, you wouldn't want to be  
 2 unreasonable, would you?  
 3 MR STEIN: Of course not. I try not to be.  
 4 SIR MARTIN MOORE-BICK: Yes, I think that makes good sense,  
 5 unless Mr Millett is going to spoil it again.  
 6 MR MILLETT: No, I'm not going to spoil it at all.  
 7 I was just going to make one other point which is  
 8 those in this room understand at least mostly, I think,  
 9 that these proceedings are those which do not involve  
 10 Mrs Wahabi in any adverse way. I think it's important  
 11 that whatever is said outside this room it is made  
 12 absolutely clear that Mrs Wahabi is a witness in other  
 13 proceedings and is not involved in any pejorative  
 14 fashion.  
 15 SIR MARTIN MOORE-BICK: I shall prefer to say nothing about  
 16 Mrs Wahabi because I think that you're right, we don't  
 17 want to embarrass her in any respect whatsoever, she's  
 18 already suffered from having to come to give evidence  
 19 this afternoon to be told that she won't be needed  
 20 today. I think the less said about her specifically the  
 21 better.  
 22 I'm minded to tell the public simply that I had to  
 23 deal with an application which concerned the  
 24 relationship between the inquiry and certain other  
 25 proceedings --

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1 MR MILLETT: Yes, that would be helpful.  
 2 SIR MARTIN MOORE-BICK: -- which had to be held in private.  
 3 MR MILLETT: That would be helpful.  
 4 SIR MARTIN MOORE-BICK: Right, well then I will -- I hope  
 5 someone has made a note of all these orders I'm making.  
 6 MR MILLETT: My junior hasn't!  
 7 SIR MARTIN MOORE-BICK: I am going to say that if the CPS  
 8 wishes to pursue this application it must do so in  
 9 writing by 1 o'clock tomorrow. That application is to  
 10 be served on the inquiry and on the legal  
 11 representatives for all the BSR core participants, but  
 12 worded a bit more elegantly than that in due course, but  
 13 that is effectively what it will say.  
 14 There will be a little time for consideration of  
 15 where we're going with this given that now Mrs Wahabi  
 16 won't be giving her evidence probably, I think, until  
 17 the middle or the end of next week.  
 18 MR MILLETT: Mr Chairman, a point of mechanics, but it's  
 19 important. The application should be served on the  
 20 inquiry and we will provide it to the relevant RLRs.  
 21 SIR MARTIN MOORE-BICK: There are practical reasons for  
 22 that.  
 23 MR MILLETT: Yes, there are.  
 24 SIR MARTIN MOORE-BICK: Yes. We will distribute it to the  
 25 RLRs.

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9 (Pages 33 to 36)

1           Now, in relation to the transcript of this  
2           afternoon, if, as I hope arrangements can be made to  
3           provide it to a limited class of people, I think that  
4           would be helpful. I would like to see one, and I think  
5           the RLRs for the BSRs should also have access to it, but  
6           that it not be made available more widely. All right?  
7           Good.  
8           Thank you all very much for your help.  
9           At this stage we could ask the public to come back  
10          in, if they're still -- sorry, I am getting a message  
11          from the corner.  
12       THE USHER: We need ten minutes to reset everything.  
13       SIR MARTIN MOORE-BICK: Right, we have to reset everything.  
14          Well, in that case I'll rise now and we'll resume  
15          this at 10 o'clock on Friday.  
16          We shall, for the avoidance of any doubt, be sitting  
17          in private when we resume, unless any order is made to  
18          the contrary. All right?  
19          Good. Thank you all very much.  
20       (3.15 pm)

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10 (Page 37)

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