

**THE ROUGH JUSTICE AFFAIR.**

## **PROLOGUE.**

1985. It seems a long time ago. Margaret Thatcher was in power and the Conservative government was still two years away from its third election victory. It's hard to appreciate the atmosphere of those days when we had just won the Falklands war, nationalism was at its yuppie height and we had a government that was radically changing the face of British society.

So it's hard to explain just how bad things had become within the system of justice. The Guildford Four were still in jail of course, as were the Birmingham Six. No one even dreamed that they would be let out of jail before the turn of the decade. Many people in Britain still held the view that we had the best system of justice in the world - even if, as Mrs Thatcher believed, the professions involved needed a little sorting out.

But if you can remember the feeling in the Press when Lord Taylor took over as Lord Chief Justice, it may give you some idea of what had been going on before - under the previous Lord Chief Justice, Lord Lane. And if you then double the intensity of the feeling, you'll be getting somewhere near the vile atmosphere that permeated the corridors of the Royal Courts of Justice in 1985.

Many had thought Lord Lane to be a reforming Lord Chief Justice. In 1980, when he came to office, he was. But things had developed at such a pace during his first years in office, that by 1985 he was hardly thinking rationally any more. The entire system of justice was under attack from the Government. Mrs Thatcher saw in the judiciary and the legal professions not only a rival power, but also a bastion of the establishment she wanted to reform. Faced with such an onslaught, Lord Lane became liable to make the most outrageous judgements and hit out against anyone he perceived to be not on his side.

There is one case from 1985 which illustrates well how Lord Lane could abuse his powers as Lord Chief Justice. It's not the only one we could study, but it benefits from having copious notes and transcripts attached to it. The real story of the case has nothing to do with courts of law. The case Lord Lane had before him was the appeal of a Manchester man, Anthony Mycock, who had been sentenced to four and a half years for robbing and mistreating a young woman called Anne Fitzpatrick. But Mycock hardly figures in this story. There seemed little question that he was innocent - and Lord Lane quashed the conviction. However, Mycock's innocence was almost an aside to the real story. The real issue concerned two BBC journalists, Peter Hill and Martin Young.

Lord Lane hated Hill and Young because they had produced a BBC series of programmes called "Rough Justice". For five years, they had systematically revealed that miscarriages of justice occurred within the British system of justice. As if this were not enough, they did the job thoroughly, so that most of their cases were to progress through the rigorous and prejudiced vetting system of the Home Office - into Lord Lane's courts.

In 1985, Lord Lane decided he had had enough. The case of Anthony Mycock presented itself as the perfect vehicle for his revenge. The appeal itself presented no problems to him - Mycock was clearly innocent - so he could indulge himself in other matters, such as finishing off Hill and Young. The case also had two perfect helpmates for Lord Lane to use. Eager to help him were the Greater Manchester Police who were furious with Hill and Young because of their earlier case in Manchester of Michael and Patrick McDonagh. Also keen to help was the victim, Anne Fitzpatrick, herself. She had been shown up as a prodigious liar. She had not only falsely identified Mycock across the courtroom at his trial - but had even invented the robbery itself to cover up a fit of rage she had had when a flatmate had left her.

Faced with this, the two eminent Queen's Counsel involved - for the appellant and for the Crown - tended to allow things to go whichever way Lord Lane wished. And so, as we shall see, the appeal of Anthony Mycock became the trial of Hill and Young.

You will be surprised to read just how far a Lord Chief Justice of England was prepared to go to kill off what he perceived as his opposition. He acted unfairly in the name of fairness. For example, he accused

the journalists of editing interviews to suit their purposes rather than the truth - and to “prove” his point, he *unfairly edited tape transcripts in evidence before him*. Anne Fitzpatrick lied 70 times before him in court and in the evidence before him - yet the Lord Chief Justice supported her story when it suited his purpose. He ignored all evidence that the two journalists had acted properly and had, indeed, done a public service.

A quick glance at the transcripts of what occurred gives a rough indication of how far he went. He questioned Hill and Young for some three hours. Yet these two were not witnesses in the case. Mycock’s counsel even refused to call Hill after what he had seen happen to Young. The Lord Chief Justice then called Hill under his own powers to call witnesses - and cautioned him before submitting him to an hour and a half of interrogation. Not satisfied with this, Lord Lane then used his final judgement on the appeal to castigate the journalists further - spending about a third of the judgement on them, when their evidence had contributed nothing to the case before him.

His abuse of power in this was outrageous, for he enjoyed complete privilege in his judgements. Those criticized by a Lord Chief Justice can get no redress.

Can you imagine something like this happening today? Can you really believe it happened only a decade and a half ago? Read on, and see just how bad things had become after the first five years of Margaret Thatcher.

What follows is based on an even more detailed and annotated version of the events. It refers to various areas of evidence - such as the transcript of the programme Hill and Young produced and the transcripts of the tapes that they had recorded when they talked with Fitzpatrick, for they recorded almost everything on tape. There are also statements Fitzpatrick made to the police as well as the statements of other witnesses such as Sue Roark, Fitzpatrick’s girl friend in California, and various acquaintances of Fitzpatrick from when she lived in Manchester.

In this version, the references are omitted and even some of the sources not mentioned. That is to make it easier reading - and to lead you more directly to the truth. But the volumes of evidence that backs up this version do exist and can be consulted.

## **CHAPTER 1.**

### **THE MYCOCK CASE.**

#### **The Main Facts.**

Anthony Mycock was convicted of burglary and assault in Manchester in 1983. The only evidence against him was that the supposed victim, Anne Fitzpatrick identified him in an identification parade. None of the stolen goods were ever found in his possession, nor any forensic evidence found which placed him at the scene of the crime.

Miss Fitzpatrick had claimed that her attacker had a 'helmet' tattoo on his left hand. Mycock's hands were covered with tattoos - none resembled a helmet. She also claimed that her attacker had dark hair which came down over his forehead - Mycock was balding at the front. She said that this intruder had an earring in a pierced ear. Mycock had neither an earring nor a hole in his ear for an earring. She also claimed that a second intruder was called 'Baz' which she later modified to 'Gaz'. Tony Mycock's brother was called Gary - shortened by some to 'Gaz'. Miss Fitzpatrick's description however did not fit Gary, nor did she pick him out from an identity parade. Needless to say, she only modified her pronunciation of the name "Baz" after she had learned that Gary's nickname was 'Gaz'.

Anne Fitzpatrick claimed that she had been tied up, but had wriggled around to the front of the house where her flat was on the ground floor, and raised the alarm with an upstairs neighbour Miss Kath, "Kitty", Prow. Fitzpatrick was in pyjamas then, but she changed, and the two women went to Fitzpatrick's parents who lived a little further along the road from where she lived. Fitzpatrick talked to her parents and then called the police.

Kath Prow did not give evidence at Mycock's trial. She was told she was not needed. In fact her evidence was sensational. She believed that the burglary had not taken place. She knew Fitzpatrick well, had seen the rope which she had been 'tied' with, and did not believe the story. She also saw the state of Fitzpatrick's pyjamas which did not match the story that she had wriggled around the house.

Two years later, Hill and Young heard this, and they also interviewed another witness who had not given evidence at the trial. This was a Miss Maxine Marshall who had lived with Fitzpatrick up to the night of the 'burglary'. It seemed odd that only Maxine's belongings had disappeared or were broken in the burglary - Fitzpatrick's belongs were all intact and untouched. They also heard many stories of Miss Fitzpatrick's irrational behavior. She was known as "Schizo Annie". They came to the conclusion that not only was Mycock innocent, but that it was probable that the burglary had never taken place. They determined to interview Miss Fitzpatrick.

Fitzpatrick had left Manchester soon after the trial. In fact the police had issued a warrant for her arrest on a different matter. Hill and Young discovered her whereabouts in California. They approached her, saying they were journalists. They determined to record every conversation that they had with her - though two short conversations were not recorded because of the nature of the events. She eventually agreed to give them an interview. At that interview she told them that the burglary was a figment of her imagination.

The Mycock case was referred back to the Court of Appeal by the Home Office. During the re-investigation of the case by the Greater Manchester Police for the Home Office, three detectives went to California. They took a sworn statement from Miss Fitzpatrick's flatmate, Miss Susan Roark, and took notes of what Miss Fitzpatrick had to say - though she did not make a formal statement. She could not as a consequence, be later charged with perjury.

The statements by the two women made a wide variety of wild claims - the principle one being that Hill and Young had threatened to expose their lesbian relationship if Fitzpatrick did not give the interview.

Hill and Young could quite easily refute these accusations, not only because they themselves had a tape of the conversation referred to by the two women, but also because Roark herself had taken a tape of that particular conversation. This second tape however, was later said by Roark to have "not recorded".

The police discovered further evidence which tended to discount the allegation that a burglary had taken place. The 'stolen goods' were found to have been sold and given away by Fitzpatrick to friends of hers. Other witnesses came forward to testify that Fitzpatrick had originally identified a man called *Wayne Mycock* ( no relation to Tony and Gary) as the intruder.

Fitzpatrick and Roark came to the Appeal Court. Fitzpatrick has been arrested on her return to England and rushed to court in Manchester where she was found guilty on a charge which had been outstanding against her on her departure from England and on which she had skipped bail.

Fitzpatrick then went to London and repeated her allegations against Hill and Young in the Court of Appeal. However, she was then faced with the transcripts of the conversations she was giving evidence about. They bore no resemblance to what she alleged. She became evasive and somewhat incoherent.

The Lord Chief Justice however, homed in on the two journalists and set about attempting to prove Fitzpatrick's allegations for her by using the transcripts. Much of the following report is devoted to how he interpreted the transcripts to suit his purpose.

As you will see, none of the allegations had any substance and the Lord Chief Justice abused his powers by ignoring some of the evidence and twisting other parts of it in order to back up Fitzpatrick's claims.

You will see the points on which the Lord Chief Justice attacked the two journalists, the evidence he used to back up those attacks, and the evidence which shows that the accusations had no substance.

You will see the 70 lies which Miss Fitzpatrick told during the case - and bear in mind that this list is confined to lies which can be shown to be false by documentary evidence. It does not contain the lies which only verbal evidence refutes.

You will see the standards of evidence Lord Lane adopted during this case, you will probably find them unusual. And there are some tricks employed by the Lord Chief Justice and Crown counsel in court to trap the two journalists.

You may come to the conclusion that the two journalists were 'fitted up'. And you may wonder what can be done to get justice for them. Unfortunately, the answer is - nothing. There is no form of appeal against outrageous remarks made by a Lord Chief Justice.

The only conclusion of value we can bring from these sorry events is that men who reach the highest office of Lord Chief Justice must be particularly careful not to abuse their power. They must adopt a high moral standard for their conduct. When one is above the law, one must act as its servant.

## **CHAPTER 2.**

### **HOW THE LORD CHIEF JUSTICE RAN THE APPEAL.**

Beginning this story with Anne Fitzpatrick's evidence in the Court of Appeal is like jumping into a river in midstream - because the truth of Mycock's innocence was already obvious by the time Anne Fitzpatrick appeared in court. Her evidence was superfluous; the goods she had told the jury on oath at trial had been stolen had been identified by various people as goods she had sold to them. Enough had been said by witnesses (in particular a Dr. Devlin) about how unstable she was. It was clear that no one could rely on anything she said anyway.

But, since she had come from California, albeit via the courts in Manchester, the Lord Chief Justice felt it right to hear what she had to say - particularly because he liked what she said.

No one else wanted her in court. She was Crown counsel's worst witness and Mycock's counsel did not need her. What's more, it is normal in the English Court of Appeal that the Appellant counsel has the right to put the case as he wishes - even though the judges usually have some say in the matter too.

We must bear in mind that the issue in the appeal by Mycock was that of Mycock's innocence - not the guilt of Fitzpatrick. So, if his innocence was already proved, why listen to the lies of the woman who had falsely accused him? Mycock's counsel did not wish to have Fitzpatrick before the court at all. He said so before the case began and as soon as she appeared he started grumbling about it again.

"I have indicated as strongly as I can within my duty that I am not relying on the retraction on the television programme and that my case is based on quite other matters," he said. Then, to make his position as clear as possible, he then added,

"May I say I am concerned..... that I do not want to do anything to deflect the Court from a true consideration of what the real issues in this appeal are..."

Well, this did not please Lord Lane. His baleful grey eyes looked sternly across the courtroom.

"I think we appreciate what the real issues are," he replied.

We would expect nothing less of the Lord Chief Justice. Of course he must appreciate what the real issues in a case are. But the case was already proved - and Mycock's lawyer didn't want to question this witness.

He didn't want to question the BBC reporter Martin Young either. But Lord Lane insisted, because he wanted to force Martin Young to admit that he knew that the interview Fitzpatrick had given him in California was not the truth.

Lord Lane wanted that in evidence. Mycock's counsel did not. When Martin Young was called, he got up and said "May I say first of all, I reiterate that the retraction of the statement is not part of my case."

Then, on the insistence of Lord Lane, he questioned Martin Young - until Lord Lane took over the interrogation.

Both counsel were surprised by the ferocity of Lord Lane's questioning of Martin Young. But he also wanted Peter Hill's blood. Counsel refused to call Hill.

Mycock's counsel couldn't have put it more clearly - "he is no part of my case."

But Lord Lane called Hill. For, as far as the Lord Chief Justice was concerned, Hill was a part of "the real issues".

Spare a thought for Mycock's counsel. All this interrogation and bullying of Young and Hill might well cloud Lord Lane's mind and make him forget the seven key points already in evidence which cleared Mycock. They were:

1. The property that had been "stolen" had not belonged to Anne Fitzpatrick, but to her girl friend Maxine Marshall. The police had recovered major parts of this property - the TV set and the gramophone records - from witnesses who testified that *Anne Fitzpatrick* (not Mycock) had disposed of it. Fitzpatrick had already admitted to the Manchester police who interviewed her in California that she had disposed of the TV set- "To get revenge on Maxine" She had gone to America using the same passport that she had said had been stolen by Mycock.
2. The Identification parade at which Mycock had been picked out by Fitzpatrick had clearly been improper. The Lord Chief Justice had already agreed that the rules laid down by the Home Office had not been complied with.
3. Fitzpatrick had identified *Wayne* Mycock by photograph as the intruder. This was testified to by three members of a family called Smeeton. Wayne Mycock looked nothing like Tony Mycock and had no connection with him. They lived more than eight miles apart.
4. Kath Prow's complete evidence cast serious doubt upon Fitzpatrick's original story at the trial. It would certainly have been enough to alter the jury's decision if it had been given at trial.
5. Fitzpatrick's doctor, Dr. Devlin, had already told the Court of Appeal that she "fantasised and exaggerated facts." He had examined her for over a week as an in-patient just two months before the alleged robbery. This evidence not only cast serious doubt upon anything Fitzpatrick ever said, but would have swayed the jury if it had been given at the original trial.
6. According to statements Fitzpatrick had made to the BBC, she had been threatened by the Greater Manchester Police with charges of perjury if she changed her story. Because of this, any further statement from her seemed likely to be worthless.
7. Most of these above points demonstrated that Fitzpatrick was a liar whose statements could not be believed.

The earlier points were perhaps the most important. This last point however, needs some attention here - because although the appeal was (supposedly) about Mycock, this present story is about Fitzpatrick, not Mycock.

Fitzpatrick's prodigious ability to lie is the central point of what you are reading. And it is important to bear in mind that Hill and Young knew about her ability to lie throughout their dealings with her - and particularly during the filmed interview which so disturbed Lord Lane. They were, however, inhibited as journalists from mentioning her lies in detail to anyone because of the law of defamation. But they had been warned she would "cry rape" and they determined to guard against any traps she might set for them. They determined to meet her always in a public place and they decided to record everything they said to her - because they were sure she would subsequently try to put words into their mouths that they had not said.

They were doubly alerted when Hill discovered Fitzpatrick had broken through the security of his hotel in California. He found her outside his room only by chance - when he was returning from a research trip. He saw her trying to insert a small square paper package under his hotel room door. Her reaction to being discovered doing this - and the quick manner in which she hid the small package convinced him that she was planting drugs on him.

The journalists never claimed to believe anything Fitzpatrick ever said to them. For example, in their final script they said of her filmed interview with them in California:

"this filmed interview will not be allowed into the Court of Appeal as evidence which could free Anthony Mycock."

And Peter Hill also said during his interrogation by Lord Lane "I do not believe what she said on that filmed interview was true.... I think she is a stranger to the truth, the lady is a liar."

He also said of the filmed interview "the interview is valueless." And he later summarised his attitude towards Anne Fitzpatrick like this:

“ I have learned with Miss Fitzpatrick the only way one can assume that something she says is correct is by corroborating it by some other source. Nothing she said in that television interview could be corroborated.”

So, it seems that everyone in court was warned that the lady was a liar - and Mycock's counsel was particularly keen that she should not have any further opportunity to lie against Tony Mycock.

Let's pause for a moment. Mycock's counsel had a point didn't he? You have read just a little about Fitzpatrick and her ability to lie and cheat. Haven't you already forgotten the other six points that demonstrated that Mycock was innocent? Has not the detail of Fitzpatrick's character and abilities diverted you from the main point? Wicked she may be - but she is also fascinating.

That was how Mycock's counsel saw it. To go further into any other issue could cloud the central point - Mycock's innocence. He had good reason. His list of reasons why Mycock should go free was long - but there were even longer and more dramatic lists in the Fitzpatrick/Hill / Young case than in the Mycock case - as you shall see.

However, the Lord Chief Justice “knew what the real issues” were. And they involved Hill and Young, not Mycock.

Let's not dismiss Lord Lane's view on this too lightly. After all, he was the Lord Chief Justice, so we must assume that he had a rational position for doing what he did.

Why did he have Fitzpatrick in the witness box, - then call Young - and finally Hill? It was a question of credibility. She may have lied - indeed, she *did* lie - about Mycock. But could he trust her to have told the truth about what Hill and Young had said and done in California? If she was truthful about that, she could be used to finish the two journalists off.

From now on we need to remember a salient date: July 1st 1985. This was the date when Hill and Young landed in California. From that moment on, in broad terms, Fitzpatrick's credibility was to be found reliable. Before that, no one, including the Lord Chief Justice, believed a word she said.

Unfortunately for justice, all the witnesses to her credibility had experience of her before that date - except Hill and Young. But Lord Lane thought the word of journalists was not to be trusted.

So, Lord Lane decided that Fitzpatrick's credibility should not be judged solely on the independent evidence of various witnesses such as Dr. Devlin. She should be put into the witness box where the Lord Chief Justice himself would question her. During this examination the questions did not concern her general credibility in California - but only her credibility *with regard to what she claimed the two journalists had said and done there*.

It's not surprising that the Lord Chief Justice's final position on her credibility was ambivalent, even though it was crucial to the outcome of the appeal.

For example, he said of her evidence about events in Manchester:

“ We do not accept that she has no recollection of this box of records. She was not telling us the truth about this..... We content ourselves by saying that had the jury been aware of the unreliability which she demonstrated before us, the result might have been quite different.”

Clear enough? The lady was a liar. She did not even tell the truth under oath in the Court of Appeal. However, the Lord Chief Justice was able to believe Fitzpatrick's uncorroborated word elsewhere in the appeal.

For some reason, he chose to believe Fitzpatrick's evidence that there had been a break-in at the house. He even added more evidence as if to corroborate her word on this, though what he brought forward to support her word was evidence was untested and indeed wrong.

His actual words were:



“ The other remarkable fact is one which we have already mentioned, namely..., that Gaz or Gary Mycock had on the base of his left thumb a tattoo in the shape of a heart.”

A ten year old child could have checked this. But Lord Lane didn't. He had heard evidence on this from a policeman, Detective Sergeant Fury, who said:

“ He has a tattoo on the base of his left thumb... looks something like a heart, I am not quite sure.”

In fact, D.S. Fury had not seen Gary Mycock close enough to examine his hands for two years - and Lord Lane knew it. But consider this: Gary Mycock was outside the courtroom when D.S. Fury said these words. He available to the Court or Appeal and the Lord Chief Justice knew that too. But he was not called before the court so that his tattoo might be examined.

Some of this was even in written evidence before the Lord Chief Justice - but he ignored it. At the time of the original investigation Gary Mycock had been arrested with his brother and examined for tattoos - no such tattoo had been mentioned at that time, even though a tattoo was a key clue in the case.

And why should the Lord Chief Justice rely on D.S. Fury's competence? After all, this policeman had already said that *he arrested Wayne Mycock simply because his name was Mycock* - and for no other reason. What “reasonable ground” was that for an arrest?

Nevertheless, the Lord Chief Justice preferred to believe the word of this man against the physical evidence that was available to him - evidence he deliberately chose not to examine.

Even today we can still discover the truth with our own eyes. Gary Mycock's tattoo is still available for inspection. It is not the “helmet” shape that Fitzpatrick described. It is not “something like a heart” as described by D.S. Fury. It is not “heart shaped” as described by the Lord Chief Justice. It is the four letters “A.C.A.B.”

By the way, it means “All Coppers Are Bastards” - not an uncommon opinion in Manchester.

Remember, this “incriminating tattoo” was the corroboration which the Lord Chief Justice advanced in order to lend credibility to Fitzpatrick's claim that there was a break-in and a burglary. He effectively pronounced Gary Mycock guilty on this evidence.

Not that all this evidence about "Gaz" and tattoos was of importance to the Lord Chief Justice. Fitzpatrick's general credibility was not the “real issue” of the appeal, even though it had been central to the original trial. We can deduce that by simply counting lines of transcript. Lord Lane spent, and allowed to be spent, almost *half the appeal* on the credibility of Fitzpatrick's filmed statement in California. And even then, the credibility at issue was that of the journalists, not of Fitzpatrick. In fact, in general, whenever Fitzpatrick's credibility was questioned, he actively supported it. She was to be believed and defended, no matter what.

If a line of questioning was heading for this dangerous area, Lord Lane was not above using his power as Lord Chief Justice to simply tell counsel to shut up.

For example, Maxine Marshall, who had lived with Fitzpatrick in Manchester, was questioned by Mycock's counsel on Fitzpatrick's state of mind. Miss Marshall said that Fitzpatrick was violent, unpredictable, she had a strange attitude and was often in need of money.

This sounded like bad news to Lord Lane. It was getting towards the word “unreliable”. What's more, he was simply not interested in evidence of Fitzpatrick's state of mind when she made her original statements. So he interrupted Mycock's counsel with the tart phrase:

“ I do not think this is getting us very far.”

That shut counsel up. It also lost the evidence of an important witness - for Maxine Marshall was the last person to see Fitzpatrick before the alleged robbery, and the person closest to her at the time.

There are other examples of Lord Lane's tactical interruptions. Much of Fitzpatrick's evidence during the original trial depended upon whether or not the police confirmed that she had been in a disheveled state - as if having been assaulted and robbed.

A policeman called D.C. Marsh was the key witness on this. During the trial he had claimed to have seen Fitzpatrick dressed in wet muddy pyjamas. Kath Prow had not been heard at the trial, but she now said that the pyjamas were dry except for a wet patch on the seat -and that Fitzpatrick had *changed into ordinary clothes before the police arrived*. She had her original statements to back this up. What's more, even Fitzpatrick herself had said that she had changed her dress. She said at the trial "I just threw some jeans on and a top and coat."

So surely D.C. Marsh was wrong about her being in a "disheveled state" and in wet muddy pyjamas? And if this was so, then he could be wrong on several other matters which supported Fitzpatrick's story. This was what Mycock's counsel was leading up to. Fitzpatrick's entire story depended on her being in a disheveled state. The police had supported her on that. But Prow's evidence suggested that the story of being disheveled and in wet muddy pyjamas when the police first saw Fitzpatrick was wrong.

The trap was being laid, and D.C. Marsh was about to fall into it because he did not know that the rest of the evidence was contrary to what he had said at trial and was now prepared to say at appeal.

Lord Lane came to the rescue. He interrupted, talked at length - and then finally, when D.S. Marsh had had plenty of time to realise what was going on, he said:

"What is the purpose of this cross-examination?"

Mycock's counsel was, by now, alert to the tricks coming from the Bench. He gave a general reply:

"To test the witness's credibility in relation to his memory."

The Lord Chief Justice was not having this. He knew exactly what evidence D.C. Marsh was about to give, for it was in the deposition before him. So he asked Mycock's counsel whether he was questioning whether Fitzpatrick had ever made a complaint. This was obviously pulled out of thin air because everyone knew that she had made a complaint to the police - otherwise why had there been an arrest, why had there been a trial - and why were they all now in the Court of Appeal?

But the question forced Mycock's counsel to spell out his plan of attack whilst his intended victim listened. So he replied:

"With respect my Lord, the point about which the witness is giving evidence is in dispute is whether this girl at the time he arrived was in night attire which was wet. Your Lordship will recall Miss Prow said she went upstairs and changed before they went to the mother's and called the police. That is the dispute."

Counsel was now told to carry on. But the policeman was now well aware of the trap. He wouldn't fall into it now. So counsel gave up, saying simply:

"I think I have made the points now."

Another important piece of evidence had been lost because Lord Lane had spotted where Mycock's barrister's questions were leading. Counsel was setting up a confrontation between Fitzpatrick and the police. If Marsh said she was wearing dirty wet pyjamas, and Fitzpatrick said she wasn't - who was to be believed? Lord Lane would have been forced to make a choice between the police and the lady. He wasn't inclined to take sides on that issue.

Just how far Lord Lane wanted to protect the police as well as Fitzpatrick was clear when the crucial question of the time of the robbery came up. Here, I am afraid, is another list, but an interesting one.

There were three different timings for when the police were informed of the robbery.

D.C. Marsh has said that he arrived at the scene at 5:03am.

Then he changed his mind and said that the time was actually 3:05 am

He later admitted that the crime report said it was 2:15 am.

But just when Mycock's counsel was about to bring these discrepancies to the policeman's notice, Lord Lane once again came to the rescue with the pithy phrase:

"Can we pass on to something else then?"

He must have known, from the papers before him, that some devastating points were about to be made. Mycock's counsel had dug out the weather records for Manchester for the night of the supposed burglary. They showed that there was no rainfall in Manchester after 1:00 am. If the police were right about either of these timings, particularly those of 3:05 am or 5:03 am, then Fitzpatrick *must have been lying* about what had happened. Alternatively, if it was true, as she said, that she wriggled around the house whilst it was wet, that meant the robbery had been near to one o'clock. So where had the police timings come from? Someone was lying, but Lord Lane did not care to find out who.

These tactics by the Lord Chief Justice to defend the police were a minor matter. The real defences were reserved for Fitzpatrick herself. Her credibility was at its weakest on the matter of the "stolen" gramophone records. She said she did not remember having done anything with them. This was her story in her Californian statement to the police; it was also her story in the transcript of the filmed BBC interview, though she said it between takes.

A Mrs Langhorne came to Lord Lane's court to tell the truth - that she had received these gramophone records from Fitzpatrick. She still had some of them. But had Fitzpatrick simply forgotten she had given the records to Mrs Langhorne - or was she lying? Mycock's counsel thought he could prove she was lying, rather than deluding herself. And that would shatter her credibility.

But even here, where Fitzpatrick's lying was so clear, the Lord Chief Justice stepped in with damage limitation. He simply said:

"You have made your point on this Mr. Price."

Mr. Price, Mycock's counsel, had not made his point. He could prove Fitzpatrick was not *deluding* herself about the records, but was indeed *lying*.

It was all in the written evidence already submitted to the judges. When Fitzpatrick talked to Hill and Young between takes of the filmed interview, she told them about the box that had contained the gramophone records. She said they "vanished":

"Honest to God, that's the Gospel Truth, they did vanish. I never found them, honestly. I'm telling you the truth, that's the Gospel Truth. They did vanish. I never found them. But I never did find that box or stuff, I really didn't."

This "box of stuff" had also contained a "stolen" television set. And in fact, Fitzpatrick had already admitted to the Greater Manchester Police when they met her in California that she knew where the TV had gone. So the "stuff" did not "vanish" - as she said. Mrs Langhorne had already spoken about the records, but Mycock's counsel also had a Mrs Margaret Wright waiting outside the court of Appeal, ready to tell Lord Lane that Fitzpatrick had sold the television to her.

But when Mycock's counsel began leading up to this second point, the Lord Chief Justice again stopped the exchange with another abrupt comment:

"You have made your point, Mr. Price."

We shall never know if Lord Lane had understood that Fitzpatrick had definitely lied about the TV set. Certainly he did not refer to it when he later remarked that she was lying about the records.

Other similar points may have escaped him - particularly about whether or not a robbery had taken place.

Whether or not there had been a robbery became a crucial issue. Hill and Young always argued that no robbery, no assault, had ever taken place - it had always been a figment of Fitzpatrick's vivid imagination. The Lord Chief Justice, in order to enjoy the argument that the journalists had forced a lie out of Fitzpatrick (hardly a difficult task!), had to believe that *something had occurred*. So there had to be a robbery, the mistake that convicted Mycock lay simply in a false identification.

Fitzpatrick said:

"All along I argued with Peter Hill that the robbery did take place."

But, of course, this was not all she had said.

At one stage, she told Hill and Young that there had been a *second* robbery (when the 'box or stuff' had vanished). That was a little hard to swallow - but she had even stuck with this lie when talking to the Manchester Police in California.

Let us go through this carefully, because Fitzpatrick could weave intricate webs of lies.

She was claiming:

- a) there was a "robbery" in which the stuff she had listed to the police had been stolen.
- b) there was then a *second* robbery during which some more stuff "vanished" (remember she said : "that's the Gospel Truth").

Why would she invent a second robbery? - Because she knew that her sale of some of the items from the "first robbery" had already been uncovered. So if *that first* robbery no longer "existed" - she had to invent a second "robbery." (Welcome to the wacky world of Fitzpatrick's fantasies!)

Fitzpatrick also claimed that she had lied throughout the filmed interview in California with Martin Young. She told Lord Lane she had done it to please the BBC journalists. But she also claimed that she had told the truth at all other times - to the police, the journalists and the courts.

A part of this blanket "truth" is the story about the "stolen" gramophone records (which of course she actually gave to Mrs Langhorne.) This is the one piece of evidence on which she consistently told the same story to the BBC, to the police and to the Appeal Court. She claimed the California interview was a lie - yet she told this story of the gramophone records story on film and off film at that time.

Lies about truth and truth about lies become a little confused when one is dealing with such a liar as Anne Fitzpatrick. Mycock's counsel did not have the opportunity of exploring this with their Lordships because of the Lord Chief Justice's tactical interventions.

By now you may be becoming aware of the fragility of the Lord Chief Justice's general position that he would believe nothing Fitzpatrick said before July 1st and everything after it

Was it really rational for him to believe Fitzpatrick when it was a matter of accusing the BBC journalists, whilst simultaneously believing that her general credibility was not an issue?

His lowest point in this sorry saga was probably when Mycock's counsel began to suggest to Fitzpatrick that she fantasised about things. You may readily understand by now that such a scenario did not fit in with Lord Lane's plans at all. But here was a woman in the witness box who was liable to say anything - and Lord Lane had already heard the evidence of Dr. Devlin, though Fitzpatrick had not.

Dr. Devlin's evidence had been devastating. Fitzpatrick had been admitted to hospital 10 weeks before the alleged burglary and assault. She had been suffering from fantasies. She had just broken up with her girl friend.

When she left Dr. Devlin's care, she returned to her flat and took up with another girl friend, Maxine Marshall. We may well wonder if it was sheer coincidence that the alleged robbery by Mycock occurred immediately after she broke up with Maxine Marshall. Surely, if she had had fantasies in such a situation *just 10 weeks before*, could she not have had fantasies when the same circumstances occurred on the night of the "robbery"?

Mycock's counsel began this line of questioning with Fitzpatrick with a fairly innocuous question:  
"Did you find you used to imagine things?"

But Lord Lane immediately intervened, with his own philosophical criticism of counsel's question:

"Ex hypothesi, that is impossible to answer is it not?"

Good question! Do any of us know if things we see are real? Or are some events we *think* we witness nothing more than imagination?

This intervention stopped any attempt to get an answer from Fitzpatrick on this. However, looking at known facts, Fitzpatrick, if truthful, might have made certain deductions. After all:

- a) Fitzpatrick admitted going to the trial whilst in possession of her "stolen" passport.
- b) She also admitted that she must have given the gramophone records to Langhorne, though she could not remember doing so.

c) She told the police she had sold the “stolen” TV set - but she told Hill and Young the “gospel truth” - that it had “vanished”.

So she knew on three counts at least that she had “got it wrong” - had she perhaps “imagined” the passport being stolen, the gramophone records being stolen and the TV set “vanishing”?

To re-write Descartes: “*My passport is in my hand, therefore I deluded myself when I thought it had been stolen. Therefore I find I can imagine things.*”

It seems that Lord Lane prefers a less French kind of logic.

More to the point was the matter which was to be counsel’s next question before Lord Lane’s interruption. Was Fitzpatrick even aware that she had been admitted into hospital two months *because she had been fantasising*? Or did she perhaps think that the images of the hospital that were in her head were just a fantasy?

In fact, Fitzpatrick had already denied in court earlier that she suffered from fantasies - so she was about to have another lie exposed. But the Lord Chief Justice broke up the line of argument. Not satisfied with that, he alerted Fitzpatrick to Dr. Devlin’s evidence:

“I hate to interrupt, we have the evidence of Dr. Devlin. I should have thought, speaking for myself, you have exhausted this topic from your point or view.”

Counsel gave up at this. However, later, during the questioning of Fitzpatrick’s landlord Jack Thorpe, Lord Lane used a similar trick of questioning counsel’s choice of words. The subject was the usual one - can anyone believe Anne Fitzpatrick? The exchange went as follows:

“Thorpe: On oath I should believe her, I do not know, it is doubtful,

Counsel: You would doubt what she said on oath would you?

A: Yes.

LCJ: It is not exactly what he said. He said “I should believe her, but it is doubtful”

Well, your Lordship, he didn’t say that actually. And we don’t really need the clarification you interjected, because we all heard what he said and no jury sits in the Court of Appeal. And when asked “You would doubt what she said on oath would you?” Mr Thorpe clearly and unequivocally agreed with the statement.

However, Lord Lane liked the section where Mr. Thorpe said “On oath, I should believe her”. The Lord Chief Justice was, perhaps, unaware of the Northern idiom whereby a statement is put positively only to be then negated for emphasis. So the Lord Chief Justice skipped over the significant adjunct negative “I do not know, it is doubtful.” And he left out altogether the unequivocal “yes” that Mr. Thorpe gave to the question “You would doubt what she said on oath would you?”

From the above, you may discern how the Lord Chief Justice shored up Fitzpatrick’s general credibility by fair means or foul. He needed to do this if he was to put into effect what he considered to be the “real issue” - his attack on the BBC journalists. Believing her gave him the only weapon he had to undermine their credibility. To destroy the journalists, the filmed interview in California *had* to be a lie, whilst all her comments on why it was a lie had to be *absolutely true*.

His mistake in planning this massacre of the innocents lay in the fact that his plans were drawn up before a significant piece of evidence was brought to his attention. He based his plan of attack on Fitzpatrick’s allegations to the Manchester Police about the conversations she had had in California with Hill and Young. He did not know that the BBC men had taped everything they could whilst dealing with Fitzpatrick. The final filmed interview which was central to Lord Lane’s entire plan was actually taped on three different recorders.

In spite of this serious flaw in his plans, Lord Lane did not change his line of attack once the tapes were introduced. This failure to adapt his strategy led him to commit serious errors.

As you will see, in spite of the better evidence from the tapes, the Lord Chief Justice of England:

- (i) Followed the *structure* of Fitzpatrick’s evidence about events in California even when this varied from the evidence on the tapes.
- (ii) Used *her choice of words* both from her deposition and court evidence in preference to those actually used on the tapes.

- (iii) Pursued her accusations against the BBC journalists even in the face of evidence that they were false.
- (iv) Used the tape transcripts *not* as best evidence and a guide to the truth, but *solely* to support Fitzpatrick's accusations. To do this he had to resort to quoting sections out of context.

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This chapter has been merely an introduction to the manner in which the Lord Chief Justice conducted affairs in his courtroom in December 1985. The details are not as important as the essential points underlying them. For what he was doing was actually contrary to the spirit of British Justice.

It is generally regarded as the *right* of every man to conduct his own case, and in appeals particularly, to *prepare the grounds for his own appeal*. Mycock was not allowed to do this. His appeal was shaped by Lord Lane for quite a different purpose than proving Mycock innocent.

The tape transcripts of the conversations with Fitzpatrick were only introduced into the appeal at the end of the first day of the proceedings. They were introduced by *Lord Lane himself* - Mycock's counsel was not relying on them and had not introduced them as evidence - he merely referred to them as he referred to notes. Once the tapes were put into the appeal - with the aspect of the case they covered, it was clear that they constituted *better evidence* than had been previously presented in Fitzpatrick and Roark's depositions and should have been fully considered by counsel and justices before the appeal went on. It is a rule that *best evidence*, when available, should be presented: once the tapes were introduced they were clearly best evidence. No adjournment was granted for such consideration. As a result, best evidence was not properly considered.

Because it was the Lord Chief Justice's own position regarding the presentation of evidence which forced these transcripts into the proceedings, it should have been his decision to adjourn the case until they could be properly considered.

### CHAPTER 3.

#### THE LORD CHIEF JUSTICE'S ATTACK AGAINST THE BBC JOURNALISTS.

We know exactly what the Lord Chief Justice accused the BBC journalists of doing because he made a list. His list extends beyond the areas we have already covered - in short, he threw the book at the journalists, using every piece of evidence he could, not simply the lies that Anne Fitzpatrick told about them.

He had seven main points:

- (i) That the attitude of the BBC journalists could be described as “ we will accept nothing less than a full retraction of your evidence and that they were determined to force Fitzpatrick to say that the robbery never took place.”

*To press this point, he followed Fitzpatrick 's version of events, even when she was wrong. He adopted her phraseology even though different words were on the tapes before him in evidence. He even added words to Fitzpatrick's version - even though there was evidence in the tapes that such words had never been used.*

- (ii) That the BBC journalists issued a thinly-veiled threat to expose the lesbian relationship between Fitzpatrick and Roark.

*There was no evidence to support this allegation, but the Lord Chief Justice took words out of context to support the argument. He did this in the name of “fairness” when in fact he was being unfair.*

- (iii) That the BBC journalists criticised Fitzpatrick between takes whilst filming and asked her to think again.

*Here, Lord Lane actually criticised Hill for not accepting as truth what **was demonstrably a lie**. He misinterpreted Hill and Young's position regarding the filmed interview in spite of evidence within the tape transcripts which supports their position.*

- (iv) That the BBC journalists had ulterior motive in cutting out the words “ three days ago” from the California interview.

*This may seem a minor point, but Lord Lane actually made the accusation without questioning either of the journalists about their motive for this cut. He presumed evidence - something he would not allow anyone else to do in his courtroom. What's more, whilst making this accusation, the Lord Chief Justice actually committed the offence of which he was accusing the two journalists! He cut words out of evidence in order to “prove” his point.*

- (v) That the two BBC journalists used discoveries to put Fitzpatrick into a difficult position so that she retracted because she thought she faced expulsion from the USA.

*Here again, the Lord Chief Justice not only chose Fitzpatrick's words and context without reference to the truth that was demonstrated in the tape transcripts, but he also “embroidered” Fitzpatrick's allegations. In particular, he inserted a word which was far more incriminating of the journalists than the word Fitzpatrick had used. Needless to say, Fitzpatrick's words were not supported by the truth of the tape transcripts.*

*Lord Lane clearly showed prejudice and bias in this.*

- (vi) That the two journalists reinforced their threats to Fitzpatrick by boasting of relationships with the local sheriff in California and Law Lords in England.

*When he made this accusation, Lord Lane ignored the true motive behind such references which was clear in the tape transcripts. He ignored all Fitzpatrick's statements of consent to making a film interview - and ignored the fact that all her statements of consent ( 5 in all) were made before the references he chose to use in his condemnation of the journalists. As earlier, he adopted her phraseology and interpretation without question.*

(vii) That the BBC journalists had failed to show Lord Devlin (who appeared in their programme, commenting on the case) how the filmed interview had been obtained and that such was relevant to Lord Devlin's interview and deplorable.

*The Lord Chief Justice claimed this without considering, of even asking for, all the evidence available - particularly on the role of Lord Devlin. He was clearly prejudiced because he did not consider the evidence available to him - yet he considered this to be a real issue in the appeal.*

This was Lord Lane's complaint in brief - but of course, to fully appreciate the strength of his feeling and the limit of his ability to abuse the power of his office, we must look at the detail. Here then is a detailed examination of his list of accusations. You may find on occasion that you could agree with him, but on the whole - and particularly considering that the appeal was about the innocence of Anthony Mycock, you will no doubt come to the conclusion that this was the work of what they used to call a "hanging judge".

(I)

### **THE ATTITUDE OF THE BBC JOURNALISTS.**

Fitzpatrick told the Court of Appeal on two separate occasions that the BBC journalists had taken the attitude that there had been no robbery and they would accept no other story. She could not have been clearer is what she said:

"We will hear nothing other than that the robbery did not take place. Peter Hill said this very many times."

"... and he said ' there was no robbery, there never has been and that is the only story I am going to accept"

" Hill said..., there was no robbery, we will hear no other story."

To help clarify this for their Lordships, Crown counsel rephrased this accusation twice when questioning Hill:

" what you were saying was ' we believe this burglary did not happen and that is the only story we will accept from you.' "

" That was the only account you were prepared to accept is it not?"

This seems clear enough - until we look at the tape transcript of the conversation in which Fitzpatrick claims this threat took place. What Hill actually said was:

"there's only one story which we're actually prepared to believe, it's that the burglary did not occur."

Just to give the complete list of references on this phrase, here is how the *Lord Chief Justice preferred* to re-phrase this sentence. He said that Hill said:

" We will accept nothing less than a full retraction."

You may already have noticed a subtle change of emphasis. Hill was talking about what he was "*prepared to believe*"; he was saying in other words that all the evidence the journalists had gathered



led them to one single conclusion. The thinking is based on the Conan Doyle dictum “eliminate the impossible and what remains is the truth”.

The versions from Lord Lane re-phrased the wording and introduced the idea that the journalists would not *listen* to any other story.

How was this done?

Notice how Lord Lane’s version picks up *counsel’s* word “accept” rather than Hill’s phrase “prepared to believe.” He also used the phrase “nothing less” - he picked that up from Fitzpatrick. She had used the words “ nothing other” and “no other”

It’s not just in the choice of words. The Lord Chief Justice also picks up Fitzpatrick’s *context* for these words, which is significantly different to Hill’s.

Hill spoke of the journalists’ *belief*. They were saying, in other words, ‘ If you are interviewed and say there was a robbery *there will be some hard questions because we don’t believe it .*”

Fitzpatrick quotes the phrase not as their *belief*, but as their *position in a negotiation* “ We will hear nothing other than that the robbery did not take place” - in other words “ if you do not admit there was no robbery *there will be no interview, that is the basis of our offer.* Lord Lane swallowed this version completely. He too considered that Hill and Young had been using the words as a negotiating position. He put it more succinctly:

“We will accept nothing less than a full retraction.”

If he had examined the transcript of the tapes - as he should have done - he would then have had to take into account extracts which clearly show that Hill saw a difference between what he believed and what he would accept.

For between takes of the filmed interview Hill said to Fitzpatrick:

“ But if that’s the story, I don’t mind accepting that I suppose, but I just don’t think it fits, and you know, I’ve got to say so now.”

It’s quite clear here that he is prepared to go ahead with the interview on the basis she is stating - but that he doesn’t believe it, because it does not fit in with his research. And he is warning her that he doesn’t believe it - but *he is not saying, as he was accused of saying, that he will not go ahead with the interview.*

Perhaps that was just a lucky quote from the transcripts that supports Hill’s case. But he said the same kind of thing several times. We have already seen the first example of this:

“ but we are not prepared to believe there was a burglary at all,”

but he also said later: “ we don’t believe it.”

and “ the only story that we are prepared to believe is that the burglary did not occur.”

and “ The burglary did not take place.”

These are all the phrases Hill and Young ever used on this matter. There’s only one time when Hill does not specifically refer to what he *believes*. There is never a hint that the interview will only be conducted on the basis of her agreeing that what the journalists believe is the truth.

In fact, the BBC journalists were doing what all journalists should do - they were being frank about their attitude towards the coming interview. They were being scrupulously fair with their interviewee in that they were telling her that they had done a lot of research that led them to a specific viewpoint on the matter - and that any alternative version being put forward would be rigorously examined and questioned.

To explore their position, let us look at an analogy from an entirely different context.

If, for example, Hill had been interviewing the Prime Minister on Gulf War Sickness, it would only be fair for him to tell the Prime Minister before the interview that he had seen a lot of research and come to the conclusion that the sickness really existed and was caused by certain chemicals.

But consider this - what would Hill do if before the interview he had listened to a Downing Street aide who claimed at length that the “sickness” didn’t exist? Should he say nothing about his research?

Would his silence indicate he accepted all that was being claimed? If he kept quiet, Downing Street might well believe that he was passively accepting the official's viewpoint. What if he then began the interview by attacking the Prime Minister and producing evidence from scientists proving that the disease did exist? No doubt he would be accused of being unfair and obtaining the interview on a false basis.

This is, of course, exactly what happened when Mrs Thatcher was cross-questioned on the BBC's "Nationwide" programme, an incident which had occurred not long before Hill and Young's visit to California and which was fresh in the minds of everyone. A viewer in Bristol, thoroughly researched, was allowed to ask the Prime Minister about the Belgrano incident. She persistently questioned Mrs Thatcher's answers about the course the "Belgrano" had been on. The BBC was accused of bad faith in that Mrs Thatcher had not been alerted to the fact that the viewer was not only of a certain opinion, but had done a lot of research on the subject. The Editor of "Nationwide" Roger Bolton, lost his job because of that.

Anne Fitzpatrick could hardly claim that Hill had not told her that he was not only of a certain opinion, but had done a lot of research on the subject.

Indeed, to quote the BBC producer guidelines which were compiled two years after the "Rough Justice" affair:

*"The need for straight dealing covers all the activities involved in making a programme. From the start the programme makers should be as clear as they can be about the nature of the programme and its purport. Unless there are special considerations of confidentiality, they should be open about their plans. It is very important to be honest with people who are to take part or are otherwise to be shown in the programme, remembering that when such people are unfamiliar with programme making because they have never appeared before, they do not share assumptions about what professionals regard as obvious."*

Hill and Young had no such guidelines to guide them - yet what they did is in accordance with what was eventually formulated. As to the guidelines current in 1985, when Hill and Young approached Fitzpatrick, little even touched this area of operations. As producer of "Rough Justice" and in charge of a team constantly facing such a problem, Hill had to define the limits of such conduct himself. Close analysis of the goings-on in California will support the contention that Hill and Young were trying their very best to be fair to Fitzpatrick throughout the entire episode. Their use of a tape recorder to record all conversations is indicative of the transparency in their negotiations with Fitzpatrick.

Hill and Young warned Fitzpatrick of their belief because they considered it their duty to do so. People who knew Fitzpatrick in Manchester had already warned them that Fitzpatrick would accuse them of being unfair to her. So they made the basis of the interview *absolutely* clear. If she persisted with her story that there was no robbery, she was in for some tough questioning - because the BBC men had good reason not to believe that story. If she went ahead, she knew what to expect.

We cannot expect the Lord Chief Justice to be fully conversant with the practice and ethics of journalism. But we can expect him to be fair to the evidence before him and not to make such important pronouncements out of ignorance.

He considered that the attitude of the BBC journalists could be described as :

"we will accept nothing less than a full retraction of your evidence and that they were determined to force Fitzpatrick to say that the robbery never took place."

Where is the evidence for this remark? When did Hill or Young demand a retraction? Where is the threat to force such a statement out of her?

It does not exist.

## (II)

### THE LESBIAN THREAT

This was probably the most outrageous of the accusations made by Lord Lane. He said that the BBC journalists had threatened:

“to expose Miss Fitzpatrick ’s lesbian propensities”

The known source of this was Fitzpatrick’s statement to the Great Manchester Police when they visited her and her partner Sue Roark in California ( though we shall see later where this may actually have sprung from). She told the police, though not under oath:

“ They were going to say that both Susan and myself were gay.”

and she added for good measure:

“They were going to publish it in the local news.”

What is remarkable about the Lord Chief Justice’s accusation is that even Fitzpatrick admitted that there was no evidence of this in the tapes conversations when she said this happened! When cross-examined by Mycock’s counsel, this is the exchange:

“Q: Could I ask you this, did you see anywhere in the interviews any threat to expose the fact that were a lesbian?

A: No I did not.

Q: To Miss Roark’s parents, of anybody else?

A: I saw nothing in the documents suggesting I was a lesbian.

The Lord Chief Justice was not satisfied with this. He looked through the tape transcript and interrupted to bolster up his witness:

“LCJ: Mr. Price, in fairness to the witness you might refer her to the transcript of tape at page 3J bottom of page 2 and from then on.”

Mycock ’s counsel read the section, but he did not know what form his cross-examination should take about it. So the Lord Chief Justice read it out - it was a long paragraph. When he had finished, the judge by his side, Justice Russell, remarked:

“ There was a plain threat there to expose not only Miss Fitzpatrick , but Sue as well.”

to which the third judge, Mr. Justice Taylor, added, putting hypothetical words into the mouths of the BBC journalists:

“ unless you say there was no burglary.”

and the Lord Chief Justice added, once again putting words in the journalists' mouths:

“ We are not going back without that.”

Now, bear in mind that *not one* of the three sentences said by these three judges *was actually in the tape transcript*. Each line was purely hypothetical. It got worse, because Mr. Justice Russell then stated as a fact that the long paragraph Lord Lane had read out was a threat to expose the two women as lesbians.

By now, Fitzpatrick realised she had the judges on her side - and broke into Mr. Justice Russell’s remarks - claiming that the tape was edited. Of course it could have been proved that the tapes had not been edited, but no one on the Bench was bothered, both counsel had given up on the case - and Fitzpatrick was never questioned on this point.

So, the entire “lesbian threat” was based on a paragraph the Lord Chief Justice had found, something that Fitzpatrick had not remembered at all. Let’s see just what had been said.

“ Martin:... if you’d not come to see us today if you had simply rung us up and said: that’s it, because we’re the kind of people we are.... you we’re persistent, we would have then tried to go round a lot of people. We have already had the ammunition if you like to use that word, we know

where we would go and we know what we would do. The problem with that is, and I would not feel good about it, and nor would Peter, is that that would then rake up a load of problems for you in staying here.

Peter: Which also incidentally would rub off on you Sue. And we've gained a very positive impression of you by the way."

This paragraph was read out in court during Fitzpatrick's evidence, when Hill and Young were not present. They were interrogated the next day. The passage was not mentioned.. Lord Lane was clearly not interested in hearing what they meant by the words. Hill was never accused in court of the lesbian threat. Lord Lane simply accused him of in his judgement - when Hill was not even present. This important passage was not mentioned by anyone to either of the two BBC journalists during their appearance in court or subsequent to it. Indeed, the lesbian threat was only put once - to Young

"And to lend credibility to the threat that you might divulge to her parents the nature of her relationship with Miss Fitzpatrick - was that not your purpose?

Young denied it without knowing the source of the accusation.

Perhaps the Lord Chief Justice read the entire tape transcript later. And perhaps that's why he did not ask either Young or Hill about it. For his argument contained a fatal flaw.

There's a clue in the tenses of the verbs being used.

The paragraph is entirely in the conditional tense - i.e. "if you'd not come" "if you had simply..." "we would have then..." "we know what we would do..." "would rub off on you".

Why is this in the **conditional**? If we go back one page in the transcript, we discover why. Fitzpatrick had already agreed to do the interview!

" Well I will do the interview with you. I will wear a wig, I don't want to go on like this."

to which Hill replied:

" That's alright."

Do you really believe that the BBC journalists would threaten to expose Fitzpatrick's lesbianism in order to obtain an interview - *just one minute after she had agreed to do the interview?*

If that's not enough, there are two other reasons why the Lord Chief Justice's remark is not believable. If you were to see the entire transcript, you would see that the paragraph Lord Lane quoted came about because Sue Roark had asked the BBC men about Fitzpatrick's immigration status. Both Hill and Young reply with the word "if" - meaning "if she hadn't agreed to do the interview, things would have taken a different turn."

Now this in itself might be seen as a threat - but it came *after Fitzpatrick had agreed to do the interview*. What they were actually saying was that if Fitzpatrick had not done the interview the programme would still have gone ahead and the fact that she had not cooperated would undoubtedly cause a lot of publicity in Southern California. The warrant for her arrest in England and her illegal immigration status in the USA would no doubt be used against her by the Californian authorities - if only to extradite her to another country. Such a possibility was no longer likely after the TV interview she had just agreed to give - because the authorities would regard her penitence as being worthy of consideration.

The third reason why the "lesbian threat" accusation was so ridiculous is the "common-sense" one. Common sense is not something that gets mentioned much in the Court of Appeal - even today. And Lord Lane was not the type of person who would have any experience of the social mores of Southern California. But anyone with even limited experience of the social world Fitzpatrick lived in would know that such a threat would have no weight at all in California. It is something of a haven for homosexual people. And if, on top of that, the judges had known just how close the Roark family home was to the flat that the two women lived in, the idea that Roark's parents did not know about the lesbian relationship is absurd. Sue Roark lived just ten minutes away by car from her parents.

The lesbian threat was Lord Lane's trump card and a brilliant tactic. In particular, it drove a temporary wedge between the "Rough Justice" men and the liberal lawyers who supported them. Who could possibly help men who could do such a thing? Yet the journalists could not answer the accusation

because they did not even know about it until too late - and there were some 200 pages of tape transcript to go through to prove it untrue.

Some consider this to be the most outrageous accusation the Lord Lane ever made and the most immoral tactic he ever used within the privilege of his courtroom. You may care to speculate on his motive for doing this.

This was no ordinary accusation. It was the Lord Chief Justice of England himself who claimed that the journalists threatened Fitzpatrick. He claimed they said that they would expose her lesbianism if she did not do the interview. This vile accusation made by such a senior judge was not based on any fact. Even the "victim" denied it - once she remembered that the tapes of the relevant conversation were in existence.

So what on earth was going on here? Let us look again at the evidence.

The paragraph that the Lord Chief Justice of England and his two fellow judges used to make their accusation was at the end of a long conversation - the hour-long conversation in the bar of the Holiday Inn at Laguna Beach on July 4<sup>th</sup> 1985.

The section Lord Lane used for his accusation was actually about incidentals. It was not even about the content of the interview - the content had already been agreed. Amazingly, the three Appeal Court judges must have realised that this was so - because they could only reach this section of the conversation by reading through the rest. Yet they took it out of context and hung their hypothetical threats onto it. And worse - they put words into the journalists' mouths *that had never been uttered*.

Surely they must have realised that this source was a section of the conversation with Fitzpatrick when any threat would have been counter-productive - because *Fitzpatrick had already agreed to do the interview*.

But what about Hill's remark:

"which incidentally would rub off on you Sue"

- surely that was a threat?

The Lord Chief Justice did not ask Hill about this - yet the explanation was simple and suggests that Lord Lane was ignorant of how investigative journalists work - to defend themselves against defamation suits and the like. Remember that Martin Young had already said "we're persistent, we would have then tried to go round a lot of people"

If Fitzpatrick had not done the interview, the two journalists would have increased their investigations in California. Their motivation would be to protect the BBC against a suit for defamation by proving Fitzpatrick had no reputation there. Reputation is an essential part of a defamation suit.

So a lot of people would have been contacted and evidence collected that Fitzpatrick had no reputation in California. Evidence had already been collected that she had no great reputation in Manchester.

Hill's remark actually refers to the fact that the manageress of the condominium block where the two women lived had told Young that she had had enough of Fitzpatrick and would throw her and Roark out if there was any more trouble. If the two journalists had "dug" any more in that area, there would certainly have been "trouble" - which Hill believed was unfair on Roark, an innocent party

The paragraph Lord Lane used was actually an expression of the journalists' relief that they did not have to do any more investigation in California - because it could have become embarrassing. Is that the sentiment of a journalist issuing a threat to expose a woman's sexuality?

It is outrageous that Lord Lane used the power of his office to claim that when he interrupted Mycock's counsel about the "lesbian threat", he was doing it "in fairness to the witness" - Fitzpatrick.

It was this idiosyncratic idea of "fairness" that prompted him to keep the source of his accusation secret from both Hill and Young. Why were they not allowed to answer the accusation? Why were they not allowed to justify their comments to Fitzpatrick?

In the name of "fairness", the Lord Chief Justice acted unfairly. It was this same idea of fairness that brought an early end to Lord Lane's career.

### (III)

#### THE ALLEGED CRITICISM DURING FILMING.

The Lord Chief Justice said:

“ During the making of the film itself, as appears if one examines the transcripts closely, there were breaks in which what she had already said was criticised and she was asked to think again.”

The source of this was not the transcripts of the conversation. It was the deposition Sue Roark gave to the Greater Manchester Police when they went to California. Roark said:

“ On two of three occasions during the making of the film it had to be stopped because Anne was not certain what answers she was expected to give. The last occasion that the filming was stopped was at a point when Anne was being questioned about being tied up during the robbery and how she managed to tie herself up. Anne insisted that she had been tied up by someone but Young would not accept that fact. Anne became so distressed that I interrupted the filming and told Hill that I thought Anne was telling the truth in her account of the tying up. Hill said that he would accept that and stopped the filming.”

Fitzpatrick was questioned on this in court:

“Q: What happened when you broke off?

A: Peter Hill would whisper something to Martin Young and they would confer. I did not understand what they were talking about.

Q: Was anything said to you when there were breaks in the filming?

A: Yes, he said ‘you’re doing fine’

This is the part of the conversations that was recorded on *three separate tape recorders*. The machine that was closest to what the two women alleged was in Hill’s top pocket, where whispers would be recorded. Any reading of the transcript shows that Roark and Fitzpatrick’s different, and contradictory, versions are pure fiction. What’s more, the film rushes recorded no interruption by Roark. She said nothing throughout the interview.

The Lord Chief Justice however relied on the transcripts. Crown counsel had first raised the question of Hill’s attitude during the filming. He said Hill had criticised Fitzpatrick when he said to her:

“HILL: You can’t have the rope as a figment of your imagination. That’s the trouble. And it’s not for me to really suggest what it might be. But I’m just pointing out the difficulty.”

When this was put to him in the court, Hill replied:

“ The difficulty is that she was supposed to be telling us the truth and she was telling us something which not only could not be corroborated, but was absolutely denied by the physical evidence in court. In fact it was not the truth.”

Crown questioned Hill on this:

“Q: Trying to make it more credible were you not?

A: I was trying to find some story that had some kind of corroboration.”

At this point the Lord Chief Justice interrupted with a question designed to distract:

“ Mr. Hill, was this the sort of tone of voice in which you were addressing Miss Fitzpatrick ?”

Hill suggested Lord Lane listen to the tapes to decide for himself what the tone was, but Lord Lane moved on, once again disregarding best evidence, i.e. the tapes.

Crown counsel returned to the conversation about the rope, where Fitzpatrick was now saying the rope was a figment of her imagination - when it had appeared as physical evidence at the original trial.

Hill replied to his questions by reference to the tape transcripts. He tried to get the full section of the conversation into the discussion.

Now Crown counsel interrupted:

“ Mr. Hill, are you deliberately trying to divert our attention?”

Far from diverting attention, Hill was trying to get the whole context out. He had been asked a general question and he was trying to give as full an answer as possible. But he was not allowed to. He was not allowed to mention the second break in filming where the exchanges were of a similar nature - showing Hill's general attitude when Fitzpatrick's latest lies still did not fit in with the facts as Hill knew them to be:

Hill said on the transcript:

“ Yeah, hold it there, because that bit about putting the stuff by the door isn't going to work, because Kitty in her testimony goes round to the flat immediately and sees all the things missing.”

If this, and the section concerning the rope, are to be described as ‘criticism’, rather than comment, then it can only be described as criticism by Hill that Fitzpatrick's story does not fit the known facts as determined by the original trial.

At this point in the California interview Fitzpatrick was saying that the rope was a figment of her imagination and that she had put the “stolen goods” in a box by her back door. But in fact the rope had *appeared in court* and Kitty Prow, a good witness, *had not seen the box by the door*.

These two pieces from Fitzpatrick are in fact a retraction of her evidence at trial. That surely was what Hill and Young wanted! Yet Hill is rejecting them - why? Simply because they do not fit the facts and are an obvious lie.

The Lord Chief Justice criticised Hill *because Hill refused to accept an obvious lie*.

There's a lot of evidence on the tape that Hill and Young were trying to get the truth rather than a story that fitted their prejudices. Hill's desire for the truth is illustrated by his own question on the film - just after Young had finished the interview. Hill did not stop the camera, he said:

“ Keep rolling. What happened to the goods?”

He wanted an answer he could corroborate - as, in fact Fitzpatrick's sale of the “stolen goods” was later corroborated by witnesses in the Court of Appeal..

Any reading of Hill's questions between takes shows a desire to obtain corroboration. He points out the absurdity or parts of the story she is telling, and quotes the evidence or other witnesses in an effort to have Fitzpatrick corroborate their stories. Young had already attempted to get the same kind of corroboration during the interview.

“ Where did you get the idea of the man with the helmet tattoo from?”

Let's not forget that the Lord Chief Justice specifically referred to the tape transcripts when he criticised Hill. He was claiming he had read them. But he completely ignored the way in which the comments on the tape *support the BBC journalists' interpretation of the matter*, whilst Fitzpatrick and Roark's version are *pure fiction*.

He simply wished to believe Fitzpatrick when she spoke of the treatment of her by Hill and Young.

So he accused the BBC men of criticising her so as to *persuade her to tell them lies*. But the only possible interpretation of the transcripts of the conversation he quoted is that they were criticising her to *persuade her to tell them the truth*.

Welcome to the crazy world of Lord Lane's logic.

#### (IV)

#### THE CUTTING OF THE INTERVIEW.

This was a major accusation over a very small point that could have been explained within a minute if only Lord Lane had asked either of the two journalists during the three hours he interrogated them in his court.

A section of the filmed interview in California had a small cut in it - cutting out the three words "three days ago".

The Lord Chief Justice said that the editing of the words "three days ago" was because of a desire by the BBC journalists to cut the filmed interview so that it would become the clear retraction which they wanted.

Let's look at the section of the filmed interview at greater length:

“ Young: How did you feel in court when Anthony Mycock was sentenced?

Fitzpatrick : Very bad, but at that time I still believed he had robbed me.

Young: When did you realise you had made this mistake ?

Fitzpatrick : About three days ago.”

This was read to Hill during the appeal by Mr. Justice Taylor. He then said:

“That part was edited out?”

to which Hill answered:

“Yes.”

The matter was not pursued. It was never mentioned again until Lord Lane made the accusation in his judgement.

If only Mr. Justice Taylor had asked “Why?”, Hill could have explained. His reason for cutting the section out was based on a part of his conversation with Fitzpatrick two days before the interview. Fitzpatrick showed him her driving licence. The conversation went on:

“ Anne: My driving licence is correct. Do you want to see?

Peter: Let me see that.”

Fitzpatrick also produced her passport.

“ I got my passport because, I thought you guys would take me back today.”

and a little later she said:

“ Well, I've got my passport here.”

This was a very significant moment to Hill and Young, the first piece of concrete evidence they got from Fitzpatrick. Fitzpatrick put the passport on the table between them Hill and Young saw it clearly. It was an old one, and obviously the same passport which Fitzpatrick had *claimed was stolen by Mycock*.

So, a short list of facts and deductions showed that her words “three days later” were a lie:

(a) When Fitzpatrick went to the USA one month after the original trial, she must have already used her passport to obtain a visa.

b) She must therefore have realised at that time, in 1983, that Mycock had *not* robbed her of the passport.

c) She was not telling the truth when she claimed that she still believed Mycock had robbed her “until three days ago” - in 1985. The passport corroborated the contrary.



Hill was determined not to transmit to the British public a statement *which he could prove was a lie*.

This editorial policy accounted for some other cuts in Fitzpatrick's interview.

These are the lies Hill left out:

(a) "I didn't tie myself up. I told you it was a figment of my imagination." ( Kath Prow *saw* the rope)

(b) " A lot of my stuff was there and I put them in a box near the back door. Now that is the funny thing about it..... the next day.... they had gone. The whole box had gone. The records and everything had gone and that puzzled me,. ..... in fact they had been stolen."

( Remember, Langhorne and Wright had received the "stolen goods" *from Fitzpatrick*)

The Lord Chief Justice failed to appreciate the ethical background for Hill's editing policy. He never asked them about it - even though the two were before him for about three hours. What's far worse however is the fact that *he actually committed the same offence he accused the journalists of!*

Lord Lane quoted the section " three days ago" - missing out the line " I still believed that he (Mycock ) had robbed me."

Why did he not want *this line* included? - because in it Fitzpatrick was not only claiming that there was a robbery ( which the Lord Chief Justice wanted to believe) - but that *Mycock was the guilty man*. Lord Lane couldn't possibly believe her on this second claim - because Mycock was clearly innocent.

So he edited this line out when he made the accusation against the journalists.

## (V)

### THE ALLEGED THREAT OF EXPULSION.

If you have been paying attention so far, you might be able to guess what was wrong about this fifth accusation by Lord Lane. In short - the lines he quotes against the journalists come *after Fitzpatrick has already agreed to do an interview*. Nevertheless, the Lord Chief Justice claimed that Hill and Young said what they did to force her into doing the interview. It defies logic.

Nevertheless, this was the most powerful judge in the land pronouncing on the conduct of two journalists, so we should investigate the background to the accusation carefully.

To fully understand the situation in this section, you must learn things that the Lord Chief Justice never bothered to ask about. Lord Lane had made certain assumptions about the conduct of journalists, which seem to be some way off the truth.

He does not appear to have appreciated that Hill and Young had not simply gone off to California without any thought other than obtaining an interview. In fact Hill and Young had obtained legal advice both in England and the United States on several matters - including the question of perjury and extradition. They knew that there was a warrant out for her arrest because she had skipped bail in Manchester.

The advice they were given was practical. They were told that Fitzpatrick, though wanted by the police and courts in Manchester for skipping bail, would not be extradited for such an illegal act. Technically, of course, this advice was incorrect. In extreme circumstances she might have been extradited.

When Sue Roark raised the question of extradition, Hill and Young quoted the practical advice, not the true technical legal position. Extradition was unlikely.

However, Fitzpatrick's position in the USA did not depend solely on her misdemeanors in the United Kingdom. She had given false information to several people in the USA with intent to gain financial advantage. In particular she had used false driving licence numbers to convince people of her abilities

and her identity. If any of these people she had duped had brought her before a court in California, she would almost certainly have had her visa withdrawn.

Skipping bail in England is also pertinent. The English authorities might not demand extradition, but the US Immigration officials are clear on the subject of visa application forms and such matters. Anyone who declares that they are wanted for a crime in the country from which they apply for a visa will not be admitted to the USA. If the subject of the visa application form does not declare such information in section 35 of the application, the visa may be declared invalid and the person deported. Fitzpatrick was wanted in England on a bench warrant. If the US Immigration had learned that she was to be “arrested on sight”, they would almost certainly have invalidated her visa and put her on the next plane out.

Lord Lane never denied that Fitzpatrick had done these things and got herself into such a difficult situation. He simply claimed that the BBC men had used the information to threaten her into telling lies in the filmed interview.

Hill was not questioned on this matter in court, though Young was. Young was questioned by Crown Counsel - who doesn't appear to have grasped the distinction between a passport and a visa. Nevertheless, since this is the source of the accusation, we should read it:

Q: Crown: She still had a United Kingdom passport?

A: Yes she did.

Q: Subject, if necessary to deportation, is that right?

A: Presumably, yes.

Q: You were preying on that were you not?

A: No, I was not preying on that.

Q: Just look at page 12. Mr. Hill said, finishing off another subject, about the driving licence, ‘alright, what about your - what about your visa application form? She said “ what about it? You said -

A: I said “ did you declare everything about your past and why you were leaving?

Q: She said “ I was leaving because I wanted to.

A: He said “ Did you declare anything in the visa form about your criminal record for example”

Q: Now she had not got a criminal record, had she?

A: No, it is the wrong expression, it should have been the bench warrant which is what we then go on to say.

*(Neither of these two was correct about the criminal record. Fitzpatrick had a criminal record number because of the bench warrant, but no criminal record because she had not been tried.)*

Crown counsel continued :

Q: Why were you asking this girl about her visa application form?

A: For exactly the same reason that all these questions were asked, which was that we were trying to establish that Miss Fitzpatrick told lies and she had not declared the truth on her visa application form, we imagined. She does not deny it.”

The Lord Chief Justice said later:

“ She faced disclosure and, according to them, possible expulsion from the USA”

He quoted more from the original tape transcripts in his judgement than Crown counsel had. He edited the passage to make his point - yet he did not say that he was pulling sections together. It came out as one coherent whole.

Nevertheless, his main problem was that there was no hint in what Hill and Young said that they were in any way threatening Fitzpatrick with deportation - or as Lord Lane preferred to call it “expulsion”.

There are only two passages in the transcripts of the conversation of Hill and Young where they come close to it, though in neither passage do they clearly refer to deportation.

The first suggestion is contained in an answer to Fitzpatrick. It concerned her bench warrant, not her US visa.

“ Anne: You’re saying that the whole thing will be forgotten, there’ll be no bench warrants”

Hill: No, I’m not saying that there won’t be a bench warrant. What I am saying is that nobody is going to remember it much.”

Roark took this up a little later.

“ Sue: Basically, what you’re saying is that if there’s an interview in the States, things can be worked out.”

So, the idea of a deal came from Roark, not the journalists - but the BBC men were not biting on the bait. They firmly rejected the idea:

Hill said: “We can’t work anything out.”

and Young said: “We have no power, we are not policemen... we are not the least interested in causing you any trouble with the police.”

Roark certainly thought there was a deal to be done. She continued with the idea that this was a threat that the journalists would lift only if Fitzpatrick did an interview. But Hill again firmly rejected the suggestion:

“ Sue: Unless she doesn’t give you an interview.

Hill: No, not true.”

The matter came up a few minutes later. Hill was explaining the practicality of extradition to Fitzpatrick. He was saying that the bench warrant did not merit extradition - then he added:

“ But what is also a fact is that your visa could well be invalidated, particularly when the police contact immigration here, and that could be quite serious for you.”

That was a fact - the US immigration service in California would be far more concerned about irregularities than the police and courts in Manchester. As soon as the film was transmitted in England, the US immigration Authorities would learn of the bench warrant and seek Fitzpatrick out - the withdrawal of her visa would almost certainly follow.

Lord Lane’s problem was that this section was on the tape transcript page 20 - and on the same transcript on page 17, Fitzpatrick had said:

“I’ll talk, I’ll talk on film.”

So Hill was again allegedly threatening her *after she had agreed to do the interview.*

There’s another similar section on the next tape. Sue Roark came back to the immigration problems.

“ Sue: You were saying that she could have problems with immigration here in the United States.

Peter: If we- if we started talking about that, yes.

Anne: So you mean only if you started?

Peter: It’s only if we started digging around in that, yes.”

A threat? - well, earlier *on that same page* Fitzpatrick had re-affirmed she would do the interview. She said:

“Well, I will do the interview with you. I will wear a wig.”

If you read the entire transcript, it becomes clear that the subject of the visa came up as part of the long list of Fitzpatrick’s lies that Hill and Young had uncovered in both Manchester and California.

The idea of a deal, or a threat, comes from Sue Roark - who must have been in some kind of shock at the time, for this was the first she had heard that Fitzpatrick was not necessarily a fine up-standing citizen.

Roark was clearly worried about Fitzpatrick's status in the United States. She had just learned of the bench warrant issued for the arrest of Fitzpatrick in England, she realised that this could affect her visa - and that if Fitzpatrick got into any trouble with the police, either in England or America, she might be deported. She had motive to be afraid on this count - for Fitzpatrick was her girlfriend.

Roark's deposition to the police in California reshaped this, and Fitzpatrick's evidence followed her line. Roark said:

"It was during this conversation that Hill mentioned to Anne that she had a criminal record and that she was wanted back in England, a factor which could influence her ability to stay in the United States. He said that if Anne ever returned to England she would be arrested and he had arranged that if that occurred she would be handed over to the BBC. I took that statement with a pinch of salt. Hill assured me it was correct, because he had contact with and was friendly with a man in the British Home Office."

(The transcripts show that Hill made no reference whatsoever to the Home Office)

Fitzpatrick told the Manchester police in California:

"He told Sue that I had a criminal record and there were warrants out for my arrest in the U.K..... and all they had to do was to go to the Immigration and I could be deported from the US"

(This is actually the first time that the word "deport" appears in any of the documents.)

Fitzpatrick expanded on this in the Appeal Court:

Q: If you had walked out, what were they going to do in relation to Brad Gates?

A: Deport me to England.

Q: Who was going to do the deporting?

A: I do not know. As soon as Peter Hill said "deport". I was shocked. I looked at Sue and she said 'I do not know what to tell you'

Q: What were you going to be deported for?

A: I do not know.

None of this is supported by the tapes of the conversations.

One can observe the moulding of the lie. Hill had first raised the point about Fitzpatrick lying on her visa application form to question her credibility. Fitzpatrick was claiming she never lied about anything. However, the subject was raised again periodically by Roark. To her it meant more than a reflection on Fitzpatrick's credibility. She saw it as a threat to her relationship with Fitzpatrick. Moreover, she considered that the journalists also considered it as a threat - to be used against Fitzpatrick.

The "hardest" words used by Hill were "invalidation of visa." In considering his attitude towards this aspect of the case, we should note that he also advised Fitzpatrick *how to renew her passport* without going back to England. He told her she could do it by going down to Mexico. Is this the action of someone threatening deportation?

By the time Fitzpatrick came to court, the word had become "deported", the idea had become Hill's, and the story had become considerably embroidered. Hill's advice on the legality of her situation - all strictly factual and true - was forgotten.

The Lord Chief Justice followed Fitzpatrick's line - he linked the references to the visa and the passport with a supposed threat of action if Fitzpatrick did not do the interview. The transcripts do not support this allegation.

(VI)

**THE REFERENCES TO THE SHERIFF AND THE LAW LORDS.**

The first part of this accusation was that the journalists had used a connection with the Sheriff of Orange County - a Mr. Brad Gates - to yet again persuade or threaten Fitzpatrick into doing an interview.

Their actual connection with Brad Gates was tenuous. In California they had visited the home of Marshall Houts, a noted criminologist with whom Hill had been in touch over the previous five years. Houts was a friend of Brad Gates and offered to enlist the help of the sheriff in their inquiries in California.

Much was made during the Appeal of the fact that Hill and Young had given the impression that they knew the sheriff, when they had had no contact with him. Martin Young asked that the tapes be heard on this point - this was ignored.

The passage he wanted to quote was from the conversation Hill and Young had with Roark and Fitzpatrick in a hotel bar two days before the Fitzpatrick interview was filmed. Young had gone to the bar to order some more drinks. When he returned, Hill said:

“I was just telling Sue about Marsh Houts and the sheriff, whose name I didn’t know till you -

Roark: Brad Gates.”

This passage clearly shows that Hill does not know the sheriff - he does not even know his name. And he is not hiding the fact. Lord Lane never read that section, or if he did, he ignored it. It denied the truth of what he wished to prove - that the journalists had threatened to talk to Brad Gates about Fitzpatrick.

The section Lord Lane relied on for this accusation begins with a conversation about the Manchester Police. Fitzpatrick had had conversations with them before Hill and Young approached her. They had told her *five months earlier* not to talk to the BBC. The conversation then progresses, *at Roark’s instigation*, to the California police.

“Fitzpatrick : If it goes to the Home Office, this is what the C.I.D. told me now.....someone from Manchester Police Department will come to Los Angeles and interview me.”

Hill said he did not believe that the Manchester Police would be put in charge of the inquiry re-investigating Mycock’s case after the programme is transmitted. Fitzpatrick continues telling the journalists what the police have told her:

“Fitzpatrick : ... this was back in February he said... we don’t want you to go near them.”

Hill replied:

“ Well, if they come here.. you don’t need to talk to them.”

It is at this point that Sue Roark introduced the idea of the American authorities:

“ ( what if they) get the cooperation of the American authorities?”

Hill reassured Fitzpatrick on this :

“The US police have nothing on you, this is not an extraditable offence.”

It is at this point that he mentions Brad Gates. His words make it very clear that he is prepared to use what influence he has in this direction *to protect them*.

Hill: There is no way - in any case, if the local sheriff's office here - we happen to know the local sheriff.

Fitzpatrick interrupts him at this point, before he can finish the sentence, with a question about the Manchester police.

Hill's replies:

“ But... the... police have no jurisdiction here.”

Where is the threat in this? Yet, this is the passage Lord Lane said contained the threat.

Later, in the Appeal Court, Fitzpatrick's version of this conversation went:

“ Q: If you walked out, what were they going to do in relation to Brad Gates?

A: Deport me to England.”

How could Lord Lane possibly believe this - if he had read the transcripts?

And if he had only looked some 20 minutes earlier in the tape transcripts, he would have read this sequence of responses from Fitzpatrick:

“Hill: ... Are you prepared to do an interview with us?

Fitzpatrick: Yes.

Hill: On film?

Fitzpatrick: No.”

then:

“Fitzpatrick: I'll talk, I'll talk on film... can you do a profile?”

“ Fitzpatrick : And I know you don't believe me, but I'll say - I'll go on TV..., I'm glad this matter's gonna be cleared up.”

“ Fitzpatrick : Well I will do the interview with you. I will wear a wig..., I don't want to go on like this.”

“ Fitzpatrick : I want you to know right now, I mean, you know, I'll go through with this interview, but I can't guarantee what I'm going to say because I feel so nervous right now, my throat's going dry.”

She first agreed to be interviewed less than 10 minutes after meeting the two BBC journalists. She confirmed this a further four times. Yet twenty minutes after her fifth consenting reply, Hill is supposed to be threatening her into doing an interview!

Not one of these statements by Fitzpatrick, *agreeing to be interviewed*, was mentioned during Anthony Mycock's appeal. Lord Lane simply ignored them all. He chose to believe Fitzpatrick's word against the evidence of the tape transcripts.

So, according to Fitzpatrick, she never said she would do the interview - until the end of the conversation mentioned above. She told the Appeal Court:

“ Q: By the time that meeting came to an end, what did you decide to do?

A: Well, I did not have much choice. They told me I could not walk out. I had to agree to do the film. So I said “ OK, I will do it.”

There is, of course, no reference to her not being “able to walk out” or anything remotely like that, on the tapes.

As for the BBC men mentioning Law Lords, once again the connection they had was real, if tenuous.

Hill and Young had consulted several retired Law Lords during their various “Rough Justice” inquiries and were currently working in cooperation with an active Law Lord, Lord Edmund Davies, who eventually viewed the final film and discussed it with leading BBC editorial figures. They also worked with other prominent members of the legal profession including a former Justice of Appeal Sir Brian McKenna, former Attorney- General Lord Silkin and former Law Lord, Lord Salmon.

But did they *threaten* Fitzpatrick with these connections?

The conversation where Law Lords were mentioned was, again, *long after Fitzpatrick had agreed to the interview* - and the tapes show a relaxed atmosphere.

The conversation concerned the attitude of the Greater Manchester Police. Fitzpatrick said that she is sick of the hassle - meaning the fact that the Manchester Police had been threatening her.

Young says :

“ I wouldn’t also speak to our friends in the Manchester police any more. They will try and really put a spoke into us. Obviously I say that out of self-interest.”

He then mentions an earlier case they had investigated in Manchester - the wrongful convictions of Patrick and Michael McDonagh. When this came before the Appeal Court the Manchester police harassed two “Rough Justice” witnesses and apparently tried to lay charges of conspiracy against Hill and Young.

Hill says that in the light of the outcome of that:

“ I’m actually surprised that some guy had the nerve to ring you up.”

He explains that he feels the Greater Manchester Police came out of the McDonagh affair badly and that they learned that the BBC journalists had good legal backing. This is the crucial moment. It is here that he states:

“ .. what they didn’t understand - we’ve got the Law Lords working with us, not just attorneys we’ve got Law Lords working with us.”

Young carries on to explain, in a very loose and relaxed fashion that it is very useful for the BBC to engage the services of persons such as Lord Salmon ( who supervised the Rough Justice “Livesey” case) because the Home Office feels obliged to listen to evidence which has been “passed” by such eminent people. There are no more references to Law Lords in the text.

The Lord Chief Justice simply ignored the allegations Fitzpatrick was making against the Greater Manchester Police in this conversation which led Hill to make the remark. She actually named the policeman who had made the threats to her - Detective Sergeant Featherstone. Featherstone appeared at the appeal - yet the Lord Chief Justice failed to question him about threatening Fitzpatrick. This was the man Fitzpatrick alleged had threatened her with a charge of perjury if she changed her story.

The supposed threats by the journalists were all the Lord Chief Justice noted when going through the transcripts. He took no account of threats Fitzpatrick said had been made by the Manchester Police. That was clearly “not the issue” of the case.

(VII)  
**THE PARTICIPATION OF LORD DEVLIN**

This was Lord Lane's final accusation - and thankfully, it had no suggestion that threats had been made. The connection with Lord Devlin clearly touched a raw nerve - yet there was nothing sinister in the matter at all.

First, let's see what Lord Lane actually said in his judgement:

“What is particularly deplorable is the enlistment of a retired Judge of great eminence to give credence to a programme such as this without giving the judge an opportunity of reading from the transcripts the way in which the investigations were conducted and the way in which the admissions were procured. Lord Devlin did not see the transcripts.”

There are three assumptions in this statement which are not factually correct and should be corrected before further discussion:

a) It is assumed that Lord Devlin was enlisted by the BBC alone. This is not so. Lord Devlin was approached at the suggestion of “Justice”, and took part in the programme because it was a “Justice” matter.

b) It is assumed that Lord Devlin appeared to give credence to the whole programme including the California interview. This is not so. Lord Devlin only appeared in the programme to comment on the identification evidence *in the original trial of Anthony Mycock*.

c) The implication that Lord Devlin should have seen the background to the entire investigation is not valid - he was not commenting on the entire case. Nor could he have gained further insight by reading all the transcripts. His section was devoted solely to the identification evidence. On this there was no doubt that the identification parade was not in accordance with Home Office rules - and Fitzpatrick had pointed across the court at trial and said “That is the man who robbed me.” Lord Devlin was fully briefed on this.

The reason the BBC journalists had for approaching Lord Devlin to comment on aspects of this case was a sound one and proper in the circumstances. In 1976 he chaired a committee on identification cases whose findings are generally quoted as the alternative system which might be used instead of the present system.

Mycock's counsel at the Appeal made a detailed examination of what had gone wrong with the identification procedures during the original investigation, and *the Lord Chief Justice himself commented on these procedures* :

“It is also pointed out that according to the rule in the Home Office circular, only one man could stand on the parade, unless, if there were two, they are of comparable description. It is said that Gary Mycock was not resembling his brother either in height or appearance. Accordingly they should not have stood on the parade together.”

He condensed the essence of this later:

“the rules as laid down by the Home Office appear not to have been complied with.”

Lord Devlin's view was that identification evidence alone should not be allowed to be advanced as having value any better than “reasonable doubt”. Unless there is corroboration of the facts from another source, any case involving identification should have a built-in reasonable doubt so that the jury may not convict.

In the Mycock case there was no evidence to connect Mycock with the crime except Fitzpatrick's identification of him. It illustrates the point of Lord Devlin's opinion perfectly. Lord Devlin was pleased to comment on this at length in the “Rough Justice” programme. His views had nothing to do with the Fitzpatrick interview in California. That interview did not even mention the identification because the BBC journalists felt the point was beyond question.



Lord Devlin had heard about the interview in California however, for the BBC journalists had mentioned it to him prior to the interview. They were making the point that everything she said in the filmed interview remained uncorroborated and was therefore not firm evidence.

During the interview with Lord Devlin, the Californian interview was mentioned once. The phrasing of Martin Young's question reflects the discussion that had taken place about the validity of the interview.

"Young: Assuming what Miss Fitzpatrick has told us is now the truth..."

Lord Lane missed the obvious point that the journalists were clearly not trying to enlist Lord Devlin to their cause - *because they did not show him any of the really damning evidence.*

If they had wished to enlist Lord Devlin "to their cause", it would have been to their advantage to show him the transcripts of the discussions in California.

Those transcripts show allegations by Fitzpatrick that she was being *threatened by the Manchester police*. Such threats might have convinced Lord Devlin that the police had something to cover up over the identification parade at which Mycock appeared.

He would have read the following:

Fitzpatrick: "They told me not to talk to you."

Fitzpatrick: "Featherstone was the one who told me 'OK - stick to my story.'"

Fitzpatrick: "If I give you your interview on TV, he said, I can assure you that within six weeks of that being released, One of our C.I.D. guys will be in Los Angeles arresting you to come back to Court to be- to be done for perjury."

Fitzpatrick: "they are threatening me with perjury because they don't want me to do it."

If Lord Devlin *had* read the transcripts, as Lord Lane thought proper, he would no doubt have come to the conclusion that *the Manchester Police did not care what was the truth, as long as Fitzpatrick's story suited their purposes*. He might then have studied the detail of their initial investigation further and seen the terrible mess they made of the investigation. It is clear from the evidence that the Manchester police were simply not interested in finding *any corroboration of Fitzpatrick's identification of Mycock*. What would Lord Devlin have thought about that - when *he so strongly recommended corroboration of such identifications?*

In fact, if Lord Devlin *had* seen the transcripts and the trial papers, he would have been able to draw up the following list of poor investigative technique of the supposed burglary by the police:

- (a) the evidence of a footprint on Fitzpatrick's window was not investigated. She said the robber did it - though in fact it was her own footprint.
- (b) the evidence of the rope she was allegedly tied up with was left unclear - apparently it was cut and yet only one piece appeared in court.
- (c) No one checked the state of Fitzpatrick's pyjamas.
- (d) No one checked the physical condition of her dog. She said the robber kicked it.
- (e) No one checked the rainfall record for the night in question. It disproved her story.
- (f) No one checked for sightings of a strange car in the neighbourhood. She said the robber had a car.
- (g) No one checked for fingerprints even though Fitzpatrick's evidence suggested there should be some.
- (h) No one queried why Fitzpatrick's list of stolen property changed every time she made a statement about it.
- (i) No one asked the true owner of the property stolen (Maxine Marshall) for a detailed description of it, with serial numbers if possible.
- (j) No one queried the fact that Fitzpatrick had initially identified Wayne Mycock as the culprit.

With his well-known devotion to justice, Lord Devlin would no doubt have wished to be interviewed on all of these points too - *if he had seen the evidence that Hill and Young had*. Of course, in the Court of Appeal, Lord Lane had all of this before him too - but he did nothing, except criticise the journalists.

Hill and Young were aware of all the evidence of poor police work when they interviewed Lord Devlin. They also had evidence (though from Fitzpatrick!) that the police were threatening Fitzpatrick to stick to her story regardless of *whether it was true or not*. If they had been attempting to persuade Lord Devlin that Fitzpatrick's filmed interview was the truth, they would have produced this evidence in order to discredit all her previous statements.

What Lord Lane did not know - or did not care to mention - was that *someone else* had been interviewed for the film about the California interview. This was Sir Edward Gardiner. He said in his interview:

"When you're dealing with a liar, and Miss Fitzpatrick, whatever else you may think about her, was a liar, you have to ask the question: when do you believe a liar? Do you believe her statement when she tells you, on camera, in the United States 'all I have previously said is composed of lies'?"

He added later:

"This woman, Miss Fitzpatrick, was such a prodigious liar and upon those lies founded such compelling evidence, with a breath-taking audacity and wickedness that really passes belief. She fooled everybody, inside and out of court."

Lord Lane may have questioned how far Sir Edward was briefed on the background to the interview. He would have discovered that Sir Edward knew everything. His son was a member of the research team and kept him fully informed. Moreover, a long discussion on the reliability of Fitzpatrick took place before the interview was made, so Sir Edward was fully aware of the editorial basis on which the BBC was approaching the interview.

And this was not the end of the checking. When the film was finished, the journalists organised a dinner at "Justice" before transmission at which Lord Edmund Davies (a Law Lord) and Paul Sieghart Q.C. saw the film and discussed the whole matter - *in particular Fitzpatrick's interview* - with the Controller of BBC 1 Michael Grade as well as senior BBC editorial figures.

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What then should we conclude about Lord Lane's performance in the Court of Appeal when Mycock came before him? He ignored evidence, he edited evidence to suit his purpose, he misquoted, he threatened, he bullied - in short he did everything he accused the journalists of doing. And yet they had done none of what he accused them of.

It's a sad story isn't it? But, as we all know, those were the bad old days. The trouble is - unless we know just how far the system can be bent to the will of one man, we may well fall back into those bad old ways. And we don't want that.

But unfortunately, even this is not the entire story. You have only just gone through Lord Lane's accusations against the journalists - what about his performance in general? Read on - and learn just what a Lord Chief Justice of England can get away with. It makes chilling reading for those unfortunates who come before him in Court no. 4.

## **CHAPTER 4**

### **THE PATTERNS OF FITZPATRICK'S MANY LIES.**

A good judge is one who has a "feel" for witnesses. He must be able to make a good guess about which are the reliable ones - and which are good at telling lies. We've seen Lord Lane's attempts at getting the truth out of Hill and Young - how did he fare against much tougher opposition - that "prodigious liar" - Anne Fitzpatrick?

The result unfortunately is not in Lord Lane's favour. She won 5 -1 when she appeared before him in the Appeal Court - and at least 70 - 1 in the written evidence he had before him. In this respect it was not one of his better cases.

Of course, he had a handicap. Against all the evidence, Lord Lane had a desire to believe Fitzpatrick's uncorroborated word that a break-in had occurred. And of course he also wanted to believe her when she spoke of the treatment she had received from the BBC journalists.

Fitzpatrick must be one of the most prodigious liars ever to come before the Court of Appeal. She lied to the police, the magistrates, the trial jury, to the BBC journalists, to the Manchester Police - and finally to the Lord Chief Justice. In fact she lied to anyone who would listen. She only once ever expressed contrition for the harm her lies did. That was during her filmed interview in California. It was followed in the months up to the Appeal Court hearing by an avalanche of lies - clearly designed as revenge on the journalists who had exposed her lies in Manchester.

Her lies were sometimes simple contradictions of the truth. But she could also weave a complicated web of lies, piling one on another. She also used her lies to play on the emotions of the listener. An important part of her pattern of lies is an ability to detect the wishes of the listener - and to supply a story that will satisfy them.

Exactly why she lied so frequently is something of a mystery, but she is certainly an interesting case of a type of person who can cause the British system of justice to make grave errors because of false testimony. She had been diagnosed by her doctor as a schizophrenic, a woman who fantasised. Evidence of this may also lie in the fact that she has a bad memory, for many of her lies contradict other statements she made - to the point where we do not know which is the lie and which is the truth.

There is another medical syndrome which we should consider, though it was not widely known about in 1985. The case of the Leeds nurse Beverley Allitt brought Munchhausen's syndrome to public attention. This takes the form of feigning illness to gain attention, sympathy and support. There can also be self-mutilation or the consumption of a dangerous substance to give the appearance that the subject is ill. There is often a claim that "I am a victim". Lying or fantasising about the "illness" is a natural part of the syndrome, as is fantasising about illnesses in others that the sufferers themselves "cure". Sufferers from Munchhausen's are generally women - and a quarter of those known to suffer from it are nurses caring for children, or other such carers.

Fitzpatrick had some of the outer appearance of a sufferer of Munchhausen's. Perhaps significantly, she generally worked as a nanny - caring for small children. She fantasised about suffering in others - as we shall see later during the Mycock appeal.

When Hill and Young met her in California her head was shaved. That was why she said she wanted to wear a wig for the filmed interview. She said she was having chemotherapy for a brain tumour. However, at the time of the appeal some 6 months later, she was growing her hair - and she made no further mention of chemotherapy.

When she failed to turn up on July 5th for the filmed interview, as she had agreed on the 4th, her excuse was that she had to go to the dentist's for an emergency operation because some stitches in her mouth had come apart. This appears to have been a lie because when Hill and Young checked with the dental surgery, they found she had not had an appointment. According to their conversation with the dentist's secretary, Fitzpatrick had not even had any teeth out, never mind had stitches in her mouth.

The “burglary” itself might well have been a similar attempt to gain sympathy and support. Throughout the entire episode of the trial, the visit of the journalists and the appeal, Fitzpatrick’s first reaction was to portray herself as a victim. When she rang Martin Young on July 2nd 1985 - the first time she acknowledged her true identity, her initial approach was to suggest that the journalists were working “for the Mycocks” and that the Mycock family had threatened her ( they did not know where she was) and that they had accused her of drug dealing.

But there’s also a hint in her evidence of a different psychological reason for her lying - her compliance syndrome. She generally exhibits a willingness to please - she tends to say what she feels will ingratiate her with her current audience. This is particularly noticeable when she was interviewed by the Manchester Police in California after the “Rough Justice” programme had been transmitted. It’s also apparent in her evidence to the Lord Chief Justice. But it can be seen elsewhere. One example is right at the beginning of this story. It seems clear that the Manchester Police showed her a mugshot of Wayne Mycock as a potential suspect - and coincidentally within a day or so she looked at a picture of Wayne Mycock in a friend’s photo album - and she identifies him as her attacker. Wayne Mycock was completely innocent - and had no connection Anthony Mycock, who was arrested because he had the same surname.

The only way that anyone can rely on anything that someone like Fitzpatrick says is to corroborate it from another independent source. This, unfortunately, was not the attitude of the Manchester police - nor of the Lord Chief Justice. Only the BBC journalists insisted on independent evidence being the test of Fitzpatrick’s veracity.

To fully understand the impact of Fitzpatrick’s lies on this case, we need to look at a long list. What follows is not that entire list - it covers the seventy or so lies that Fitzpatrick told during the period between the supposed “burglary” and the end of the appeal. It contains only those lies which can be proved to be untrue by independent evidence - either by other truthful witnesses, documents, or, in particular, the tapes which Hill and Young recorded whilst talking to her in California. There are probably many other lies, the truth of which we shall never know. But those which follow are surely sufficient to make clear just what the Court of Appeal, and particularly Lord Lane, had to deal with.

Fitzpatrick began her trail of lies in this case on the 22nd of July 1983 when she gave her very first statement to the police. She said:

“ I now know that the following property was stolen from my flat.... a Bush portable television/radio, a wooden mineral box containing 100 single records..”

She added to this at the Magistrates’ Court on the 15th of August when she said:

“It was pouring down with rain and I was wet.”

And at the same time she embroidered her previous list of “stolen goods” by saying:

“There was a hundred single records taken. There was a small radio/TV... a Bush portable.”

and then - remember?

“ a passport was taken.”

By the time Lord Lane heard her, he knew that the items she mentioned to the police and the magistrates *had not been stolen*. After all, Mrs Wright and Mrs Langhorne had told him that they had the TV and the records. Fitzpatrick herself still had the passport - she had returned to England using it. And Kath Prow, backed up by the Met Office proved that it wasn’t raining when Fitzpatrick said it was. So he should have noticed these lies.

Then there was her statement to the trial jury on 11th of October 1983 when she “remembered” the robber had said:

“ He said: it’s alright Gaz.”

Lord Lane knew that this differed from her deposition dated 3:8:83; where the name she remembered was “Baz”

He also knew that she had told more lies at the trial - for example:

“Q: Apparently at that time you saw a police van pass a number of times?

A: Yes sir.”

This was physically impossible - and the plans and pictures before Lord Lane proved it, as did the TV programme. The entire area in which Fitzpatrick was located at this time was surrounded by a six-foot high wall - and she was supposed to be tied up, wriggling along the ground.

These were the simple, obvious lies that Lord Lane should have picked up without any problem whatsoever. In fact his only comment, as we have seen , was:

“ We do not accept that she has no recollection of this box of records. She was not telling us the truth about this..... We content ourselves by saying that had the jury been aware of the unreliability which she demonstrated before us, the result might have been quite different.”

The early lies illustrate another of Fitzpatrick’s weaknesses - she seems to feel a need to “embroider” any story. The simple facts are not sufficient - so she adds that it was raining, though it wasn’t. She adds the police car going by, though she couldn’t have seen it.

If these examples of her lies can be classed as some kind of “protection” for someone who feels the world is against her, other lies indicate that she was simply a devious character, willing to lie simply to gain an advantage. There were several such blatant lies in the various transcripts and statements disclosed at the Appeal. If Lord Lane had been doing his homework, he should have noticed them.

The conversations Hill and Young had had with her in California yielded many such lies.

Fitzpatrick gave a reference to Ms. Sandy Green of “Sitters Unlimited” in Laguna Beach. It said that Fitzpatrick had worked for a Mrs. Caffrey for 9 years. This was documented in Ms. Green’s files, and it was mentioned in detail on one of Hill’s tapes. In fact the marriage certificate of this Mrs. Caffrey showed that she was Fitzpatrick’s sister. And Fitzpatrick herself admitted to Hill and Young that she had never worked for her sister.

Fitzpatrick also told Sandy Green that she had “majored in English at the Nelson and Colne College”. This too was on the tapes. But she never attended the Nelson and Colne College - the college records prove it.

Fitzpatrick showed Sandy Green her driving licence - no. 3033101. This was a complete fake. This was not her English licence number and, because of the numbering, cannot be a Californian one. Fitzpatrick has never lived anywhere else. Hill told her about this during the conversation mentioned earlier in this account, she did not deny she had given a false licence to Ms. Green.

Fitzpatrick also gave her sister’s name - Mrs Caffrey - as a reference to Ms. Toni Goolsby manageress of Las Colinas condominium where Sue Roark’s apartment was. She did not disclose the family connection.

The driving licence number she quoted to Mrs Goolsby was yet again another fake - licence number 43033792, neither Fitzpatrick’s licence number, nor a Californian one. Hill recorded a tape of Mrs Goolsby where she quoted this number.

This lying about references and driving licences was to gain an advantage - to get a job under false pretences. Would any Californian family have given Fitzpatrick a job as a nanny - as several did - if they had known this? Would they have considered employing someone who had been admitted to because of her fantasising? She appears to have been trying to cover up her entire previous life.

Perhaps this was why, when Hill and Young went to California, she embarked on a series of lies ( all recorded on tape) which attempted to completely deny her very existence.

First, she denied knowing the woman who “freed “ her from the rope around her hands and feet - Kath Prow:

“Q: You know Kath Prow, Kitty Prow?  
A: Who?  
Q: Kitty Prow?  
A: No.”

She repeated this later:

“Q: And you don’t know Kitty Prow?  
A: No, never heard of her.”

Then she denied knowing the girl friend whose belongings she had stolen in the supposed “robbery” - Maxine Marshall:

“Q: Maxine Marshall,... do you remember her?  
A: No, never heard of her.”

She denied knowing Maxine’s brother, Paul - even though she owed him money.

“Q: You don’t know Maxine or Paul Marshall?  
A: No.”

She denied knowing anything about her home in Moston, Manchester:

“Q: You used to live in Church Lane Moston.  
A: No, where?  
Q: Moston in Manchester?  
A: Oh no, good Lord, no.”  
and later:  
“Q: You never lived at 145D Church Lane Moston?  
A: Oh good Lord no.”

And any knowledge of the robbery:

“ Q:... the business of the robbery in Church Lane Moston with Tony Mycock.....  
A: What on earth are you talking about?”

But her most spectacular lie at this point in time was *complete lack of knowledge of Anne Fitzpatrick!*:

“ A: Why hasn’t the BBC tried to contact this person...Anne Fitzpatrick?  
Q: Well, you’re the Anne Fitzpatrick though.  
A: How wonderful.”

Was this schizophrenia? Was she simply trying to avoid publicity? Or are these the desperate lies of a woman who finds she has been caught out after unjustly sending a man to jail for a crime he did not commit?

These simple, almost childish, lies indicate a detachment from reality that Hill and Young had suspected, but which they now had to deal with. Did Fitzpatrick really believe that two BBC journalists would travel from England to California to confront her with the Mycock story - and then simply turn around and go home because she said they had the wrong Anne Fitzpatrick? Had they not already checked her identity? Would they not check further?

Before we dismiss these lies as being off-the-cuff, we should bear in mind that, according to Fitzpatrick, the Manchester Police had contacted her five months before the BBC men flew to

California - telling her what was going on. She had had five months to come up with better lies than these.

It seems that she had lived for those five months in some kind of fantasy world in which she would simply lie her way out of trouble. Hill and Young's assiduous research brought her into the real world with a jolt. She called back after their first call and admitted who she was.

In the conversations that followed, they then got down to the details of the crime - and of course out came the same old lies:

(referring to the television and the gramophone record)

"I don't know anything about that."

However, within a few weeks she was telling the Manchester Police who went to California "I sold it (the TV) to Margaret Wright".

Lord Lane, reading the transcripts, knew that.

Fitzpatrick also told the journalists:

"The burglary did occur."

And of course:

"Q: When did you realise you had made this mistake?

A: About three days ago.

These lies were about the *robbery*. Fitzpatrick had motive to lie about that, but she did not confine her lies to this subject alone. During the conversations with Hill and Young which spanned four days, she frequently demonstrated her predilection to lie rather than state a simple truth.

For example, as we have seen, after consenting to do the interview, she did not turn up at the agreed time. She gave as excuse:

"I just got back about half an hour ago from the dentist.... Garden West Dental Clinic."

Hill and Young checked the dental clinic office records - she had not had an appointment.

When she told the journalists that the Manchester Police had rung her up in February 1985, she told Martin Young that the police had asked her to stick by her story at trial:

"Q.: Did the police ask you to persist with this theory?

A: Yes."

But she denied this when she made her statement to the Manchester Police in California later in the year.

The original lie here seems to be a "compliance" lie. She may have thought that Martin Young wanted her to agree, so she said "yes". The denial may also have been "compliance" however, for the Manchester Police never denied that they had contacted her as she said. Perhaps significant to this consideration of her lies is the fact that the content of this line was of little importance, if any, to the case.

You can already see why Hill and Young were so keen to corroborate everything she said to them from an independent source. Perhaps the most significant aspect of the filmed interview are the moments when Hill particularly raises corroborative evidence against her statements.

She said:

"I didn't tie myself up. I told you, it was a figment of my imagination."

Hill queried this - saying that the rope appeared in court and Kath Prow saw it when Fitzpatrick rang her doorbell. How could it be a “figment”?

Then she said she had not explained to the police that she had taken her hand out of the rope she had tied herself up with - to reach the doorbell to summon Kath Prow:

“ I didn’t show the police this, I didn’t want to go through it all again.”

Corroboration that this was a lie was brought out before Lord Lane. Detective Sergeant Featherstone described the events at the Appeal Court - she *did* do a demonstration to the police - using her head to press the bell.

During her filmed interview she repeated the familiar lies, now embroidered, about the records and TV she gave to Mrs Wright and Mrs Langhorne:

“ The records and everything had gone and that puzzled me..... in fact they had been stolen.”

But notice how her love of adding to lies is demonstrated here, for she goes on:

“ They went in the middle of the night when I was down at the police station.”

Of course, when both Hill and Young said they did not believe this, she protested it was true:

“ But they did go. Honest to God that’s the Gospel Truth. They did vanish, I never found them, honestly I’m telling you the truth, that’s the Gospel truth. They did vanish, I never found them. But I really never did find that box of stuff, I really didn’t.”

It may seem incredible, but she even had the nerve to *credit the police with giving her the first information of where the TV had gone* - even though she herself had sold it to Mrs Wright and the police had told her that *they knew from Mrs Wright* that such was the case:

“ Well, the police told me it had been discovered.”

Of course, this contradicted her earlier lie:

“ I honestly don’t know what’s happened to her set.”

This is a good example of the tangle of lies that Fitzpatrick could get herself into. It suggests something more than the lies of a normal person. She was quite capable of “fantasy lies” - saying the first thing that came into her head. Fitzpatrick, in California, had the advantage of having seen the “Rough Justice” programme - Hill had sent her a copy and the Manchester Police had shown her a copy. Nevertheless, though faced with what a collection of witnesses such as Maxine Marshall, Kitty Prow and her landlord Jack Thorpe said on the programme, she absolutely denied most of what they said. Perhaps the statement to the police in California reflects, more than any other collection of lies, her willingness to comply with what is being said to her.

For example, she denied to the police all knowledge of the fight she and Maxine had had on the night of the “burglary” - even though Maxine Marshall had described it in the TV programme:

“ Q: Did Maxine call round at the flat during the evening of 30<sup>th</sup> May for bread and did you have an argument?

A: No, not that night.”

She denied being with Kath Prow and Maxine earlier in the evening - something the two women remembered well:

“ Fitzpatrick: On that night I wasn’t there with them.”

Then there was a remarkable lie about identifying Wayne Mycock as the burglar.



D.S. Featherstone told the Appeal Court that she had looked at *Wayne Mycock* in mugshots, but said *he was not the burglar*. Fitzpatrick even denied this:

“ I went to Collyhurst police station where I looked at some photos. I saw somebody who looked like him and it was the same that I saw in the photo at the Smeaton’s later.”

This, if compliance, was a compliance too far. Here she was contradicting the evidence given by the police. In the Appeal Court, Lord Lane appears not to have noticed this.

The statement Fitzpatrick made to the police in California has many examples of Fitzpatrick apparently trying to guess what the police want her to tell them. Reading the transcript, it is easy to see why - the questions to her suggest that the Manchester Police were most interested in pinning something on Hill and Young. Fitzpatrick was happy to cook up some more lies to help them.

For example:

“Police: Was it ever suggested to you by any police officer to pick out Mycock as the person responsible?

Fitzpatrick: No, definitely not, in fact Hill said the same thing to me. He wanted to know if Featherstone had told me who to pick out, nothing like that happened .”

Hill never said anything like that - The tape transcripts proves the exchange went:

“ Young. Did they tell you before the line-up to identify him?

Fitzpatrick: No, they did not.”

So Young had asked the question - and accepted the answer without question.

As a writer, it seems difficult to retain the reader’s interest in such a catalogue of lies. But some of Fitzpatrick’s lies to the police were so outrageous as to be funny.

What about:

‘ I didn’t pretend to be an American.”

She said this after she had read the tape transcript where she had pretended to be an American.

Here is another - plucked out of the air:

“ He told me he was doing a documentary on the way crime was dealt with in California and England.

No such claim is on the tapes - and Young’s first approach is clearly recorded.

These are classic “black is white” lies. Her statement to the police in California contains several. For example, she told them about Martin Young’s approach to her:

“ He called me again.... would I please meet him for dinner.... I declined.”

-when in fact the tapes show that (a) *she* phoned Young, and (b) she *accepted* his invitation.

She also lied about what Hill said to her:

“ P.Hill cautioned me that I had a record for walking away from them and that it would be very bad for me.”

The only part of that conversation remotely like this reads:

“Hill: we also don’t think it’s to your advantage to get up and go away at any time. We think you should stick it out with us and wait until you hear..... how we finish. Some of the things we say may

anger you and we think it wouldn't be very fortunate for you if you went away without hearing us through to the end."

Then she denied consenting to the interview:

"He wanted to roll a film of me on it, but I said they weren't."

As we shall see later, the tape transcripts show that she consented *five times* to do the filmed interview.

Then there was another "black is white" lie:

"He told me that if I knew what was good for me I should ask Sue to leave because the evidence they had against me would be very embarrassing to me. I presumed he was referring to the fact that I am gay. I assured him that if Sue left, I did."

If we read the actual exchange, we see it is actually an effort to protect Fitzpatrick:

"Peter: We think that some of the things we might say to you in this conversation could be severely embarrassing to you in front of Sue and it's entirely your choice whether you have Sue here or not, but we would suggest that you don't at this point in time.

Sue: It's up to you.

Anne: I can't imagine anything that's going to be embarrassing.

Peter: You can't imagine that? Well the question is, do you want Sue here?

Anne: Definitely, yes."

We know, of course, of the lies about the Sheriff:

"He told Sue.. he had friends in the Sheriff's Office in Orange County... and all he had to do was to go to the immigration and I could be deported from the US"

That no doubt pleased the Manchester Police who were interviewing her, and, perhaps sensing this, Fitzpatrick was averse to throwing in a little lie to ferment more trouble between the two sides:

"He kept referring to Sergeant Featherstone and asking me repeatedly if he had told me what to say in Court."

There is no such statement on any of the tapes.

These are all clear "black is white" lies - lies that were bound to be found out. They come from a very strange mind, someone who seems to believe that she can brazen anything out.

As we saw earlier, there another strange aspect to Fitzpatrick's lying. She tends to "embroider" - to make up one lie in order to bolster another. She added the lie that Hill said "don't wear a wig" to add force to her lie that Young said "pretend to be calm," She also said "They were going to publish it in the local news" to add force add force to the lie "(they) have been down there and took photographs." And she added "He called me... I declined." when she told the police "He told me he was doing a documentary on how crime was dealt with in California and England...."

Her most outrageous lie appeared during this same conversation, so it should be seen in the context of the other lies she was telling the police. It was the "lesbian slur" -

"He told Sue that he would expose our relationship to her parents."

There is no such statement anywhere in the tapes of all the conversations Hill and Young had with her. And when shown the transcript of the conversation in the Court of Appeal, Fitzpatrick admitted she could find no such reference.

We may never know where this idea came from. Certainly Fitzpatrick was known to have lesbian relationships. She and Roark did not attempt to hide this in California - for example the manageress of the condominium, Mrs Goolsby, knew about it. Nor was it a secret in Manchester.

It took almost two years for the final piece of evidence on this to come to light. The source was Sue Roark. She was more reliable probably than Fitzpatrick, at least in terms of memory, though not entirely reliable because of motive. She gave a deposition in which she said that on Halloween evening, October 31, 1985, Frances Fernandez and Forrest Kimler of the Orange County Register came to her door on several occasions attempting to get a story. Kimler allegedly spotted Sue and asked Anne "Isn't she your lover?" Frances Fernandez and Forrest Kimler were following up a Los Angeles Times piece on the "Rough Justice" programme. There is no independent evidence of Roark's claim about them - and their later newspaper articles did not mention lesbianism or any such relationship.

Nevertheless, this appears to be the source of the allegation - and from this moment we can trace the embroidery of it until it became a threat used against Fitzpatrick to persuade her to retract the evidence she had given at trial.

This lie does not fit neatly into the categories we have seen so far in this long list of lies. It may have been of the type "I am a victim (because I am homosexual)". It may have been "compliance" - for Fitzpatrick knew, when she first came out with it, that the Manchester Police were keen to accuse Hill and Young of something.

But, from this moment on, a new element in her lying appears to emerge which may reveal her true character. After the visit by the Manchester Police, she exhibits an arrogance and confidence she had not shown before. We can never know what was said to her or promised, but we do know that Fitzpatrick was flown to England at the taxpayers' expense. She was then rushed through the Magistrate's court in Manchester where she was found guilty, but not detained. Then she was taken to the Court of Appeal and later flown back to California after she had given evidence.

Given such personal treatment, she must have felt safe in their hands. And that is perhaps why she had the nerve to lie as she did to the Lord Chief Justice of England.

She repeated many of the above lies to him - and he did not pick her up. But she also came out with some brand new ones. The "black is white" ratio increases significantly at this point - as does the number of "fantasy" lies.

For example, in her evidence in the appeal court she got the position of her hands wrong when the burglar tied her up. This was something she would surely have remembered.

"Q: Were your hands tied behind or in front of you?  
A: Behind."

Both she and Kath Prow had said her hands were at the front - in fact Kath Prow told Lord Lane :  
"she was crouched forward".

Then there was a new one about the long conversation Hill and Young had with her two days before the filmed interview:

"At first they stared at each other and then they said 'no, go ahead'

This was pure fiction, a "fantasy lie", to no apparent advantage. The tapes have nothing like this on them. And when this incident was supposed to have happened, Martin Young was some twenty yards away at the bar - when he's alleged to have "stared at Hill".

In fact Fitzpatrick told Lord Lane a whole string of lies about what Hill and Young had said - none of which appeared on the tapes. These included:

"(They said) We are not interested in Anthony Mycock and we are not interested in you. We are interested in doing our job and justice."

"As soon as Peter Hill said "deported" I was shocked."

"He said to Sue 'Sue I am sorry you are involved with her. I am afraid we have to publish whatever we have to publish against both of you.'"

“ We have been down there and took photographs.” ( to Roark’s parents’ home)  
“They were going to publish it in the local news.”  
“ She turned round and said to me ‘do it, go on, and do it.’ I said ‘ But Sue, it happened’ and she said ‘ do it’  
“ He said ‘we are out to get them’( The Manchester Police)  
“ He said ....’we have connections in the Home Office.”

(During the filmed interview) “ Peter Hill would whisper something.”

When Hill raised the matter of the false references she had given to employers in California, her version went:

“He said ‘You admit that?’ and I said ‘Of course I do.’”

These are “fantasy” lies where there is simply no such statement on the tapes, nothing that can even be twisted or contradicted.

But even when clear evidence existed, Fitzpatrick was still capable of telling “black is white” lies.

“ He says ‘ all you have to do in here.... just go on and say it never happened.”  
“ They told me I could not walk out.”

- *What was actually said was:*

Anne: Are you saying we can’t go home until we say we’ll do it?  
Martin: Oh of course we’re not  
Peter: By all means, free agents, go -”

And:

“ He said ‘ don’t break down, pretend to be calm’ he strongly advised ‘don’t wear a wig’.

-*when the tape transcript recorded only:*

Anne: I will wear a wig, I don’t want to go on like this.  
Peter: That’s alright. .. if you want to put on a blonde wig and make up different.... we have no problem.”

Not only did Fitzpatrick have the nerve to tell these lies - but Lord Lane overlooked them. Fitzpatrick was even confident enough to turn to pulling on his heartstrings. So she told him:

“My puppy was lying comatose” ( after the robbery)

But in fact she had told *the Manchester police* in California:

“ Q: Was (the dog) injured?  
A: No, she was just nervous.”

( In a later deposition, this story of the dog moved far into the realms of fantasy)

Fitzpatrick became so confident that she actually interrupted Lord Justice Russell with one of her lies -  
“ The tape has in fact been edited”

Now this could easily be checked because of the background noise of the bar where the conversation in question was recorded. There were no breaks in it.

By this point of the appeal her arrogance was such that *she even banked on the police lying for her* - so she ventured to tell one about her contacts with them:

“Q: Did you have another contact with the police in England between going to America in November 1983 and Hill and Young contacting you in July 1985?

A: No I did not.”

She had told Hill and Young quite a lot about her telephone calls to the police in February 1985 - *five months before Hill and Young had contacted her*. It seems the Manchester police had become aware of the “Rough Justice” investigation almost as soon as it had begun. Fitzpatrick subsequently “corrected” this statement - but only under cross-examination, when Mycock’s counsel told her of the tape of the conversation.

This is quite a list of lies for one woman to tell to the Lord Chief Justice of England - and not be caught out. It clearly demonstrates an arrogance, and confidence in being able to get away with it - or perhaps a complete inability to sort fact out from fiction inside her head.

To be fair to Fitzpatrick, many of these lies ( I count 21 of them) were said *before* she knew that all the conversations she was recounting had been taped. However, it is those “black is white” lies she told in the face of all the evidence that indicate that she is more than an ordinary liar.

After she saw the huge volumes of transcripts, she was visibly shaken. Some of her arrogance vanished, but she carried on lying. Here are just a few of those she told at this time:

“Q: You went to your mother’s in your pyjamas?

A: Yes.”

Kath Prow had told the court that Fitzpatrick *got dressed before they went to her parents’ home* - and Fitzpatrick herself had said at the original trial:

“ I just threw some jeans on, and a top and coat.”

She came out with a lie about the conversation she had had with them in the February before Hill and Young went to California in the July of 1985. She said:

“No, they (the police) just told me I did not have to talk.

This was a direct contradiction of her statement - on tape - to Hill and Young about this same conversation? She had said, of the police:

“They are threatening me with perjury because they don’t want me to do it.”

She also told the Appeal Court more about this conversation with D.C. Featherstone of the Manchester CID:

“ I did not speak to Featherstone before Hill and Young interviewed me.”

This was quite different to what she said to the BBC journalists. Just five months earlier she had informed them:

“ Featherstone was the one that told me OK, stick to my story.”

Was this arrogance? Or are these lies perhaps examples of the old dictum “ if you’re going to tell a lie, tell a big one”? Fitzpatrick had already used that trick with the “lesbian slur” when she was interviewed by the police in California. Now she adopted it in the Court of Appeal - with several wild, “fantasy” lies that could easily be proved as such. Faced with the tapes that destroyed her story, she said:

“ this whole manuscript has been edited. There is stuff been put in and taken out.”

The transcripts had been inspected by both counsel - they said so in court. The transcripts matched the tapes.

This was swiftly followed by a pleas for understanding, perhaps even pity -

“ I cannot afford a solicitor. Unfortunately they do not have legal aid, I told Peter Hill that.”

In fact the transcripts showed that no such conversation ever took place

These two lies were her final effort - and significantly the only two occasions when she looked for, or offered, an excuse for her “mistakes”.

Fitzpatrick's lies reflect badly on her; but she was clearly not wholly responsible for her actions. Psychiatrists might more closely classify her weaknesses, though some syndromes seem clear. The lies she told reflect far more on the abilities and prejudices of the then Lord Chief Justice of England Lord Lane.

The Lord Chief Justice cannot, surely, have believed her. He had all the necessary evidence before him to prove that all the above statements by Fitzpatrick were lies. With his vast experience on the Bench he must have encountered other witnesses who exhibited at least some of the types of lying that she showed in this case.

Remember, his general approach to Fitzpatrick's credibility was that she could not be trusted up to July 1st 1985 - the day on which Hill and Young landed in California. But he *did* trust her after that date. Almost all the lies catalogued above were made *after July 1st 1985*. Lord Lane's position on this does not appear therefore to be a rational one.

As to her general credibility, he contented himself with the general comment:

“ We shall never know to what extent the facts have been embroidered by Miss Fitzpatrick, as undoubted, to some extent at any rate, they have been.”

Was it misjudgment on his part. Was he really taken in? Can any man who has risen to the highest position in the land be so gullible?

Since Miss Fitzpatrick lied to every person she met in this case, since she lied to every policeman who ever interviewed her, to every journalist who interviewed her, to every court she ever went to in the Mycock case, it is difficult to see why her word was ever trusted. She was not only a liar - she was a prodigious liar who exhibited several types of lie. She could claim that black was white, she could pull accusations out of a fantasy world, she could lie simply to gain sympathy and attention. Except in her filmed interview, she exhibited no sign of regret on any of the many occasions when her lies were exposed. That is, perhaps the worst aspect of her personality. She seems to have had no sense whatsoever of right and wrong. And that perhaps was why she could stand up in the Manchester Crown court, point across the courtroom at Anthony Mycock and say “ I say that is the man that came into my room that evening”.

Anthony Mycock had done her no harm. Unlike Hill and Young, he had not produced a television programme that would expose her lies. He was no relation to Wayne Mycock, whom the Manchester police suspected of the burglary - he was simply an innocent man brought into the affair because his name was Mycock.

Yet Lord Lane, whilst freeing Mycock, insisted that Fitzpatrick was to be trusted about what she claimed the journalists had said and done in California. Central to his thinking was his insistence that there had been a break-in at Fitzpatrick's flat. The only mistake, according to him, was that the wrong man had been *identified* as the robber.

In the light of the above list of lies, this may seem an incredible opinion to hold. If you go back through them you will discover that *only two of these seventy or so lies concerned identification*. Yet, according to Lord Lane, *identification* was the only mistake in the case.

However, Lord Lane was the Lord Chief Justice of England, and we should not dismiss his opinion about this lightly. So, let us now examine his methods of sorting truth from lies.

## CHAPTER 5.

### PROOF OF TRUTH

The crux of the “real issues” of Anthony Mycock’s appeal was whether or not Fitzpatrick told the truth - or whether, as Lord Lane wished it to be, the journalists had wrung an untrue confession out of her.

In the light of the previous chapter, this may seem ridiculous, but the Lord Chief Justice determined that some of Fitzpatrick’s evidence could be believed. His basis for proving “truth” - his “forensic method” must therefore be explored.

In his *judgement*, The Lord Chief justice made it clear that he believed there had been a burglary. In his opinion, that much of her story was true. He said:

“We are of the opinion that she did not invent the robbery.”

He then listed a series of proofs of this truth:

- (a) “It was not a figment of her imagination.”
- (b) “ Her reference to Baz in the statement she made to the police within a short time after the event, coupled with the fact that she recognised, as we believe she did, the second robber on the parade, whose nickname is Gaz, makes it extremely unlikely that the story is an invention.”
- (c) “ If the robbery was a figment of her imagination, the identification of the appellant did not in any way advance the suggested motive.”
- (d) “ The other remarkable fact is..... that Gary Mycock had on the base of his left thumb a tattoo in the shape of a heart.”

This last point is the *only factual matter* in Lord Lane’s list which can be checked - the question of Gary Mycock’s tattoo.

Fitzpatrick’s original evidence to the police after the robbery was that the tattoo was:

- (i) on the man who attacked her.
- (ii) on his left hand near the thumb.
- (iii) was a “helmet type-tattoo”.

She also said at trial of the man with the tattoo:

“I thought “ I will never forget your face.....And his eyes.”

She must have had a good view, because, according to her, she saw all this by the light of a 100 watt bulb in her bedside lamp.

There are several problems with this evidence. First of all, the man “Gaz’, or “Baz” was not, according to her, the *man with the tattoo*, but the *second* man.

Secondly, Gary Mycock does not resemble the description she gave of *either* man, except as to the age of the second man.

Thirdly, *she did not pick Gary Mycock out at the identity parade* - although she was to later to tell the Manchester police in California that she had recognised him there. ( Was this “compliance”?)

But most importantly - Gary Mycock does not have a “helmet type” tattoo.

We have already seen the evidence for this. His tattoo was “ACAB”

This reflects on Lord Lane's forensic method - for, remember, Gary Mycock was at the appeal - outside Court number 4, in the corridor. Nevertheless, the Lord Chief Justice, without inspecting his tattoo, said it was "heart-shaped" and Detective Sergeant Fury, who produced no evidence that he had ever inspected it, said it was "something like a heart".

On *this evidence*, Lord Lane accused Gary Mycock of being a party to the robbery. Remember, he said:

"if she recognised, as we believe she did, the second robber on the parade, whose nickname is Gaz, makes it extremely unlikely that the story is an invention."

Lord Lane's "proof" that the burglary occurred was the "fact" that the "helmet-shaped" tattoo existed - on Gary Mycock's hand!

Of course, if he had sought corroborative evidence for this accusation, by observing the tattoo with his own eyes, he would have found that the physical evidence did not support his "proof". But looking for such corroboration was not a part of his forensic method.

Was Gary Mycock guilty, as Lord Lane claimed?

Gary Mycock was never convicted of the crime in any court of law. He was not even tried along with his brother. But an examination of the known facts suggests his guilt is very unlikely.

- a) Gary Mycock admits he has no provable alibi after about 9:30 on the evening in question. He was out with a friend; but:
- b) He was then in Heywood, some 10 miles from Moston.
- c) Fitzpatrick's flat could not have been a known or obvious target for burglary because it was in a poor district and had little of value worth stealing.
- d) Means of entry was by the unlocked door. Only someone who knew the flat could have predicted that the door would be unlocked.
- e) The burglars were surprised that someone was in. There was nothing about the flat to suggest that the occupant might be out - indeed, the open door would suggest otherwise.
- f) There are better target areas for burglars between Heywood and Moston.

Looking at this scenario from a commonsense point of view, it seems even less likely. Moreover, if you believe Gary Mycock did it, you have to believe the following:

- a) He decided to commit a burglary.
- b) He travelled 10 miles to a part of Manchester he was not particularly familiar with.
- c) He chose Fitzpatrick's flat at random.
- d) He found its only door to be unlocked, then he
- e) was surprised to find someone asleep in the bedroom.
- f) Though not wearing gloves he did not leave any fingerprints on the stereo which was dropped, nor on the drawers or the writing bureau which was rummaged through.
- g) He tied Fitzpatrick up, and then, for no apparent reason, carried her to the door of the flat where he left her in the doorway with the door open - ungagged.
- h) He left the larger part of the stolen goods (the only goods which can be proved independently of Fitzpatrick to have ever existed) behind the garage.

- all this *without the use of a car*, when buses are rare in the area.

Finally, you must also believe the strangest coincidence. Gary Mycock, if guilty, chose a flat within half a mile of the home of two young men who also bore the unusual name of Mycock and *who had convictions for burglaries of this nature*, - indeed, one of them was later identified as the culprit by Fitzpatrick.

Well - do you believe it?



Lord Lane did. He said he had proof it was true. He said the robbery obviously took place because Gaz ( Gary Mycock) was there - and he had a heart-shaped tattoo on his hand.

Perhaps you think I must be mis-construing what Lord Lane said. If so, go back to the start of this chapter and read his proof again.

And, of course, by taking this line Lord Lane was following Fitzpatrick's uncorroborated word. No doubt you will now agree that it is a dangerous practice to take anything she says as truth without independent corroboration. But Lord Lane's opinion was based on the following assertions by Fitzpatrick - all of which were uncorroborated:

Her evidence that the robbery had taken place rested on:

- a) Fitzpatrick said there had been one.
- b) The flat showed signs of it.
- c) goods were apparently missing.
- d) Fitzpatrick was bruised.
- e) Fitzpatrick was tied up.
- f) There was a footprint on the toilet window ledge.
- g) Fitzpatrick claimed one man was called Baz.
- h) She claimed the other man had a helmet tattoo.
- i) She picked someone as the culprit at the ID parade.

There was no corroboration that any of the above was true. But there *was* corroboration that some of these points were *lies*.

Kitty Prow's evidence eliminated the footprint on the toilet window sill. She said she had seen Fitzpatrick put it there the previous week. Even the police do not appear to have taken the footprint seriously, since they logged the means of entry as being by the door. Fitzpatrick told the Manchester police in California that she had no recollection of a footprint.

Prow's evidence also threw serious doubt on the evidence of Fitzpatrick being tied up. Fitzpatrick's lie about being tied up at the back increased that doubt. But Lord Lane obviously did not believe Prow - he believed Fitzpatrick instead.

Maxine Marshall's account at the appeal of the fight she and Fitzpatrick had that evening can account for the bruising. The general destruction in the flat could also have come, in part, from that - though why only Maxine's belongings should be broken is not really understandable.

So, we are left with the tattoo, "Gaz" - and the ID parade where Fitzpatrick chose Anthony Mycock.

It was all resting on Fitzpatrick's word - none of the above had any corroboration from anyone else.

The Lord Chief Justice obviously had some doubts about Fitzpatrick. But he said he could not believe that Fitzpatrick could be so wicked as to choose Anthony Mycock on the ID parade when it "did not in any way advance the suggested motive."

Well - he forgot that Fitzpatrick was wicked enough to identify *Wayne* Mycock as the burglar. She caused him to be arrested falsely because she saw his photograph in the Smeeton's photo album. And she knew Wayne, at least by sight, because he lived just round the corner from her parents, so *she should have recognised him during the burglary*.

Lord Lane was offered advice on this by the BBC journalist Peter Hill during the appeal. When Hill was asked about Fitzpatrick falsely identifying Anthony Mycock on the ID parade he said:

"There is one line of argument one could put, in which Miss Fitzpatrick goes to an identification parade where a man sticks out like a sore thumb, knowing that if she does not pick someone, there will be questions put to her by the police as to whether a robbery ever took place."

Hill already knew that Fitzpatrick might tell one lie in order to bolster or defend another lie on which she felt she might eventually be exposed. She had done it several times already in his experience.

He also knew that Fitzpatrick had a lot of stamina in defending her lies. Just how far she would go to defend her earlier lies is illustrated by the fact that she travelled from California to the Court of Appeal to lie more than 25 times before the Lord Chief Justice. Of course, according to her statements to Hill and Young about what the Manchester Police had told her, she had to stick to her story - or face perjury. So perhaps at the Appeal Court she felt she had to lie to remain free. Hill thought that the ID parade where she picked out Anthony Mycock may have been a similar situation. She may have felt that if she did not back up her lies with a positive identification of the man the police thought was the culprit, *she might have found herself subject to charges of obstructing the police in their inquiries*, or simply wasting their time.

Lord Lane would have none of this. He simply believed that Fitzpatrick couldn't so wicked as to deliberately pick out the wrong man at an ID parade. His actual words were:

"It is one thing as the result of a hysterical condition - as to that we have evidence from Dr Devlin - in order to spite her erstwhile flatmate for Miss Fitzpatrick to invent a robbery which had never taken place. But it is in our view quite another thing, and would be the depths of wickedness for her three weeks later to pick out the appellant on an identification parade as the participant of a non-existent robbery."

His forensic method appears to be:

- a) she was liable to be hysterical and *could* have invented a robbery. But
- b) she wasn't wicked enough to have falsely picked out Anthony Mycock on the ID parade. Therefore
- c) She did not invent the robbery. It took place - but someone *like* Anthony Mycock (with Gary Mycock) did it..

(Remember, Fitzpatrick's description matched neither Anthony nor Gary Mycock)

And in fact, Lord Lane misrepresented Dr. Devlin's testimony. He mentioned the "hysterical condition" - but left out :

"if put under pressure, *Miss Fitzpatrick could easily be made to believe things which were not actually true.*"

This second quotation might well account for her picking Anthony Mycock out at the ID parade. It could also account for some of Fitzpatrick's wilder "fantasy lies" which Lord Lane ignored. Do you remember these?

- a) her invention that she saw a police van pass by several times when she was on the ground behind a six-foot high wall.?
- b) When she was talking to Hill and Young in California, she invented a completely fictitious address for herself in Manchester. She said she had lived in Didsbury, in Grenfell Road.
- c) She invented a visit to the dentist to cover her non-appearance for the TV interview.
- d) She invented a second robbery - saying that the goods were stolen later in the night, and "when I was down at the police station"
- e) She invented a scene in California in which Hill and Young stared at each other, when in fact Young was not present.
- f) She invented conversations with Sue Roark which were in range of one of the journalists' tape recorders - the conversations did not take place.

Is it not within the bounds of conceivability that she might have *lied* about the identification of Anthony Mycock, rather than *simply being mistaken*? After all, the police had made sure that he "stuck out like a sore thumb" - the Lord Chief Justice admitted that the Home Office rules had not been followed.

This is not to say Lord Lane believed every word of Anne Fitzpatrick's testimony. To his credit, perhaps, one aspect of her story clearly puzzled him:

"We shall never know how, if she was trussed up as she said she was, she managed despite that to ring Kitty Prow's door bell."

This was a remarkable flaw in the consistency of Lord Lane's thinking. This statement by Fitzpatrick was one of the key parts *of the California filmed interview*. This is the very statement that was at the root of one of Lord Lane's criticisms of Peter Hill - so *wasn't this supposed to be a lie?*

Hill said during the California interview that he didn't believe Fitzpatrick managed to ring the bell whilst being trussed up. The bell was well at Fitzpatrick's head height - but she was allegedly trussed up, lying on the ground, with a step between her and the bell. He said her explanation did not fit the facts.

Lord Lane also saw that *her explanation did not fit the facts*, but he did not question her further to try to get the truth - he simply left a key part of the evidence as an unsolved mystery. At the same time he criticised Hill for pointing it out to Fitzpatrick as a discrepancy in her evidence.

This was the forensic method used by the Lord Chief Justice of England. He chose to believe what he wished to believe - and when facts came along which tended to cast doubt on that, he left them in an investigative limbo.

He said he appreciated what the "real issues" of the case were - yet they did not appear to have been either the innocence of Mycock, or the truthfulness of Fitzpatrick - which were the two key issues at the trial. He did not say so, but it would seem fair to surmise that the "real issue" of this appeal was the truthfulness, or the motives of the two journalists.

He had a nice case prepared against them, but the evidence they had produced did not fit his scenario. He had a round hole and they provided square pegs to fit into it.

Unfortunately, this was not the end of the infamous case of Fitzpatrick and the BBC journalists. That Lord Lane so pre-judged the issue is bad enough, but what he then did to fit the square pegs into the round hole was a complete abuse of his powers as Lord Chief Justice. It was the first real evidence that he was not fit for the office.

## CHAPTER 6.

### TRICKS AND TACTICS.

Since it was created in 1908, the English Court of Appeal has faced a quandary because it operates a quasi-inquisitorial system whilst the rest of English justice operates an accusatorial system.

There is no jury in the Court of Appeal; the decisions on a case are made by the three judges on the Bench. On the surface there are great similarities to a trial. Appeals are conducted by two barristers in an adversarial position. However, sometimes there are no witnesses at all. In fact until a couple of decades ago working solely with written statements was common. Sometimes the judges question the witnesses - sometimes they even question counsel. The order of the evidence and its presentation is quite different to the way a trial is run. In a trial the prosecution puts on a case and the defence then answers it. In an appeal the judges often take one issue at a time and hear both sides, first appellant, then the Crown - then even both together, in what amounts to a long conversation. Different appeals even merit different procedures - it's determined in advance after the judges have read all the documentation the two counsel have submitted.

It's not surprising therefore that the appeal of Anthony Mycock became somewhat confused - when the "real issues", in Lord Lane's view, concerned the truthfulness of Hill and Young - rather than the innocence of Anthony Mycock and the reliability of Fitzpatrick. Can you imagine a trial "forgetting" the issue of the guilt of the accused - and concentrating instead on the credibility of two persons who were not even witnesses to the crime?

There was an added factor in the Mycock appeal. Whilst "appeals" happen every day, "appeals on reference by the Home Secretary" are more rare. Today they come up at the most once a month, in the mid-eighties they appeared perhaps twice a year. Few solicitors and barristers have experience of them - and because of the Home Secretary's involvement, the normal rules of evidence can become expanded or, at least, bent.

In the Mycock appeal, the Home Secretary sent the case back to the Court of Appeal because he saw the TV programme and heard Fitzpatrick's interview in California. So the Lord Chief Justice was obliged to look at that evidence - but not solely at that evidence. Since a case called *R v Chard* in 1982, "appeals on reference" have had rules that allow the person making the appeal to introduce any evidence - to quote the particular judgement "the whole case and nothing less than the whole case".

Mycock's lawyers took this to mean that *they* could choose what to present - and they thought Fitzpatrick's filmed interview *interesting*, but not essential to their case. In fact, as we have seen, Mycock's counsel eventually came to court saying:

"I have indicated as strongly as I can within my duty that I am not relying on the retraction on the television programme and that my case is based on quite other matters."

That is why one of the great mistakes of the Mycock appeal came about. Because Mycock's lawyers did not require the film evidence, they did not require the tapes of the conversations which had led up to that film. They did not present those transcripts in evidence before the case came to court - and so, before the appeal in court, the judges read the Fitzpatrick and Roark statements presented by the Crown, *but not the journalists' tape transcripts*.

Unfortunately, Fitzpatrick's lies to the court were so outrageous that when Mycock's counsel came to cross-examine her, he did not know how to progress. He resorted to quoting sections of the tape transcripts. But this only confused her further, because she did not know the source of what he was reading. She had not known that Hill was recording everything he had said to her, and the tapes that she herself had insisted on recording of the conversations had, unfortunately "not recorded". (You may think that yet another lie, but it's one supported by Sue Roark)

The turning point in the courtroom came at the end of the first day - though the appeal proper was effectively over. Fitzpatrick had been reciting a version of her conversations with the journalists that had little similarity to the conversations recorded on tape that Mycock's counsel had in transcription before him. Eventually he said:

"I do not know whether it assists your Lordships for me to explain what I am reading from, and it may well be that I shall show the witness a transcript of the tape....."

With their Lordships' permission he then handed some of the pages over to Fitzpatrick and read out sections to her.

Within a few minutes of the tape transcripts being handed to him, Lord Lane adjourned the case until the next morning. When he returned the next day, he introduced the transcripts as evidence. Fitzpatrick had had the night in which to read them. Counsel's trap for her had been blunted.

There were 201 pages of tape transcripts. The judges had the evening in which to read them. It is impossible to discover how much time they devoted to the task, but they certainly had no *plans* to do any such reading heavy reading, for they had no knowledge of the transcripts until Mycock's counsel began referring to them.

So the judges were not as well versed in the transcripts that were now in evidence as they were in the statements from Roark and Fitzpatrick - which they had had weeks to read and which Lord Lane, as he demonstrated on several occasions, could quote without reference to the documentation.

How well had he read the tape transcripts? One indication might be that he *twice placed events of July 5<sup>th</sup> into those of July 6<sup>th</sup>*. And there were other similar errors.

What seems to have happened is that the judges looked at the tape transcripts, but explored them simply to find phrases which appeared to back up the allegations of Fitzpatrick and Roark against the BBC journalists. It seems they were not read in full as would have occurred if they had been submitted well in advance of the proceedings.

If the judges simply 'skipped' through the 201 pages, they were not alone. All the lawyers involved show signs of not having had enough time to absorb the contents of these transcripts before they questioned witnesses. They continued to use words which do not appear in the transcripts. They continued with the same lines of questioning and argument that they had prepared before the case opened - all based, of course, on Fitzpatrick's and Roark's depositions. Even though the transcripts showed that a lot of the evidence was nonsense, they carried on with the plans they had made before the appeal. The result was frequent confusion.

Most importantly, as result of this, all the lawyers in this case went ahead using evidence that could no longer be classed as "best evidence". The tapes recorded by the journalists were clearly "best evidence" - but there was not enough time to properly absorb it.

It is a basic rule of our system of justice that "best evidence" should always be considered by the court whenever possible. In this case the Lord Chief Justice presided over a case where this basic rule was regularly broken.

When it came to consideration of Fitzpatrick's claims, this became important. The Lord Chief Justice, the other two judges on the bench and Crown Counsel all tried to persuade Hill and Young to agree that they had used a certain form of words with which to threaten Fitzpatrick into giving the filmed interview. The words they tried to get the journalists to agree to were all in the statements of Fitzpatrick and Roark. The court used the women's interpretation of wording and events though the best evidence of the tapes was available.

What seemed at the beginning of the appeal to be simply the women's word against the journalists was completely overturned by the transcripts - but the Lord Chief Justice did not allow the tapes to undermine the evidence of the two women. In fact, the introduction of the tapes made any attempt to independently prove the nature of the conversations in any adversarial manner ridiculous - all the

words used were in the tape transcripts, there could be no argument about them. Yet the appeal continued as if there might be - *even with hypothetical conversations introduced*.

There can hardly be any other appeal case at which comprehensive transcriptions of conversations have been introduced - and then completely hypothetical conversations *concocted instead* to bring in a pre-judgement. Such was the sorry state of affairs in the Court of Appeal in 1985.

As we have already seen, another problem raised by the tape transcripts was the *chronology* of the events, particularly in California. The case had been prepared on the basis that Fitzpatrick's chronology of events was correct. However, the tapes showed that she was wrong on several occasions. The lawyers, in particular the judges, stuck largely to Fitzpatrick's chronology - and perhaps that is why Lord Lane twice got the dates wrong.

The situation was always likely to cause confusion. The journalists had not expected to be called, and they had not expected their tapes to be introduced as evidence. But they, of course, remembered what had been said - not only because they had been at the scene, but because they had been involved in transcribing the tapes.

So they sometimes seemed evasive when in fact they simply did not understand the question. One example is an exchange between Hill and Lord Lane:

LCJ: What is wrong if her driving licence application contained lies?

Hill: I said nothing about an application for a driving licence.

This was true, Lord Lane had got it wrong - the tapes showed that Hill had never mentioned the word "application". Lord Lane's only source for the mistake in using the word "application" must be Roark's deposition, for only she ever used the word - and only in that deposition. She said:

"He quoted examples which he alleged were lies. Her application for a driving licence contained lies."

The tape transcript however, was quite clear. Hill said:

"Let me see, your California driving licence is 43033792.....by the way Anne, if you're making up an English licence number, your English licence number is actually based on... your date of birth."

There was an earlier reference which Roark had forgotten. Here it went:

"Hill: Driving licence-

Anne: I've lied about my driving licence?

Hill:....., gave a wrong number in England."

It's clear from this simple mistake that the Lord Chief Justice was not following the evidence by reference to the tapes. He was following Roark's deposition - as if it were the "best evidence" of the truth.

Not only did Lord Lane try to persuade the journalists to agree to the same wording as the two women had used, he also tried to persuade the journalists to follow the same *chronology* as Fitzpatrick and Roark. The tapes clearly demonstrated that certain alleged events had not taken place and certain words had not been used. However, Lord Lane and his fellow judges - and the Crown counsel - tried to get Hill and Young to admit such words had been used and such events taken place. There seemed, on occasion, to be a complete disregard for the truth.

It is not clear whether or not the lawyers involved were aware of what they were doing. This was a very unusual case and the introduction of such voluminous evidence in an appeal on reference at such a late stage (actually *during* the appeal) is probably unique. But their only answer to the problem of making the square pegs fit into the round hole was to use sophistry and courtroom tricks to induce the journalists to say things that would make the original scenario of the case stand up.

Many cases in the Appeal Court allow us an opportunity to study the wisdom of the judges - but few allow us to look at their tactics. This case is unusual in this respect, because Lord Lane's preferred

tactics became only too clear. He lived in a quite different world to the relatively simple world of Anne Fitzpatrick. She told one lie, added to it and invented other lies at will. Lord Lane lived in a world of philosophical concepts and logic. He could resort to different means to achieve his purpose. He proved capable of the wildest of tricks to persuade the journalists to come around to his way of thinking. And that meant, in particular, persuading them to admit that the filmed interview was made up of lies - induced by threats.

The BBC journalists never claimed that what Fitzpatrick told them in California *was true*. They never claimed that her statement that Mycock was innocent, and the robbery a figment of her imagination *was the truth*. In fact, they often said that what she said wasn't true, or at least that they didn't believe her.

Their position was simple. They would not accept anything she said as true - even when she affirmed it was. As we have seen, Hill made this position quite clear in the Court of Appeal when he said he believed nothing Fitzpatrick said unless it could be independently corroborated, and that nothing in her interview could be corroborated.

This is a concept of truth that Lord Lane could hardly disagree with - being something that can be validated, or corroborated, as true from a separate source. His solution to this was simple - the journalists could still be found guilty *if they confessed*.

To do this, Lord Lane resorted to his vast experience of courtroom tactics. We have already seen some of his blocking tactics, but he now used sophistry and he bullied the witnesses.

Crown Counsel did some of this work for him. For example, speaking of the interview in California, he put this question to Hill:

"Was the difficulty this, that she was supposed to be saying that this was a figment of her imagination, when.... she had described how she was fastened up?"

Exactly the opposite had occurred. The tape of the very conversation Counsel was referring to contained the words:

"I didn't tie myself up, I told you, it was a figment of my imagination."

Counsel was following Roark here, rather than the tape transcripts.

He later put a proposition to Young which is basically "If the answer is A or B, and it is not A - then it must be B." But he then inserts words which come from Fitzpatrick and which are not on the tapes. Young does not notice, and agrees to the wording,

The proposition (A) was:

"And maybe convinced herself there was a burglary... but you were not prepared to believe there was a burglary at all?"

Young agrees to this. This reflects the conversation in the transcript.

But the question is then repeated in the slightly different form (B):

"We believe this burglary did not happen and that is the only story we will accept from you."

These words do *not* appear on the tape transcripts. Counsel was taking them from Fitzpatrick's evidence earlier to the Appeal Court. She said Young had told her:

"..that is the only story I am going to accept."

Young fell for the trick, agreeing to what counsel had said. He soon noticed this error - and said so. But that did not stop the Lord Chief Justice using the word "accept" in his judgement. That was the

word Fitzpatrick had used and Young had been tricked into agreeing that he had said it - even though the tapes proved the contrary.

What is so unjust about this is the fact that the word “accept” is only used once in the entire tape transcripts - when Hill says:

“ But if that’s the story, I don’t mind accepting that I suppose, but I just don’t think it fits.”

Here it clearly implies the opposite of what Crown intends in the above, in that Hill is *accepting something he does not believe*.

There are many other such examples. Here are a few of Fitzpatrick’s lies that Crown Counsel tried to put into the journalists’ mouths:

“ And that was said to her, ‘ are you now prepared after being told about the false references, are you now prepared to do what we want?’”

“Give us what we want and we won’t even come round to dinner.”

Even the Lord Chief Justice tried to trick the journalists into agreeing to Fitzpatrick’s allegation - and successfully. One example concerned a very important part of his case against the journalists. Lord Lane wanted Martin Young to admit that they had threatened Fitzpatrick. If we trace the evidence back, we see that the Lord Chief Justice himself was the first person to use the word.

Towards the end of Young’s interrogation, the exchange went:

“ LCJ: Is this the truth, that you considered them to be threats, but in your view they were justified threats...?”

Young: I would say again, taking your Lordship’s words, it is a justified threat.

Young pointed out *that this was Lord Lane’s word* for what had occurred, having made it clear earlier that he would not have applied the word threat to the actions.

Then, after talking about another part of the conversation, came Lord Lane’s trick question:

“Crown: Another justifiable threat?

Young: If you choose to call it that.

LCJ: It is what you have called it.

Young: Yes My Lord.

Young had not “called it that” at all. He had made it clear that he was “using your Lordship’s word” Let us look earlier in the interrogation, to the exchange Young was referring to. He was being questioned about the information the journalists had collected about Fitzpatrick’s lies in California. It went:

LCJ: Are those not threats?

Young: If your lordship pleases those are threats. I did not see them as such, my lord.

LCJ: It is not a question of my being pleased, in your view were those threats?

Young: I did not see them as such my lord.

Lord Lane must have known that he had twisted the truth of what had occurred during this exchange. He must have known that he himself had introduced the word and Martin Young had not only used it reluctantly, but with the qualification “justified”.

But of course, Lord Lane then used the word “threat” in his judgement, regardless of Martin Young’s qualification of it. This is a common technique known as “verbalizing”.

If Lord Lane would allow himself to do this in his court, it is not surprising if he allowed Crown Counsel to get away with something similar.



One example of a deliberately unjust action came when Hill said that Sue Roark had got several things wrong in her statement to the police.

Lord Lane intervened:

“What had Miss Roark got wrong in her statement?”

Hill asked for the transcripts, and began to leaf through them pointing out the errors. Whenever he paused, looking for another, he was asked to go on with his list. This happened four times. When he had listed seventeen errors, Crown Counsel stepped in with the remark:

“Mr. Hill, are you deliberately trying to divert our attention?”

Hill failed to complete his list of Roark’s lies.

Another, more ingenious, trick was perpetrated by the three judges on the bench. It again concerned the phrase “figment of the imagination” about which Crown Counsel had already tried to trick Hill.

After that first attempt, the Lord Chief Justice tried *again* to persuade Hill that he had forced Fitzpatrick to say this against her will, knowing it to be untrue. He tried the trick of creating truth from hypothesis

Lord Lane first suggested to Hill that if the journalists thought the interview was the filmed truth, then the journalists must have thought the robbery was a “figment” - in other words that Fitzpatrick was deluding herself throughout ( incidentally, “deluding” was a word Fitzpatrick never used. It was Dr. Devlin’s word, picked up by the Lord Chief Justice).

Hill’s view was agnostic: he would not trust anything Fitzpatrick said, even the “figment of the imagination” line. But Lord Lane, helped by his two fellow judges in the court, insisted on exploring the idea of the delusion and its implications. The interrogation then went:

Mr. Justice Russell: “There would have to be two delusions would there not? The first was that there was a robbery, and secondly that the man standing on the identification parade .. was the robber?”

Hill tried to avoid accepting the hypothesis that she has been deluding herself:

“My Lord, I find it difficult to speculate on Miss Fitzpatrick’s delusions. What I was interested in was not so much her delusions, but her credibility - and the lady is a liar.”

The Lord Chief Justice now interrupted, demanding an answer and interrupting Hill in a bullying manner whenever he did not readily reply as he wished. .

“LCJ: I do not think that is quite an answer to the question.”

Hill still hedged away from cooperating with the hypothesis.

“I find it difficult to speculate on delusions which Miss Fitzpatrick had in her head my Lord.”

The Lord Chief Justice then tried sophistry. He said it was a matter of logic. He forced Hill to answer on the basis of the hypothesis.

“LCJ: For all these things to have happened, she must have had two delusions: first of all, the robbery took place. Would you agree with that?

Hill replied: “I presume so, yes, my Lord.”

The Lord Chief Justice continued:

“Secondly, the man standing on the identification parade was the robber”

Hill would accept this - he was of the opinion that other factors were at work throughout.

Lord Lane then tried to bully him:

“ Could you try and answer the question? If you cannot, say so.”

Hill replied: “ I do not know nothing -”

At which point the Lord Chief Justice angrily interrupted him with a diversionary tactic:

“Please - is this the way you interrupted the two ladies when you were interviewing them?

Hill replied “ I apologise my lord.”

The Lord Chief Justice then expanded the hypothetical situation in which Fitzpatrick deluded herself. Hill gave in and answered as Lord Lane wished.

Q: First of all there must be have been delusion 1, that there was a robbery. Is that right?

A: Yes.

Q: Secondly, delusion 2, that there was a human being who had taken part in the robbery?

A: Yes.

Q: Thirdly, the delusion that the man standing on the identification parade, Anthony Mycock, was that non-existent human being?

A: Not necessarily.

Q: What do you mean by that?

A: I mean that there is one line of argument one could put, in which Miss Fitzpatrick goes to an identification parade where a man sticks out like a sore thumb, knowing that if she does not pick someone, there will be questions put to her by the police as to whether the robbery ever took place.”

In these exchanges we can see the trap in which Lord Lane and Lord Russell were trying to ensnare Hill. They were taking a hypothetical situation, and by forcing Hill to accept the logic of the three stages of the hypothesis, assuming that he accepted the logic of the hypothesis being the truth.

They were saying, in other words: “ If this was a figment of her imagination, then it follows she was deluding herself on three different occasions. Are you really trying to say that this delusion could last all that time? No delusion can last that long - so the robbery was not a figment of her imagination.”

If Hill had been allowed to speak, he might have argued that the evidence before the judges suggested that it could. He had seen the report of Dr. Devlin, the psychiatrist who had had Fitzpatrick in hospital under observation only a few weeks before the supposed robbery. Devlin had told the Appeal Court: “if put under pressure, *Miss Fitzpatrick could easily be made to believe things which were not actually true.*”

Hill took the position that he did not know if the burglary was a figment of her imagination or not. He could *not corroborate that statement*, so it lay in limbo as being possibly true, possibly not. , Hill’s *private* opinion was that that he never believed any of this was really a figment of Fitzpatrick’s imagination. He believed that she had an argument with Maxine Marshall, broke a lot of Maxine’s things, put other items in a box and eventually gave them away or sold them. He believed Fitzpatrick knew what she was doing all along - and had simply lied at all stages. But he could not prove that - except by producing the evidence that she had disposed of the goods.

Lord Lane did not venture into that possibility. He forced Hill to answer questions on a hypothetical basis, trying to trick him with false logic. The fact that he failed did not change his opinion. He simply resorted to a final courtroom tactic. He lambasted the journalists in his judgment on the appeal, when there was no right of intervention or reply. He then stated “truths” *ex catheda* for which he had no real evidence. Those extremely defamatory truths were then repeated with impunity in the newspapers. Through the Press, Lord Lane finally had his revenge on the journalists.

It was a further four years before Lord Lane’s disreputable conduct in his courtroom came to its logical conclusion - when he was replaced as Lord Chief Justice by Lord Taylor.



## AFTERWORD.

### THE COURT OF APPEAL IN 1985.

In October 1989, the Crown effectively pre-empted the Court of Appeal's ruling by announcing that it did not seek to sustain the convictions of the Guildford Four. It was a turning point in the history of the Court of Appeal because the Lord Chief Justice had been absolutely adamant in earlier judgements that the conviction of the Guildford Four was safe. Now the government decided, through the Director of Public Prosecutions, that the men were to go free no matter what the Lord Chief Justice said.

The freeing of the Guildford Four led to several other such appeal court decisions - and finally to the Royal Commission on Justice under Lord Runciman. Whilst this Commission sat, Lord Lane retired.

The seeds of these historic events can be seen in the appeal of Anthony Mycock.

The Mycock appeal was conducted in a fashion designed to discredit the BBC journalists - who were not even witnesses in the appeal. Hill appeared solely on the Lord Chief Justice's authority - though Lord Lane offered as his justification that it "seemed only proper.. that you should be given the opportunity of making any suggestions or statements that you would like to the contrary." By this, he offered a "right of reply" - but then omitted to mention many of his points of criticism and badgered, threatened and bullied Hill when he didn't like the answers.

Lord Lane even went so far as to formally cautioned Hill "I am bound to warn you" he said, "that it is not necessary for you to answer any question which you think may incriminate you, that is to say, lay you open to criminal proceedings." This statement amazed most people in the courtroom who could not think what he might mean by "criminal proceedings" - except perhaps contempt of court by refusing to answer questions. This caution was clearly designed to "soften up" the journalist - yet another abuse of the Lord Chief Justice's powers.

The behaviour of the journalists, whatever its merits, should not have been an issue before the court. Their appearance deflected the court from a true consideration of what the real issues were.

An irrational position was taken on the question of Fitzpatrick's credibility. Gary Mycock was accused of robbery when there was no evidence to support that accusation. The Lord Chief Justice confirmed the fact of the robbery on bad, indeed non-existent, corroborative evidence. Each of these three faults stemmed from the desire to criticise the BBC journalists.

Courtroom tricks were used to promote the criticism of the BBC journalists and best evidence was ill-used and mis-quoted to the same end. The Lord Chief Justice laid 7 specific charges against the BBC journalists. To promote these accusation, he acted unfairly in the name of fairness; he unjustly edited a quotation whilst accusing the BBC journalists of the same crime; he did not ask for all the evidence on the matter; he substituted prejudicial wording for the original; he ignored the context of the journalists' remarks concerning the local sheriff, Law Lords and their interview with Lord Devlin. He criticised the journalists for not accepting a lie.

He believed Fitzpatrick's word in spite of the fact that there was evidence before him that she had lied at least 70 times.

The pattern of his belief of her word shows his overwhelming desire to criticise the BBC journalists. She was believed when she spoke of discussions with the BBC journalists; she was believed whenever she offered evidence that her filmed interview was induced by threats. Her credibility was supported everywhere else, but was not regarded as being of importance. Her filmed interview was not believed.

Lord Lane ignored allegations Fitzpatrick made against the police. He supported poor police work. By so doing he significantly changed the context of the evidence before him.

He ignored, and did not include in his judgement, evidence that the BBC journalists had employed standard, indeed proper, investigative technique.

His judgement did not take the normal form. It adopted the form of a trial summing-up. As a summing-up, it was an unfair rendition of the evidence that had been placed before the court. This partly stems from the fact that the Lord Chief Justice allowed the introduction of such voluminous evidence into the proceedings without granting adequate time for it to be absorbed properly. An adjournment should have been called to allow such time as was necessary.

There is no duty laid upon the Lord Chief Justice to embark on “fishing expeditions”. It is not his duty to investigate and make reasoned judgements on areas of evidence that are not central to the issue of whether the appellant before him is innocent or guilty.

There is also a question of whether Lord Lane broke the rules on hearsay evidence. The Lord Chief Justice can rule on matters of law and thereby create new law. Moreover, under the Criminal Evidence Act 1988 the courts were given wide discretion to admit hearsay evidence. However, by the law as applied in 1985 the accusations made by Fitzpatrick against Hill and Young appear to fall well within all definitions of “hearsay evidence” - particularly when contrasted with the “best evidence” of the tape transcripts. If she had made such accusations at Mycock’s *trial, before a jury*, her evidence would certainly have been ruled out of order. Because it would have been classified as “hearsay” at trial, such evidence could not be classified as “fresh evidence” at an appeal on reference.

The Lord Chief Justice certainly fulfilled his obligation to society in the Mycock case by freeing Anthony Mycock. But he abused his powers granted to him by the people through Parliament by commenting as he did on the journalists.

The search for guilt is the reason for a trial. The Court of Appeal often turns towards the search for truth. The subtlety of conceptions of “truth” which were employed during the Mycock case were not accurately expressed in the Lord Chief Justice’s judgement. Without the aid of the court transcripts, no one could know this. The Lord Chief Justice effectively slandered the journalists without them having any means whatsoever of rectifying the situation.

His comments on the two BBC journalists were ill-founded. No Lord Chief Justice should be susceptible to criticism of this nature.

Ironically, just one month before this, the two journalists had asked the BBC legal department for a barrister to be briefed to sit in on the Appeal. The legal department was not enamoured of the suggestion because, as they put it, the expense would have been “outweighed by the lack of advantage to the Corporation.” The last remark in the memo from the BBC legal department on the matter was:

“I rather feel that the Court of Appeal will very quickly modify their usual anti-TV stance when they hear of the mutual support afforded by “Justice” and the Rough Justice team in cases of this nature.”

Another memo came from the legal department on 26th November 1985 - just before the appeal. It was the final judgement on the conversations between the journalists and Fitzpatrick. The Senior Legal Assistant had read the transcripts. He stated: “I am reasonably happy with most of what was said by our men....it is my view that the conduct of the BBC team is unlikely to have any great bearing upon the outcome of the Mycock appeal.”

How wrong can you be?

## CHAPTER 7.

### ON THE LAW AND JOURNALISM

How does a journalist respond to such treatment from the Lord Chief Justice of England?

There can be no retaliation through the normal channels. Not only does the Lord Chief Justice enjoy special privilege within the confines of his court, but to sue him for defamation is impracticable. Any suit for defamation would ultimately come before the Master of the Rolls in Court no. 3 - next to the Lord Chief Justice's Court. The two are always close partners, one handling the civil side of justice, the other the criminal side. However, the Lord Chief Justice is actually superior in power to the Master of the Rolls, so if they were to fall out he would have the power to over-rule his partner in justice. For this same reason the journalists in this case could not practically sue the newspapers who printed what the Lord Chief Justice said - even when they mis-reported and distorted his words.

In such a situation, the journalist in 1985 looked elsewhere to justify himself. Today's journalist, helped by the Human Rights Act can still rely on the same justification.

In 1985 the journalist first looked to Article 10 of the European Convention on Human Rights - to which the United Kingdom is a signatory. This concerns freedom of expression. It says:

*Everyone has a right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.*

And paragraph 2 adds:

*The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, condition, restrictions or penalties as are prescribed by law and are necessary in a democratic society... for the protection of the health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

These were Hill and Young's *rights to hold opinions and impart them*. The article also contains another important right - the right of the public *to receive information without interference*. However, these rights are subject to certain conditions.

First there is the law. The relevant laws in England and California are not dissimilar, and since most of the subject matter here under review concerns England, the Californian law will be disregarded - though the strength of the 1st Amendment to the American Constitution (right to freedom of speech and of the Press) should not be forgotten since it is held to be considerably stronger than Article 10 of the ECHR.

The relevant laws binding the journalists would be defamation, harassment and trespass.

Briefly, *defamation* is the publication of material that adversely affects the reputation of an individual. This implies that the subject of the publication enjoys a reputation in the area within which the publication is made.

*Trespass* is the unlawful invasion of private property.

*Harassment* is another form of intrusion - approaching individuals with the intention of causing discomfort. Lawyers usually consider that two approaches, in a normal fashion, is acceptable. Beyond that, someone making an unwelcome approach may be considered to be harassing that person.

In 1985 there was also the Broadcasting Complaints Council, which survives in various guises. It was empowered to entertain complaints on two grounds:

1. Unjust or unfair treatment in a programme,

and

2. Unwarranted infringement of privacy in, or in connection with, obtaining material in a programme.

The current BBC Producer Guidelines reflect the effect of these two paragraphs. There are other parts of the current Producer Guidelines that pertain to the general manner of events in the Fitzpatrick case, such as allegations against individuals, right of reply, straight dealing, recording telephone conversations, hidden microphones and cameras. However, the guidelines as we know them were not in operation in 1985.

In 1985 there were no formal printed guidelines as we now have them. There was a “Current Affairs Index” that gave general policy guidelines. However, in the main, guidelines on conduct were contained in various speeches, memos and conversations during which particular problems were discussed.

One such example of the latter was the discussion that led to Hill and Young recording all conversations with Fitzpatrick. These recordings were never intended for transmission; in 1985 the only rule about surreptitious recording concerned material recorded for transmission. The recordings Hill and Young made were for use in their defence in any future court case involving Fitzpatrick (defamation was the obvious thought).

Investigative journalism is a special case. The general guidelines on conduct that Hill and Young worked to were contained in a speech by the responsible member of the Board of Management, Richard Francis, then Director, News and Current Affairs.

Relevant quotations would be:

*“The BBC is constitutionally responsible to the people in Parliament”.*

*“Whereas the media cannot exist outside the law, the criteria whereby the media decide whether to publish will not always co-incide with the dictates of the law, which is neither defined nor intended to describe the limits of what is publishable.”*

*“the proscriptions of the law do not always coincide with the responsibilities of the media.”*

*“Without reliable, independent and courageous journalism in the face of societal pressures, the public is in danger of not being able to assess for itself the performance of authority (outside as well as inside the courts) or the need for legislation.”*

*“It may also be necessary to demonstrate palpable illegality in order to bring to public attention situations previously unknown ...”*

*“Quite commonly a journalist will come across information in the course of his business that, if he were a private citizen, he would be compelled to pass on to the police. But as a journalist, if he is to protect his sources, and more particularly if he is to safeguard his credibility and continue to be able to cover what affects the public at large, it is necessary for him not to reveal his sources and not to pass on his information.”*

*“To present an honest picture of a situation which puts the public at large in jeopardy, the journalist may well have to discomfort the individual transgressor beyond socially as well as legally acceptable limits. If he does a proper job of exposing the swindler running off with pensioners' life savings, society applauds. But if his doughty investigative journalism is flawed or clumsy, society condemns him.”*

The report prepared for the BBC on the “Rough Justice” affair by Head of Current Affairs, Peter Pagnamenta, went along similar lines, but referred more directly to “Rough Justice”

Pagnamenta wrote:

*"Rough Justice" has operated in the most difficult area of all - up alongside the police and the judiciary, required to challenge the judgements of both, but with the authority of neither, It is not chasing villains, but producing evidence, on behalf of people who are already seen as villains."*

*"The Fitzpatrick dealings need to be seen in the wider context of BBC journalism as a whole. Investigative programmes of the sort that Hill and Young were making operate in the most difficult and sensitive area of our factual output. No neat code of conduct can govern this sort of work precisely. Our internal guidelines avoid many of the grey areas, except where the News and Current Affairs Index says:*

*"The BBC does not believe in badgering people nor in 'foot in the door journalism' Very exceptionally (e.g. in investigative consumer programmes), when this sort of approach is felt necessary, it must be justified by the content of the programme in which it is used and must be authorised by the Head of Department."*

*"But it is unarguably the case that some of the work in this "exceptional" area has a most important public service role"*

*"Different methods are appropriate to different stories. **The BBC already acknowledges that the ends do, in a very limited sense, sometimes justify the means.** This is almost conceded when our guidelines say "when this sort of approach is felt necessary it must be justified by the content of the programme".*

These quotations demonstrate that the guidelines used by BBC journalists in 1985 were not lightly constructed. Both Richard Francis and Peter Pagnamenta had clearly considered the role of the journalist in society balancing freedom of expression (with the public's right to know) against the limitations of the law.

In short, and very broadly, the above guidelines might be expressed as "The ends may, on occasion, justify the means - but only so long as the public approve."

So, just what did the **public** think of what Hill and Young had done with their "Rough Justice programme?

In the House of Lords, Lord Paget - who had no connection with the programme - said " Martin Young and Peter Hill .... once again demonstrated how unfit the Court of Appeal is to do its job. It did not, for instance, take the two journalists long to find out first that Anne was a notorious fantasist. And they soon heard that neither Miss Prow nor Miss Marshall, both of whom knew her well, believed that a burglary had not taken place and that the landlord and Anne's own father were of like mind. In the end they discovered that she was known locally as 'Schizo-Annie'. "

Lord Paget asked : "Were they right? They had provided evidence which no impartial authority had any right to reject; and authority had rejected it... Only the people could save Mycock now."

In the same debate Lord GlenArthur, for the government, said:

"In the modern world the press and the broadcasting media are the eyes and ears of the public. They have a legitimate and, indeed, a crucial role to play in the field of criminal justice, as they have in many other areas of public life."

Sir Brian Mackenna, a former Justice of Appeal, wrote to the Director General of the BBC about Peter Hill:

"I am convinced that whatever he did was done for a good motive, for the purpose of re-dressing what he conceived to be, and I don't doubt was, an injustice. Sometimes those who administer the law see only half the truth."

Mycock's Member of Parliament, James Callaghan, wrote to the Director General:



“I became convinced of Mr. Hill’s honesty, truthfulness of approach and was convinced he is a man of professional integrity.”

These quotations can only represent a small part of public opinion, but it is an important and authoritative part. Apart from these commendations, the “Rough Justice” team was showered with letters of support from ordinary members of the public.

So what *should* Hill and Young have done in the Mycock investigation - *that they did not do?*

They faced several problems once they had gathered sufficient evidence to reach the view that Anne Fitzpatrick had lied when she had identified Mycock and had lied about the burglary.

1. They were going ahead with a programme that was clearly going to defame Anne Fitzpatrick. It would call her a liar - one of the worst of defamations - and they would be publishing this defamation in an area where, if she had a good reputation, that reputation, in part, rested.

a) To be fair to her, they had to offer her a *right of reply*. The right of reply is not only an important aspect of being fair to persons being accused of something. It is also a matter of being fair to the subject matter and to the viewer. What’s more, it is an important part of any defence against defamation. Clever people who are the subject of investigative TV programmes realise this. They sometimes try to avoid being given adequate right of reply - so that the lack of an *adequate* right of reply can be used against the journalist at a later stage.

There is one last very important point about a right of reply - it may reveal a perfectly reasonable explanation for what seemed to be something illegal or morally wrong.

With Fitzpatrick, offering a right to reply meant:

i) *locating her*

ii) *ensuring that she fully understood the details of the accusations being made and the evidence that backed them up.*

iii) *Ensuring that she understood that the programme would go ahead even if she did not give an interview as her right of reply.*

b) They had to ensure that the BBC had a sound defence of any defamatory statements transmitted. This entailed:

i) *gathering evidence in depth of the accusations against Fitzpatrick.*

ii) *researching Fitzpatrick’s reputation ( or lack of it) in California. This would be part of a defence that she had no reputation at all that the journalists might harm.*

c) They had to ensure that their actions in California - where they were to deal with Fitzpatrick - were within the laws of California. This would be regardless of whether or not such actions would be legal in England.

2. They were dealing with someone who was thought by close acquaintances to be a schizophrenic or a fantasist. Certainly they knew she had an unstable personality - and they had been warned by several persons in Manchester that she was likely to “cry rape” as a tactic against them. According to these witnesses in Manchester she had already done this against two persons in Manchester.

To deal with this problem they decided:

i) *to meet Fitzpatrick always in a public place.*

ii) *to record every conversation they had with her.*

3. They had an obligation to Anthony Mycock in that he was an innocent person jailed because of her lies. They had to decide whether the evidence they had in Manchester was sufficient to persuade first the Home Secretary and then the Lord Chief Justice that he should be freed. If this seemed unlikely, the journalists had to decide whether an interview with Fitzpatrick might help convince them. The balance in this took into account:

i) *the record of the Lord Chief Justice in this respect was not encouraging.*

ii) once alerted, Fitzpatrick would probably “go to ground”, so that the taking of any evidence from her, either by the journalists or the police, would be impossible.  
 iii) Because Fitzpatrick’s previous record in this case was composed of lies throughout, she would probably lie to the journalists in California. Any recorded instance of lies by Fitzpatrick would help destroy her credibility and therefore aid the BBC in a defence against defamation. A filmed interview in which she lied would be particularly valuable if what she said could be proved to be lies. Credibility is a key issue in many defamation suits.

4. The BBC was under pressure from many sources in 1985 - particularly from the Conservative Party in government which wanted certain reforms to be made. Bearing in mind Richard Francis’ view that :  
*“To present an honest picture of a situation which puts the public at large in jeopardy, the journalist may well have to discomfort the individual transgressor beyond socially as well as legally acceptable limits. If he does a proper job of exposing the swindler running off with pensioners life savings, society applauds. But if his doughty investigative journalism is flawed or clumsy, society condemns him.”*

They therefore needed to ensure:

i) that “the public at large was in jeopardy”  
 ii) they had to do a “proper job”  
 iii) their journalism had to be unflawed, and not clumsily-done.

To this they added

iv) they would have to be completely above-board about what they had done in California.

The key question was - would the Home Secretary refer the case to the Court and would Lord Lane quash Anthony Mycock’s case on the evidence that the journalists had already gathered in Manchester?

If Hill and Young were convinced that Mycock’s case would succeed *without any input from Fitzpatrick*, they may have considered not going to California, and trying to ensure she had a “right of reply” in some other way. However, the two journalists had more experience of the Home Office in this respect and of Lord Lane’s Court of Appeal than anyone outside the legal profession. Their experience and the expert advice given to them by members of “Justice” led them to the conclusion that *they could not take the risk of not going to California*.

It was a balance of risks. If they did not deal with Fitzpatrick they risked the Home Secretary and Lord Lane turning down Mycock’s appeal and keeping an innocent man in jail. And they would probably never get a chance to contact Fitzpatrick again - thus losing their opportunity to offer her a right of reply - a factor that would count in any defamation suit.

They judged the *risk of losing Mycock’s appeal* was greater than the risk they knew they would run *in dealing with Anne Fitzpatrick*.

5. The public had a right to know the extent to which the English system of justice could go wrong - that innocent men were being jailed in Britain and their appeals being dismissed and that good liars could bring this about by fooling the police and the Court of Appeal.

More particularly, this case demonstrated that new identification parade procedures should be introduced - *as they were, after this particular case*.

The journalists considered that since their work exposed these two major problems in the British system of justice, *what they were covering came within the definition of putting the “public at large in jeopardy”* - and their endeavours therefore came within the Francis guidelines.

6. They took extra precautions in addition to the tape-recordings and meetings in public places listed above. They did not, themselves, hold to the Francis guideline in as much as Francis implied that the Ends justified the Means. “Rough Justice” had always operated within the law, and an editorial decision was taken that *they would not break the law no matter what*. When they first arrived in California they contacted American lawyers working for the BBC, outlined their intentions and received a briefing in Californian law.

7. To make things absolutely clear, and to avoid unnecessary distress to Anne Fitzpatrick, the BBC journalist even drew up a formal contract binding them to not show the programme in the United States. This was designed to protect her. This contract, signed after the interview was filmed, read:

*The following is an agreement between Peter Hill on behalf of B.B.C. Television and Mary Anne Fitzpatrick of 25551F, Indian Hill, Laguna Hills, California. By this agreement, Mr. Hill contracts that the interview filmed on 5th July 1985 with Miss Fitzpatrick concerning her admission that there was not a burglary at 145D Church Lane Harpurhey, Manchester on the morning of 31st May 1983 shall not be for sale or offered in any way to any United States television organisation with a view to any public transmission of the said interview in the United States, This agreement does not apply to one copy of the entire programme within which Miss Fitzpatrick's interview is to be placed which will be sent to Miss Fitzpatrick at her above address for her own private viewing, By this agreement-Miss Fitzpatrick accepts the sum of \$100 as payment for her entire participation in the making of the aforementioned interview, this fee covering all travelling expenses, disturbance loss of earnings etc which Miss Fitzpatrick may have suffered in the preparation and making of the interview.*

*Signed: Peter M. Hill. Martin Young. Mary Anne Fitzpatrick. Sue Roark.*

Significantly, Sue Roark signed this contract as a witness. She made absolutely no objection to doing so - yet her evidence, with Fitzpatrick's, to the court was consistent in the claim that Fitzpatrick gave the interview with reluctance.

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So, in summary - what was the journalists attitude towards the Lord Chief Justice's criticisms?

They had looked carefully to the law - *and not broken it*. They had looked to their organisation's guidelines - *and abided by them*. They had looked to the individual's human rights - *and upheld them*.

Surely in such circumstances their superiors should have backed them?

They did not. They resorted to wholesale breach of staff procedures, lying, threats, subterfuge, deceit, blackmail and lawlessness. What was already a stain on the character of the Court of Appeal in England now spread to one of its most prestigious organisations - the BBC.

## **CHAPTER 8.**

### **THE INQUISITION.**

*What happened next is subjective to the three journalists involved - Hill, Young and their Editor Elwyn Parry Jones. Each will have his own version of events. This chapter must therefore be written in the first person by one of them, Peter Hill, the producer of the "Rough Justice" programme and the person most concerned and involved with the legal and ethical aspects of the production. Because of this, the narrative now changes to the first person.*

The Lord Chief Justice's judgment was on Thursday, December 5<sup>th</sup> 1985. I was called into the BBC Current Affairs department offices at Lime Grove in West London on the Saturday morning by Elwyn Parry Jones. He told me that an inquiry was going on.

When I arrived at the studios, I was handed a list of 5 questions. I was told I had to prepare a written reply - and it had to be short. Looking at the questions, it seemed to me that they missed several major points. They were largely of the type "When did you stop beating your wife?" So I did not specifically reply to them.

Instead I wrote a 2 page reply to what appeared to be the accusations in the questions. This was sent up to my Head of Department Peter Pagnamenta.

The two sheets were brought back by Elwyn Parry Jones. He said that they had to be reduced - indeed halved. I said that I couldn't do this, that I thought my version was too short anyway, and that I did not think that the full list of necessary questions had been put. I said I thought that there were many more points relevant to an inquiry which I hadn't mentioned in the document, because the questions I had been given had not touched on the subject matter. I also pointed out that I did not know what exactly what Lord Lane had said because I had not been in court during the judgement and the judgement was not yet printed.

This last point was of supreme importance in my opinion. The questions I had been presented with were plainly based on newspaper reports - in particular that in the Times. I did not trust the reporting and I thought that there were other questions that might be raised. I thought that the newspapers might well have taken Lord Lane's remarks out of context or misinterpreted them.

Elwyn Parry Jones said that the shorter version had to be made. He sat down at a typewriter and told me to dictate answers to the questions - and he would write them down. At the top of this sheet of paper he wrote words along the lines of "mistakes that were made..."

Both Martin Young (who had also been called in) and I protested about this. We said we did not think that we had made any mistakes and that we thought this was extremely prejudicial to any case in a BBC inquiry anyway. Elwyn deleted this heading and substituted another, similar, line.

The paper was then written by Elwyn. He asked us questions and wrote what he wished. The result was much shorter than the first statement and was written in a manner with which I did not agree. I was told however, by my immediate superior, Elwyn Parry Jones, that I had to accept the command of my superior, Peter Pagnamenta. However, although I was told this, I never once met Peter Pagnamenta throughout this entire period. I believe I first saw him briefly on the evening of the following Tuesday, and on the Sunday night when he popped his head around the door of Elwyn's office when I happened to be there. But I did not discuss the inquiry with him. I understood that he considered it better if he did not see me directly during this period.

At this time I presented Peter Pagnamenta with a list of pressures placed upon me during the previous year. They were the usual problems, but nevertheless not what non-producers might expect. I included:

1. Rough Justice's budget has never been adequate for the task in hand.
2. In the summer I was ordered to take on a Film Director (Bill Jones) who I felt I could not afford, but was told that he would lose his job if I did not.

3. I had great difficulty in finding a researcher of the necessary calibre. Having found such a researcher I twice found myself in the position of his contract not being renewed and devoting time to finding another job.
4. I was severely hampered by indecision as to whether the programme was to be wholly film or tape - or part of each. The final decision I believe to have been wrong and increased pressure on my editing schedule.
5. I was misled about which film editor I could have and when - with the resultant loss of several weeks editing.
6. The transmission schedule was changed several times resulting in uncertainty, time lost in discussion and ultimately one week less in our schedule.
7. One of our three investigations had stopped completely in the summer for 6 weeks because the chief contributor had a miscarriage. Time was consumed in reorganisation.
8. The Mycock case led to foreign travel for which the programme was not budgeted. As this occurred, I was being ordered to deliver within budget.
9. Film Department equipment did not function to its full capacity. In particular much of what was shot was not time-coded as was necessary for an efficient operation..
10. Shooting took place during an exceptionally wet period when much of our shooting was of necessity out of doors.

It was during the hurly-burly of the first weekend after the Mycock appeal that I first raised the matter of the warnings I had given the BBC months, even years, before. I had warned my line managers about the Lord Chief Justice's antipathy towards the programme and put forward my suggestions as to how the programme should be changed to avoid trouble. Such warnings had gone to my Head of Department and to Managing Director Television. They had all been ignored. Fortunately, I still had copies of my earliest warnings - in 1982, three years before the trouble occurred. In a memo I wrote to Peter Pagnamenta on December 8th 1985 I outlined some of the dangers I had brought to the attention of my superiors in the BBC.

On the Monday I received a telephone call at home from Alan Protheroe who was then the Assistant Director General. He said that a letter was on its way to me. He said he wanted to chat to me about the matter on a quiet, friendly basis. He emphasised that this conversation was not an inquiry as such, and that I did not need formal representation or anything of that nature. He said that it was simply going to be a friendly chat.

The letter that subsequently arrived by despatch rider began with a reference to the Lord Chief Justice's comments, saying that the BBC should take careful note of his strictures. It then emphasised that the meeting was in no sense a "disciplinary hearing". I was invited because I was a key figure in the programme, meeting the man charged with responsibility for the BBC's standards of journalism.

I attended this meeting on the afternoon of Wednesday 10th. It was a friendly atmosphere. I sat in a very comfortable chair and was offered coffee. That morning I had received a copy of the typescript of Lord Lane's judgement, (though not the appeal transcript) but I did not have enough time to read it before this meeting.

Alan Protheroe had a set of questions on a pad to put to me. I went through the affair as best I could in reply to his questions. It was not in chronological order, and some of what I had to say was not covered by the questions. I was, of course, unprepared in general terms. I could not produce documentary evidence, particularly the Lord Chief Justice's judgement, and I could not call witnesses.

I told Alan Protheroe that, looking back over the California experience, I felt that Martin Young and I had perhaps been a little clumsy in our approach to Fitzpatrick, but that it had always been our intention to be a bit hard on her. We knew she was a fantasist and we believed that the only way to make her appreciate the reality of the situation was to be harder than we might normally be. If we had

played it “soft and gentle” she would not have taken us seriously. . We had been afraid that she would feel that it simply was not happening to her, and walk away - an outcome which we had felt would have benefited neither the BBC nor her. I said in summary of this that I felt that I may not have come up to my own personal standards, though I did not believe that I had broken any BBC guidelines.

I also told Alan Protheroe that I thought Martin and I had been working in uncharted waters, where possibly no journalist had trod before, and that I did not think that the present BBC guidelines as I knew them covered the extreme circumstances in which we had found ourselves.

We talked about the tape recordings Martin and I had made. I did not manage to make the point that most of these had been done with Anne Fitzpatrick’s permission. However, I explained the background to the decision. I said that we had been afraid that she would invent things that she alleged we had said to her and that this was dangerous for the BBC. I said that we had first decided to simply take notes of what we said to the lady, but thought finally that this was impractical. I said that the tapes were certainly not taken for transmission, and were primarily a record instead of notes of what we had said to Fitzpatrick, and secondarily to Roark, when Roark took on the role of substituting for Fitzpatrick by acting as intermediary and agent for her. The recording of the voices of the two women was somewhat incidental to the primary aim of recording *our* words to them.

Alan Protheroe asked me if I thought that the ends justify the means. I replied that I did not agree with such a policy and had not used it in making “Rough Justice”. I talked about the general approach to Fitzpatrick at the conversation of July 4th. Martin and I had discussed this both the night before, and just prior to the discussion.

I outlined that we had decided that we would tell Fitzpatrick the *entire* truth about what we were doing, what we had found out about her both in Manchester and the USA, and what we believed had happened in Manchester. As to our attitude towards the “burglary”, we decided that the form of words should be that we would tell her that we were “not prepared to believe that there had been a burglary”. This was in fact the exact truth on the matter.

We also decided that we had better put this to her very quickly, and with some emphasis, because from what we had heard about Fitzpatrick prior to meeting her, it seemed she was a fantasist who might simply not take us seriously. The conversation in which she had even denied her own identity had increased this belief.

We felt that she might well walk away from us. We might well find ourselves technically in a situation in which if we approached her again we would be ‘harassing her’. This outcome would not be in the BBC’s best interests - nor in Fitzpatrick’s best interests either. Furthermore, if she was not in discussion with us, and thought we were harassing her, we thought it likely that she would be all the more vindictive towards the BBC and would definitely try to cook up some false story.

We felt we had to give her a mild jolt to try to bring her to a sense of reality so that she would deal with us and not walk away. In short, the quicker the better - but therefore the “harder” the approach.

Not only did I tell Alan Protheroe that we had thought Fitzpatrick might even invent an entire episode, as well as words that we had said to her during actual conversations, but I also told him we felt we had to give her the option of having Roark present or not. I also added that we had always met Fitzpatrick in public places so that we could not be accused of assault or rape or some similar crime.

Contrary to the content of the letter of invitation, the matter of the Lord Chief Justice’s comments was covered only in passing. As far as I remember, the accusations made by Lord Lane were not directly the subject of any of Alan Protheroe’s questions, though I could see that some of the questions had clearly emanated from the newspaper reporting of them.

Alan Protheroe appeared to me to trying to find out whether we as journalists ( i.e. the BBC) could find a position whereby we could remain aloof from the strictures of Lord Lane. Since I had experienced some of Lord Lane’s thinking during my interrogation in the appeal court, I tried to emphasise to the Assistant Director General that Lord Lane did not fully understand the dangers that journalists such as myself sometimes find themselves in. I tried to distinguish the duties of a journalist from those of other

professions - such as lawyers. I also emphasised as best I could those areas of evidence which I suspected the Court had not fully explored - indeed never even covered.

Towards the end of the interview Alan Protheroe asked me if I thought that there were any other pressures in the BBC which had caused me to make mistakes in California. I did not tell him my true opinion. I felt I was caught between two sides in this. If I mentioned that I had been warning the BBC about something of this nature for the past three years and had no response to my memos, I felt that higher management would feel threatened and judge me all the harsher.

In fact there had been severe pressure on me during the last series of "Rough Justice", but none, in my opinion, that would be an excuse for poor work.

I did not feel I needed to mention any of this because the current discussion was concerned solely with the BBC guidelines. I firmly believed I had not broken any BBC guidelines - so the scope of the inquiry did not need to be broadened beyond that. I contented myself with replying that there were always pressures around producers - particularly financial ones, but that a competent producer should be able to handle them as a part of the job.

Alan Protheroe took a note of this reply. It was a very friendly meeting, at the end of which Protheroe told me that if I ever got into such a situation again, I should contact him immediately so that he could help. I would estimate I was in Protheroe's office for about an hour. I felt supported by the Assistant Director General and I felt that the matter had ended there, and that I could breathe freely for the first time in a week.

I was extremely surprised to hear, I think on the very next day, December 12th, from 'a well-wisher' in Broadcasting House, that dismissal notices were being prepared for both me and Martin Young.

On the Friday, the 13th of December I received a letter from MD TEL, Bill Cotton saying that I must attend a disciplinary interview on December 17th.

This was the point in the affair when Martin Young and I decided to call in our union, the NUJ. The representative of the NUJ at that time was Vincent Hanna.

When we first met to discuss this, Hanna handed me a copy of Staff Instruction 366, which had been distributed in May 24th 1977. I do not recollect ever having seen a copy of this staff instruction until then. I have subsequently checked the date in my diary and see that I had been in Israel and France during that period, returning to take leave - this was the period when this staff instruction was put on the notice boards.

When I read this paper, I realised that the interview with Protheroe had in fact been a "Preliminary investigation." as defined in para 3.1.1 of SI366. This was confirmed by the letter from Cotton dated 13th December, which said that the disciplinary interview was "arising out of the discussion " I had had with Protheroe.

I now also realised for the first time that the allegation being investigated was under the heading of being a "breach of discipline". This was completely new to me - I had been under the impression that what was being looked into was an " appraisal of my performance" - in that so far there had been no accusation that I had broken BBC guidelines.

Having read SI366 I realised that that several points in this staff instruction had not been complied with during the Protheroe interview:

**a)** Contrary to para 3.1.1., the purpose of the questioning had not been clearly explained at the outset. I had been informed in the letter from Protheroe dated 9th December that he was undertaking an internal inquiry into the events surrounding the "Rough Justice" programme on the Mycock case, and that this was because the BBC should take careful note of the strictures and the attack by the Lord Chief Justice.

**b)** In this same paragraph, 3.1.1. it stated that it should be drawn to the attention of the member of staff that he had the right to have the assistance of a local Union representative or a colleague before the questioning proceeds. I had not been informed of any such right.

Worse - the phone call from Alan Protheroe when he asked to me attend was quite the reverse of this. He told me that the interview would be very much along the lines that this was an friendly, informal chat, just to get things straight. What's more, his letter subsequently stated that the meeting was "in no sense a 'disciplinary hearing'"

**c)** I also saw that there was a note attached to para 3.1.1. that read " If the nature of the alleged breach of discipline and the member of staff thought to have committed it are known, then there is no reason to hold a preliminary investigation."

Everything I was being accused of was *known* before the Protheroe interview. The allegation was quite clear in the Cotton letter of 13th December. It was " the allegation that you brought undue and improper pressure on Miss Fitzpatrick to give an interview in the 'Rough Justice' programme."

Nothing new on that had emerged during the interview with Protheroe. Why then had the Protheroe interview taken place? His letter of December 9th said that he was conducting an internal inquiry. I came to the conclusion that it had been a "fishing expedition", designed to persuade me to "confess" to something, beguiled by the friendly nature of the interview. That would then be later used against me. For the first time I realised that some in senior management were plotting against me - they were breaking the rules in an effort to trick me into saying something with which they could damn me. This tactic of entrapment by use of the Protheroe interview was contrary to the note attached to 3.1.1.

One of the allegations in the letter from Bill Cotton announcing the disciplinary hearing did not arise from the interview with Protheroe, since the matter had not been discussed with him. Cotton accused me of something *on which the only evidence came from the Lord Chief Justice*. This was the allegation about cutting the words 'until three days ago.' This came directly and solely from Lord Lane's judgement. It had not been raised in the previous inquiries inside the BBC.

Martin Young and I, with Vincent Hanna, next had an informal meeting with the Head of Personnel, Glynne Pryce. Several possible scenarios were discussed.

Vincent was of the opinion that there had to be some plea-bargaining. I remember saying in such a circumstance that I would ultimately settle for a reprimand and a move to a different department. I added that I did not think I merited such punishment, but if I had to concede something, that was what I would concede.

My reasons for taking this line were largely due to fatigue. I had been under severe pressure during the previous year. In fact, I had been negotiating to get out of Current Affairs because of the general pressure upon the department. These moves had begun several years before - I had even had lunch with the Head of Features Group Will Wyatt to discuss a move across to his department.

After the third series of "Rough Justice" I had once more entered into negotiations to move "Rough Justice" out of the beleaguered Current Affairs Department - either to Documentary Features under Will Wyatt, or to Network Features under Roger Laughton.

This internal inquiry seemed to me to be an opportunity to make such a move - so I offered the idea as a concession when we spoke to Glynne Price.

Clearly, with hindsight, it is clear that I was still somewhat innocent in this affair. I honestly believed that the BBC would stand by me and that a move to another department would be sufficient response to the Lord Chief Justice.

But I was not alone in my innocence. For example, I prepared a document requesting ( as was my right) a copy of Alan Protheroe's report on the interview I had had with him. I wanted to know what had prompted Bill Cotton to instigate a disciplinary hearing. Vincent Hanna persuaded me not to present



this paper. He felt it would cause unnecessary anger - it would merely anger Bill Cotton. I could not see why.

In fact the Protheroe report was largely in my favour. I saw a copy of it some months later - too late for it to have any effect on the affair.

I also told Glynne Price and Vincent Hanna that I knew dismissal notices had been prepared. Neither of them would believe this. They said I was blowing it all out of proportion.

I also showed them the Dick Francis speech mentioned above - the one in which he said :

***“To present an honest picture of a situation which puts the public at large in jeopardy, the journalist may well have to discomfort the individual transgressor beyond socially as well as legally acceptable limits.”***

I pointed out that Francis, my ultimate superior inside Current Affairs, had made several points which were in our favour. First, it gave us licence to break the law on occasion. Secondly he implied that the BBC policy was that ultimately the ends could justify the means.

I told Glynne Price and Vincent Hanna that I did not agree with breaking the law, and had not done so with Fitzpatrick. I added that as the “Rough Justice” producer I had often been in a situation when someone on the programme might have gone to extreme measures for evidence - but I had laid down a rule that the ends never justified the means.

Vincent Hanna gave me a copy of the News and Current Affairs Index. I told him that nothing in it was relevant to the present situation - whereas the Francis speech clearly was.

Once again, Vincent Hanna, who had been having discussions with Personnel department on other matters, advised that it was not a good move to present this paper. I could not understand why.

The disciplinary interview took place on Tuesday December 17th. It ranged over a series of allegations which I had not been alerted to in the letter demanding my attendance.

The interview was conducted in a friendly manner by Bill Cotton, Managing Director, Television, and Christopher Martin, Director of Personnel. Cotton appeared to me to know little of what was going on - it was Christopher Martin who had the list of questions and did most of the interrogation.

We were questioned about our knowledge of BBC guidelines. I remember passing over a copy of the Francis speech and noting that Bill Cotton had obviously never seen it before. Indeed, he pulled it apart and distributed it in its several pages. He did not read it whilst I was present..

For the first time, I was questioned about the general editorial policy of “Rough Justice”. I told Bill Cotton, now MD. Tel, of the memo I had sent to MD Tel's office in November 1983, and the various other memos that both Elwyn Parry Jones and I had sent to various BBC senior executives. We had pointed out in these memos that the format of the current “Rough Justice” was a dangerous one, and that we should change to a safer format. Just a few months earlier, Elwyn Parry Jones had presented this new format, which I called the “Court of Last Resort” to Michael Grade, Controller BBC I, as an formal offer.

I did not mention that Michael Grade had rejected this offer. I had been ordered on the first day in the office after the judgement that ***I was never to mention Michael Grade's involvement***. In fact, Michael Grade *had* been involved in the Mycock programme - he had viewed the film and then, over dinner, discussed it with Lord Edmund Davies, Paul Sieghart Q.C. and various other members of “Justice”.

When it came to being questioned about the editing of the words 'until three days ago' I found myself in difficulties in explaining why I had edited these particular words out. I explained that I had edited on the principle that *I was not going to transmit any statement from Fitzpatrick that I could prove to be a lie* - as I could in this instance. It was clear that neither Bill Cotton, nor Christopher Martin, were confused by this answer. The usual editorial rule is that *we only transmit what we can prove to be true* - and this was something like the opposite. My editorial policy on this, being a *double negative*, was

actually in line with the normal *positive* editorial policy. But they did not grasp the concept, perhaps because neither had ever been a journalist. Vincent Hanna intervened and tried to explain further, but they plainly could not understand the point.

There were also questions about the facts leading up to the *trial* of Anthony Mycock. This led me to believe that my inquisitors had not even seen the programme in question, or at least not absorbed its main points. I thought these questions quite irrelevant to the charge of bringing 'undue pressure' to bear on Fitzpatrick. What's more, I had no notice of such questions and needed my files on the case to present full answers.

Martin Young raised the question of the allegation by the Lord Chief Justice that we had threatened to reveal the lady's lesbian propensities. He said we were particularly anxious to disprove this charge, so, though it was not raised by Bill Cotton or Christopher Martin, we were raising the matter. We asked what the foundation for this charge might be, for we did not know ourselves. Christopher Martin looked it up. We thought it significant that he looked it up, and quoted it from, Lord Lane's judgement - not from the tape transcripts of the actual conversations - which he had earlier claimed to have read.

We listened to him and asked for the context of his quotation from the tapes. He could not give it - and would not be pushed further on the matter.

By this time I had become very unhappy about the manner in which this interview had been conducted. We had been ill-informed of the allegations being brought. I had prepared myself to discuss the term 'pressure' and then 'undue' - but neither had been raised in the way in which Bill Cotton's letter of December 13th had led me to believe. Instead, the questioning had ranged over a variety of subjects which had not been mentioned in the letter. In particular, the charge of biased editing could surely have had nothing to do with "undue pressure".

It was clear to me that both Bill Cotton and Christopher Martin were ill-briefed about BBC guidelines. Moreover, they did not even know the details of some aspects of the case. They also seemed to have no experience and consequently no comprehension of the basis for editing interviews - in particular interviews with a proven liar.

I also formed the impression that, although Christopher Martin claimed to have read the tape transcripts, the allegations being made emanated solely from the LCJ's judgement. I thought this wrong, since the background to that judgement - the court transcript - was not yet available. But I knew from Vincent Hanna that this was only the start of the procedure and I would better be able to get over the truth in more detail. This opinion of mine was based on Staff Procedures. Hanna had shown me S.I.366 under which these proceedings were being conducted. It clearly stated in para 3.5.:

*" A summary of the interview will be made and, irrespective of whether or not he had been accompanied at the interview, two copies given or sent to the member of staff - one copy for his retention, and the other to forward to his union if he wishes. Additional copies will be provided on request. A member of staff will be given a date, a reasonable time ahead, by which written comments he may wish to make should be submitted for filing with the original of the summary on the staff file; and told that if no comments are received by that date it will be assumed that he accepts the summary as being an accurate record."*

Having now been alerted to the questions which were put to me at the disciplinary interview, I intended answering them in much greater detail, quoting evidence, and in particular pointing out that allegations by the Lord Chief Justice which had clearly prompted the BBC inquiry had been based on poor evidence, indeed a perverse reading of such evidence.

In order to make such claims, I needed a copy of the court transcript, which was, as yet, not available. I believed that the "reasonable time" allowed by the BBC would extend to the point when the transcript would be available, and I could prove my points.

This was the first great betrayal by the BBC. I never received a summary at all - I never got "reasonable time" to reply to it. And things moved so quickly that I was not even able to lodge a complaint about the Staff Procedure being broken.

The disciplinary interview was on a Tuesday. On the following Friday, the 20th, at about 11:30 in the morning, I was telephoned at home by Vincent Hanna. He organised a conference line with Martin Young who was also at home. Vincent said that he had just been told that we were to be dismissed on the Monday, unless we agreed to the following terms by 4:30 that afternoon. We were to accept:

- a) suspension without pay for three months.
- b) we must waive our right of appeal
- c) we were to be banned from investigative journalism for two years.
- d) we were to be subject to a review of our conduct after 9 months.

Both Martin and I were astounded. We discussed whether or not the BBC was bluffing. Vincent thought they meant it, and I was certain of it, because I had already been informed by a very reliable source that the dismissal notices had been prepared well before the disciplinary interview.

Vincent then said that there was no doubt that the Union would come out on strike, but that they would be striking over Christmas, and such a strike would not 'bite' until mid-January. By then, union members would have been without pay for three weeks, and the union would be negotiating our re-instatement; during these negotiations it would be almost certain that some compromise would be reached - and *probably along the lines of the deal now being offered*.

Martin Young and I then discussed the matter between ourselves. We did not believe that the BBC would stick by the demand that we waive our right of appeal, and thought that we could negotiate on that point. We also thought that the matter might be reviewed in any case during the investigation of Elwyn Parry Jones which was still to come, and that this investigation would vindicate us any way.

We had to discuss the matter with our families, and work out how we could survive for three months without pay. With these pressures, we were very aware of the "gun being held to our heads" by the 4:30 deadline.

In the mid-afternoon, we agreed to the deal, specifying that we wanted the 'lesbian slur' denied in the press release. That was agreed to. There was another important agreement made at that time.

First, we were not to be suspended. Martin Young and I both had outstanding leave - we were to take that, while the BBC was to announce we had been suspended. I still have my pay slips to prove that I was never suspended without pay - and indeed, I actually worked during the "suspension".

Secondly, we were not to lose status inside the department. We agreed that we would not make any more "Rough Justice" programmes (in fact we had already determined that we would never make another for Current Affairs). But it was agreed that we were not to be put on programmes which were of a lesser status. We were particularly concerned about being put on the night shift for the Breakfast programme, or some similar programme. (My researcher Steve Haywood subsequently received exactly this "punishment" - though he had nothing to do with the Mycock case). More than this, Glynne Price, Head of Personnel, told me that there seemed to be no reason why I should not be doing investigations again soon.

This ancillary deal came from an unknown source. It was certainly known to Glynne Price. It was also known about by Peter Pagnamenta and Andrew Taussig in Current Affairs. In an interview I had with Andrew Taussig on May 13th 1986, I mentioned my "being suspended". Andrew said "I don't regard you as that"

On the morning of December 30th we attended at MD Tel's office to finalise the matter.

We discovered that, far from being able to negotiate the matter of the appeal against this sentence, we were being faced with a press release that did not include the denial of the "lesbian slur".

This was a complete reversal of the deal that had been agreed earlier.

In fact, whilst denying us the right of appeal, the BBC Press Release we were shown (subsequently published) specifically stated that we had a right of appeal! This may seem outrageous, but it was

made very clear to us during the discussion of December 30th that we were giving up all our rights of appeal.

Martin Young and I concentrated on the matter of the 'lesbian slur'. After much haggling, the BBC agreed to release along with the press release, the entire text of a letter they had agreed to send to us about the matter. That letter made it clear that there was no evidence of a "lesbian slur". Sending copies to the Press would make that clear.

That was not the end of the perfidy by the BBC. In the event, the press release was issued *without* the letter which vindicated us about the lesbian slur. It was only when Vincent Hanna discovered this and protested, that the letter was distributed to the press. Too late, it missed all the editions and only a few newspapers subsequently reflected it - none quoted it.

During this meeting of December 30th even more evidence came to light demonstrating the lack of research by any senior BBC management figures. The BBC letter was read to us - and I queried the passage where it stated "the way in which you interviewed Miss Fitzpatrick was deemed both by the Lord Chief Justice and Mycock's defence counsel to be improper and therefore not admissible as evidence."

I knew this was not true. I knew Mycock's counsel well and knew he did not hold that view. I asked for the evidence for this accusation. Christopher Martin read to me a passage from Lord Lane's judgement. This was a passage where the Lord Chief Justice in fact misinterpreted the position taken by Mycock's counsel. In fact it was an example of the type of error I had been prepared to point out when I obtained a copy of the court transcript.

I was not allowed to argue with Christopher Martin about this. In any case, I did not have the Court transcript of evidence - it was not printed until mid-January. So Christopher Martin's accusation and judgement - which had never been put to me during the interview of December 17th - was allowed to stand in the press release.

Mycock's solicitor later protested to the BBC about this paragraph - saying it simply was not true. The BBC agreed, but to its shame, has never retracted that criticism of us.

Even worse than this, when the press statement was issued, several members of the public wrote to the BBC - and forwarded to the "Rough Justice" office the replies they received. A Mrs L. Reed received a letter from William Carrocher, Chief Assistant to the Managing Director that contained the sentence:

"The minutiae of the matter, to which, as Managing Director, Bill Cotton naturally had uniquely comprehensive access, were very carefully considered before action was taken."

and later

"let me emphasise that these threats were made not in order to elicit information, but in order to secure the interview".

This may have been written in ignorance, or may be another lie. Whichever, it is obviously wrong. Bill Cotton *never* considered the *court transcripts* on which the Lord Chief Justice based his accusations. He *never* looked at the "*minutiae of the matter*". Nor did he have "uniquely comprehensive access". Indeed, where he did have access more than the public - as with the tape transcripts - *he ignored the major facts in it, never mind the minutiae*. Those tape transcripts clearly showed that Fitzpatrick had agreed to make the filmed interview *before* any of the incidents that the Lord Chief Justice referred to.

Whatever the background, the BBC began telling the public untruths about the case. Untruths which have never been corrected.

It was clear to me now that the BBC was acting exactly as Lord Lane had - they were basing their opinions on secondary evidence, when better evidence (particularly in the tape transcripts) was available. They believed Lord Lane without question.

Of course, the BBC executives involved were no experts in these matters. They, like many, tended to believe anything the Lord Chief Justice said. They had no experience in the appeal courts - the nearest I think Bill Cotton ever got to court was the comedy series based on the A.P. Herbert books.

It was also clear from the letter being shown to me that management had simply not grasped the policy on editing which had taken out the words "until three days ago". The explanation given in Bill Cotton's letter of 30th December was not the explanation I had given during the disciplinary interview. I am not exactly sure of where his explanation comes from, but I think that it was a part of an answer which I gave to the previous question to that about the editing. It was certainly no part of my answer concerning the editing of the interview. The executive who drafted the letter had become confused.

There was also a significant mistake in the letter when it came to the matter of collecting information to discredit Fitzpatrick as a witness. Bill Cotton, or his drafter, left out a significant part of my answer given during the disciplinary interview. The letter stated that we collected such information *to help prove Mycock was innocent*. That was nonsense - and anyone in Current Affairs would know it. I had clearly told him we collected such material to defend the BBC against a suit of defamation from Fitzpatrick. Management obviously did not understand this.

Actual words that appeared on the tapes of Fitzpatrick were misquoted in the letter Bill Cotton sent to me. I told him so at the December 30th meeting, but he had not believed me, clearly preferring to believe Lord Lane. He wrote that I had told Fitzpatrick that I "refused to accept" anything but our version of events.

The word "accepts" does not appear in the tape transcripts - it only appears in the case in Fitzpatrick's evidence, and in the Lord Chief Justice's judgement.

This proved to me that the BBC management had not conducted any proper kind of investigation at all. They had accepted the Lord Chief Justice's rendition of Fitzpatrick's own evidence. They even used the words "thinly-veiled threat" which came directly out of the Lord Chief Justice's judgement.

What had been going on was first an attempt at a forced confession, then entrapment, followed by a "gun to the head" - followed by a deal - which they then ratted on.

In 1985 I had been working in the BBC for 23 years. I had never encountered such an attitude - and had never even dreamed that I might. The blame lies to some extent in my own naiveté or innocence. But others around me could not believe what was happening either. On one occasion I talked with Chris Capron, my former Head of Department. He had been trying to intervene on my behalf for some days. After I talked to him he said with some astonishment "But you're saying you didn't do what Lord Lane said?" When I replied that all the accusations were untrue, Chris re-doubled his efforts - he had been trying to defend me whilst thinking me guilty!.

But the BBC made one simple overall error. This whole affair was a matter for the Current Affairs Department and the line of managerial responsibility above it. In other words, it should have gone through Peter Pagnamenta, through Alan Protheroe, up to the Director General. Those men had journalistic experience. Instead it went up to Managing Director Television. The production experience of the incumbent of that post had been largely confined to Light Entertainment. He was ill-suited for the job of judging this particular issue. He should have been better briefed, but the team behind him was led and guided by the Director of Personnel who similarly had no journalistic experience.

This breakdown in managerial control emanated from moves inside the BBC to restrict and change the role of the Current Affairs Department. Indeed, the whole affair became mixed up with other controversies - such as the revelation that a representative of Special Branch was vetting personnel from an office in Broadcasting House. But management's ignorance of journalistic ethics meant that others with the necessary journalistic background remained in ignorance of the truth. For example, in his book "DG", published in 1988, Alastair Milne wrote:

*"Anthony Mycock was subsequently released. It later transpired that the methods used by our people to gain the woman's confession were, at least, open to question. These methods were subsequently lambasted by the Lord Chief Justice in the High Court towards the end of 1985. I asked Bill Cotton to conduct disciplinary interviews with the people concerned. He did so, and they were suspended for*

*three months without pay. They had been instrumental in getting a man out of prison: yet, by their own admission, they had used methods the BBC could not countenance."*

This is what the Director General was given to believe. He never learned the truth. In fact we were never suspended without pay for a moment, never mind three months. We had never admitted we had used methods the BBC could not countenance - indeed, we quoted BBC guidelines that condoned and even encouraged behaviour far worse than what we were even accused of, never mind what we had done.

This is yet another example of how the BBC gave out untruths about the affair to the British public.

Letter began flooding in to the BBC complaining about the treatment that had been meted out to the "Rough Justice" team. D.B. Mann, Editor, Correspondence, Secretariat, issued a stock letter which stated that unjustifiable threats had been used and suggested again that Anthony Mycock's counsel conceded that the manner of the interview was so improper as to render it inadmissible as evidence.

Mycock's solicitor now wrote to the BBC pointing out that Mycock's counsel's position was that

*"this witness had placed herself in such a position that she could not be approached by any party without being under some sort of pressure."*

The letter continued:

*"Indeed you will, no doubt, have seen the transcripts in which she indicates that the police officers themselves had threatened to prosecute her for perjury if she spoke to the BBC."*

To this, Anthony Jennings, the Solicitor to the BBC replied that he agreed "with the way in which you express the matter." There was never a public apology for this mistake.

However, if you have formed an opinion that the BBC *itself* was guilty of "methods the BBC could not countenance", do not finalise your opinion yet - for far worse was to come.

There is an irony in this. Peter Pagnamenta detailed me to produce a programme for November 1986 about the Suez crisis. During the shooting, and thankfully, when I was working with a foreign crew and interviewing in French, an interviewee suddenly came out with some astounding and very embarrassing information of an international diplomatic nature.

I loyally contacted Alan Protheroe, and he arranged with Peter Pagnamenta that I should go to an edit suite at Lime Grove where the particular part of the interview would be cut out and colour bars inserted so as to fool the video editor of the programme into thinking that there had been a break in shooting. I have kept the secret of that to this day.

## **CHAPTER 9.**

### **THE FINAL PUSH.**

After the cataclysm of the BBC's judgement following Lord Lane's equally biased judgement, everything seemed to go well for a while. However, it transpired that the insertion of the "9 month review period" in the Cotton judgement was a ploy to put a gag on me and Martin Young. I have never had the benefit of that review.

However, a serious blunder had been made on December 17th when Elwyn Parry Jones to a meeting with Bill Cotton and Brian Wenham ( a former Head of Current Affairs and Controller BBC 2) . Elwyn was harangued as if guilty. It was a breach of procedure which Vincent Hanna immediately spotted. Not only had Elwyn been judged without proper procedures, but he had been clearly pre-judged. The Elwyn Parry Jones case was therefore held over until the New Year and put under a more proper investigative process. Since Martin Young and I were an essential part of that investigation it meant that we had an opportunity to not only to help Elwyn win his case - but to put our own case for the first time.

In mid-January the full appeal court transcripts of the Mycock case were bought for the BBC and I obtained a copy. For the first time I could examine all the evidence that the Lord Chief Justice had gathered against me. I could begin to outline my criticisms of it. I now also had time to look carefully at the staff procedures and how these agreed procedures had been used in my case. I discovered that the BBC had flagrantly breached procedures in dealing with me. I prepared a report on this

Tony Crabbe, Special Assistant to Dep. DG Alan Protheroe, conducted the inquiry into Elwyn Parry Jones' conduct. This happened in mid-February, though Tony Crabbe told me that Bill Cotton had asked him to "undertake an investigation into the editorial circumstances surrounding the Mycock programme.". That seemed to be a good sign. Bill Cotton might well have realised how badly he had been advised.

Tony Crabbe said he had four terms of reference:

1. To review existing statements of policy and practice in so far as they relate to investigative journalism.
2. To establish to what extent customary and formal editorial guidelines were understood and communicated in this instance.
3. To consider to what extent they were observed.
4. In the light of his findings to make any recommendations he thought necessary to improve procedures in these areas.

When I spoke of the full appeal transcript, he told me he was interested in what I had to say about its relevance. He did not have a copy and asked me if I could provide him with one. This I did.

I thought it significant that he did not have a copy of the appeal transcript - and also significant that at last someone in the BBC thought it important to read it. Clearly no one had read it by the beginning of February.

Quite what relevance it had to the terms of reference, I was not sure. However, the Crabbe inquiry was not really about guidelines for investigative journalism. It was about Elwyn Parry Jones - and was a review of the entire case.

I had two long interviews with Tony Crabbe during which I showed him my report on procedures that had been broken. As a result of these conversations - and a conversation I had with Chris Capron after the affair had been raised in the House of Lords - I prepared a much longer and detailed report on the affair, focusing mainly on the actions of Lord Lane, but pointing out how the BBC had acted before all the available evidence had been obtained by both sides. I finished this report in April 1986.

I had also written Tony Crabbe a long letter about the nature of the BBC inquiry. One part went:

*"I feel that the inquiry was unjustly weighted against me. My reasons for certain actions and words given to the court were not considered by the inquiry because they were not inquired into. One aspect, the editing, was, I feel misinterpreted by the inquiry. M.D.Tel stated to me "you told me that you cut several parts of the interview with Miss Fitzpatrick which were damaging to her as a witness." I do not recollect having made any such remark. I do remember however distinctly mentioning that the sight of Miss Fitzpatrick's passport had led me by logical progression to cut the section in question. I believe that this misinterpretation resulted from a reading of the Lord Chief Justice's judgement rather than my own evidence either in Court or before the inquiry."*

It was decided at the end of Tony Crabbe's inquiry that no action should be taken against Elwyn Parry Jones. Since Elwyn had made it clear that he had been fully apprised of what Martin Young and I had been planning and doing, this suggested a successful outcome to our "appeal".

Discussions on this continued with Head of Personnel, Glynne Price, who acted as contact with Bill Cotton's office. After being given confirmation that proper consideration would be given to it, I handed over my lengthy analysis of the case. After a period during which Bill Cotton's office considered the report, I was asked by Glynne Price to prepare what I thought would be an adequate press release to exonerate myself and Martin Young. I did this and submitted it. I understand it went to Bill Cotton. It said that there had been a review because of new evidence (i.e. the court transcripts) and that the decision of December 30th was inoperative.

It was now May 1986. Although only four months had elapsed since the Cotton judgement, I asked Glynne Price to put into action the "9 month review". I thought that it could substitute for a proper appeal - and would help the current review being undertaken privately and unofficially by Bill Cotton.

The response to these two initiatives was astounding. I was told that the case was 'set in cement' because of a legal suit that had been started in California by Miss Fitzpatrick and her friend Miss Roark. I was particularly astonished about this because I knew that the action in the United States had actually begun four months earlier - on January 16th 1986. Fitzpatrick and Roark were alleging personal injuries, physical and emotional and mental distress, ridicule and humiliation, violation of the rights of privacy, blackmail, harassment and intentional infliction of mental distress. They had engaged a lawyer, Richard M. Hawkins, in Los Angeles. Now, in May 1986, management was using it as a reason for not re-considering the case.

I felt I had been tricked yet again out of an appeal against the judgement - once again, in my opinion, a flagrant breach of staff procedures..

However, I turned my attention to the Californian Court case because the plaintiffs (Roark and Fitzpatrick) were claiming something in the region of \$18 million - and more - in damages for defamation, blackmail, loss of earnings, emotional distress and punitive damages. Some four million of that was directed at me personally. It was clear that the BBC was in a weak position on this because Bill Cotton had already publicly proclaimed that Martin Young and I had used "unjustifiable threats" against Miss Fitzpatrick. Fitzpatrick would undoubtedly use that statement against us - and against the BBC because we had acted in its name and with its knowledge.

The summons was issued on June 5th 1986. The first big meeting on the case was on Saturday August 9th 1986. I attended a meeting at Broadcasting House at which were present Martin Young, Anthony Jennings and Glen Del Medico, these last two being the most senior persons in the BBC legal department. We were in the main building, on the fourth floor. I understood that we were in Anthony Jennings' suite of offices. We were soon joined by Craig Hentschel and Julie Ward of the firm of Stuart Kadison, Los Angeles - the same lawyers Martin Young and I had consulted in 1985.

What followed was a lesson to all who deal with a large corporation such as the BBC.

The discussion began with Mr. Hentschel stating that, although 98% of the case was common cause, he thought that it was essential, because of the possibility, however remote, of there being a conflict of interest, that we ( Martin Young and I) should have a separate attorney. Anthony Jennings agreed with this, stating that in his opinion it was also 98% common cause.



I had never before encountered any hint from the legal department that the BBC should split from the two of us. I was surprised - and said that I thought that a united front was the best way of approaching the case. I realised that I would personally have to do most of the research - for the BBC. I did not understand how I could do that for the BBC if there was the remotest possibility that we should not always be acting together.

I asked the lawyers if there was any possible compromise, signed if necessary, which could be made by Martin and myself so that we might avoid separate representation. I asked that the BBC reconsider the situation and try to find such a compromise. Anthony Jennings told me then that this would not be possible. We discussed this further, but the BBC's position on the matter was firm - Martin and I had to have separate representation.

After a short while on this matter, Hentschel and Ward withdrew. The BBC Solicitor, Anthony Jennings, then offered Martin Young and me a deal that took my breath away.

He outlined a situation that constituted an offer. He specifically stated that this offer came from a conversation he had had with Michael Checkland, who was now the deputy Director General. He emphasised this so strongly that I understood quite clearly that this offer, though being spoken by Jennings, was actually coming from Checkland's office. I asked Anthony Jennings if the Director General knew about this offer. I was told the Director General was on holiday in Scotland at the time, judging a bagpipe festival.

Anthony Jennings made it very clear to me that the offer was coming from the Head of the BBC Board of Management as of that moment.

The offer was that:

- a) The BBC would pay all legal costs subject to certain conditions which were later outlined.
- b) The BBC would pay all ordinary damages to the court as may be incurred during the court case.
- c) The BBC would pay any punitive damages award against Martin Young and myself, but that this arrangement was remain an absolute secret.

I was told that this arrangement is illegal in California, but not illegal in the U.K. I was told that the act to be committed was to be done entirely here in the U.K. and that it was therefore legal. The secrecy was, I understood, because of the attitude of the court in California. I was told however that on no account must I ever reveal that the punitive damages were paid for by the BBC.

This constituted an agreement to commit perjury. If the case ever came to court in Los Angeles I would have to take the stand - and if asked, lie for the BBC. That would be an offence punishable by a term of imprisonment. I was afraid of that - but the implications in England were even worse. At that time, I was still afraid that Miss Fitzpatrick would sue us for defamation in the English Courts. If she had done so, she would have had an easy ride - because one of her best witnesses would be the Lord Chief Justice. What, I wondered, would happen if I were asked about the matter in an English court? Even if the arrangement Anthony Jennings was outlining was legal in England, I would still have to lie to the court here - and I could guarantee that the court in England would take the most severe view of this perjury. Moreover, I did not understand how the BBC could pay punitive costs in England if they were awarded in California. If the case was found against me, I would be in California and would, presumably have to pay the money over there. Questions would be asked about where I had acquired such a large amount of money.

On the other hand, if Martin Young and I did not agree to this deal, the BBC was going to refuse to pay any punitive damages. If we lost - and nothing is certain in courts - I might lose as much as £4 million. I didn't even have that kind of figure in pence, never mind pounds.

What's more, I did not understand the need for this. After all, what we had said in our programme was true - and we had the evidence to prove that we had not committed any crime in California. Why should the BBC now abandon us and blackmail us in this fashion?

At this moment in time I did not realise the full implications of what was going on in the background. Later, when my own American attorney got to work I understood that one of our chief witnesses

would be Alan Protheroe - but one of Fitzpatrick's witnesses would Bill Cotton. I did not realise this in August, though I was already thinking that one of our defences would have to include the letter Bill Cotton had sent us in December - along with the press release. The matter of the lesbian slur was of prime importance to us. She was accusing us of it - and Cotton had agreed there was no evidence for it.

However, the idea that Fitzpatrick might call Bill Cotton as a witness only came later. Perhaps I should have realised it immediately - after all, he had condemned us in the press by announcing our "suspension". But everyone I knew in senior management knew this to be a fake - to avoid a confrontation with the Lord Chief Justice.

The reality was that the Cotton position was soon to be genuinely "set in concrete". All talk of "inoperative" statements became untenable. Bill Cotton could not go back on his decision because Fitzpatrick would argue that he had only done a U-turn to defend the BBC's position in the California courts. If, as the "secret review" had suggested, he had modified that position in April or May "after considering *all* the evidence", this potentially disastrous possibility of having one BBC man speaking against another in a Californian court would not have arisen. "Setting it in concrete" as early as May was to seem disastrous by September.

Although I did not understand all of these implications at the time, I felt reasonably sure that the deal Anthony Jennings was offering on behalf of the BBC Board of Management was not the right way of going about things. I suggested that a different way might be found so that the BBC could pay the punitive damages without there being any hint of illegality. One of my suggestions was that a separate contract might be drawn up concerning, perhaps, some form of employment such as a co-production. This would a) only take effect in the circumstances that punitive damages were awarded, and b) bring a net profit to Martin Young and myself to of a figure which would equal that of the punitive damages. Jennings said that he would consider that. He never came back to me on the idea.

Glen Del Medico stated that if the BBC broke the terms of this 'secret deal' he would stand up in the court in California and tell the court that such was the case. That, at least, reassured me.

I said that I had known Anthony Jennings since about 1972, and Glen Del Medico since about 1976. I had never found them anything other than honourable and honest men. I said that though I might not trust other executives of the BBC to keep to a bargain, I felt that I could trust them, and would accept such a deal because of my trust in their integrity.

Martin Young then raised the question of tax. If the BBC secretly paid us an amount equal to any punitive damages, were we to be liable to tax on it? Jennings said that he did not think this a problem - Del Medico concurred, though Jennings said that he would look into this further. I thought it was a huge problem. How could so much money be handed over to us without the taxman knowing? And if we paid out that kind of money - wouldn't the taxman ask us where we had got it from? It seemed to me that whatever the outcome, questions were going to be asked about the income of Martin Young and myself - and we were liable to land in court in England because of those inquiries.

We discussed what conditions would be attached to the deal.

Anthony Jennings told us that the BBC would only pay if everything that we did in the case met with the BBC's approval. What had begun as an illegal deal to "bail us out" now became open blackmail. We would have a separate attorney - but if our attorney decided that something the BBC did not like was in our best interests, we had to stop him taking such action.

Another part of the deal was that the BBC would have to approve of our choice of legal adviser. The BBC would also have to approve of our line of defence. And the BBC would have complete control over all avenues of investigation we might care to take. I understood immediately that all investigation on our behalf *inside the BBC* would be vetoed.

Both Martin Young and I asked if the BBC lawyers present would advise us to put our houses and general possessions in our wives' names. They both strongly urged us that this was not the time to do this - it was not necessary.

We also asked about the mechanics by which a court in California could obtain money from us. I was assured that the Californian courts could certainly obtain possession in some form over my assets in this country - but as for this case, there was no question of this happening. It did not seem so to me at the time.

I suggested that Martin Young and I sue Fitzpatrick in America - possibly for defamation. I wondered if the BBC would fund such a suit. I thought that there would be certain advantages in this, in that it would bring home to the two ladies the dangers they had put themselves into in this case. I also thought it would bring the suit to an early end.

I was told that the BBC did not particularly think it a good idea, in that it would be a 'railway siding'- and we should stick to the main line. I was also told that we would have to fund such a suit ourselves

At one point in the conversation came the first moment when my preferred line of defence and the necessary back-up investigation was vetoed by the BBC. This was when I raised the question of investigating areas of the case of Mrs. Livesey. This was a case "Rough Justice" had done in 1983 - in Preston. Fitzpatrick had had nothing whatsoever to do with this case, but evidence from persons connected with that case appeared in the summons. Enemies of Mrs. Livesey had jumped on the "Fitzpatrick Bandwagon" and accused us of similar tactics.

I pointed out that we were completely innocent in that case and I wished to fight whatever allegation the people in the case were making. I said I wanted to find a witness whom we only knew as 'Jim'. He was the current boy friend in 1983 of a witness named Susan Warren. If we fought this case and won - as we certainly would - it would discourage Fitzpatrick. I must of course admit that I was forgetting we would be fighting the case in the *English* courts - where we certainly not get any justice.

Anthony Jennings turned this down. He said the BBC felt that the matter would not be raised during the current proceedings. I asked that it should be re-considered.

I also mentioned a Dr. Tripp who had contacted us about some of Fitzpatrick's fantasies which had affected him personally - and the allegations that Fitzpatrick had claimed falsely to have been assaulted by various men in Manchester and in California. Anthony Jennings and Glen Del Medico both stated that such areas were of obvious interest to the BBC. I would be funded to go to Manchester and Lincoln to find them.

We then discussed covering-up the BBC's actions in the previous December. I mentioned the long report I had prepared in April. This had been circulated in a very limited fashion in May - there had been a lot of press publicity during this period. I said I suspected that this document had been photocopied and had received a much wider readership than I had intended. This was the critique of the treatment that Martin Young and I received at the hands of the Lord Chief Justice in December 1985.

I was told to ask for all the copies I had made to be sent back to me. I pointed out that this was impossible. I did not know who had copies now, and in any case, if I asked anyone to return a copy it would undoubtedly raise suspicions. Even if such persons returned the copy they had, they would almost certainly take a photocopy of it first.

Anthony Jennings said I should simply spread the word around that the document was not to be published in any form. This, I thought, was extremely vague in legal terms, but I agreed to do the best I could.

There was also the problem of publicity at the Edinburgh Television Festival. Martin Young had agreed, in writing, to attend a debate about "Rough Justice". Anthony Jennings advised him to refuse to go. It was more than advice - there was threat in his words. Martin agreed, saying that he would say that the matter was now sub-judice.

I mentioned to Anthony Jennings that I had had An argument with Steven Haywood, my former researcher on "Rough Justice". He had been cooperating with ITV producers. Haywood had copies of certain "sensitive" documents - and he could not be trusted not to pass them around. I had in mind particularly the transcripts of the tapes and certain internal BBC memos. However, he also had a copy

of the report I had written in April. Haywood had been put on the night-shift on Breakfast Time. He considered this to be a punishment - and I thought he was right.

I also asked what we should do about the speech by Dick Francis to the Law Society in Coventry (quoted above). Glen Del Medico said that this would have to be a part of the case and that our lawyer would receive a copy. I understood from this that publicity about the Francis speech would not be in contravention of the agreement concerning costs and damages, etc.

However, when I then suggested that I would have to raise certain matters about the BBC's conduct towards me, things became a little hazy. I said that there was a danger that 'an awful lot of dirty linen' could come out during the proceedings if certain lines of evidence were explored. I added that the tactics should be to avoid getting this matter in open court. This was not because I was afraid of going to court, but I thought that it would damage the reputation of the BBC. This discussion about "dirty linen" went no further. Nevertheless, Anthony Jennings knew what I was talking about because I had had a conversation with Glen Del Medico that morning during which I have talked at length about the letter sent in Bill Cotton's name to Young and myself on 30th December 1985. I pointed out the matter of the denial of any right of appeal - and the mistake about the opinion held by Mycock's counsel. I also mentioned the inaccurate reporting of my reply about editing. The BBC had lied to the British public and was expecting us to keep our mouths shut about it. This, I felt, would inevitably come out. I was not prepared to perjure myself on this area of the evidence.

Anthony Jennings then adjourned the meeting whilst he went away to discuss something with someone. I thought this odd - because it was a Saturday. I could only think that he had something to say to the American lawyers that he did not wish Martin Young and myself to hear. I could not think what this might be. He returned without the American lawyers and another round of discussion began. Now it was a matter of tactics in the case.

Anthony Jennings said that it was a 50-50 case. He told us that it might be necessary to "pay the lady off" as a matter of expediency because of the high legal fees. I disagreed with this. I said that Martin Young and I knew this lady well and did not think that she would accept any figure that the BBC might consider to be "reasonable". I thought that making such an offer would only encourage her and her lawyer to proceed strongly.

Anthony Jennings said there were ways in which the Fitzpatrick lawyer might be 'harassed'. He said it would be possible to engineer a situation so that Fitzpatrick's lawyer would have to expend a large amount of his own money in expenses in coming to the U.K.. This would make him think twice about proceeding, because the ladies could not pay him - he would be on a "contingency".

He had a further point that suddenly made me realise why Martin and I had to have separate representation. He said that according to Californian law, the BBC, as constituted, was a quasi-governmental body and as such had certain rights in US law. This would be a strong defence for the BBC that would also make Fitzpatrick's lawyer seriously consider quitting. I realised that this meant that the full brunt of the suit might be brought to bear on Martin and me - and we had been blackmailed into accepting such a position.

I raised again the matter of a suit against Fitzpatrick by Martin and myself.

Glen Del Medico said that the present pleading by Fitzpatrick was an extremely poor one. He thought that efforts to fight it before court would force the opposing lawyer to "clean up his act". That would be bad for both us and the BBC. I did not really understand the logic of this, but accepted his advice because I know him to be a wise man.

We discussed the phrasing of what Martin and I should say to either the press or the unions who might take an interest. The following were suggested, in order, by Jennings.

- a) "The BBC will support us."
- b) "The BBC is entirely supplying legal support."
- c) "The BBC is supplying the legal support in the normal manner."
- d) "We are fighting this cooperatively."

None of these was the actual truth. The BBC was only supporting us as far as it wished to support us. The BBC was supplying entire legal support - unless we decided to do something the BBC did not approve of. The manner in which the BBC was supplying legal support was certainly not in the normal manner - and we were fighting the case separately. We were only “co-operating” in as much as Martin and I *had* to co-operate with the BBC even if it was against our best interests.

Having already been forced into going along with a BBC lie - concerning the Cotton letter and press release - I was not happy about speaking such lies myself.

The weakest point would be - why were we having two sets of lawyers? We decided that we should answer that the BBC as a Corporation, was in a different legal position to Martin and myself who are journalists - this being under American law. In such circumstances, it was stronger to fight from slightly different standpoints, though we were defending the matter cooperatively.

This was a little nearer the truth than the other statements, but the American press would soon see through it. It is easy to forget now that the American West Coast Press was very interested in this story. A feature on the “Rough Justice” team appeared in the Los Angeles Times at this time. President Reagan had been restricting the rights of the American Press under the First Amendment, and the Press in turn was looking for a *cause celebre* with which to fight back. We were just the right kind of case for the US press to use in a campaign.

I had already been subject to American Secret Service scrutiny when I worked in the USA - particularly in the White House - in 1976 -77, so I knew how good they were. I thought that the lies we were being forced into making would soon be exposed should the American government become involved - through the First Amendment controversy. But this kind of consideration is dismissed inside the BBC as fanciful talk. I did not even raise my fears about it.

With this discussion concluded, the American lawyers were invited back. Discussion now centred on who our lawyers might be. Martin Young and I only had experience of Stuart Kadison in Los Angeles and Craig Hentschel thought our lawyer should come from another firm. Anthony Jennings reminded us that we had to choose lawyers approved of by the BBC. Craig Hentschel gave us two names: a Mr. Alan Mirman, and a Bill Shrier. Martin and I had no knowledge of either of these and we blindly chose Mr. Mirman. Craig Hentschel said he would contact Alan Mirman who would, in turn, contact us.

The meeting was adjourned for lunch, and did not formally re-convene, though we went back to Anthony Jennings’ office and discussed the way in which we would be working in the next few days. In particular it was decided that I should accompany the American lawyers to Manchester at some time. There I would show them the house where Fitzpatrick had lived and introduce them to some of the witnesses that they might care to meet.

This I did. So this period of the case ended with me helping the BBC American lawyers with the case - whilst our own lawyer was in Los Angeles. We had been given a list of lies to repeat, parrot-fashion, to the Press. We had been ordered to cover up lies already told by the BBC. Our right to defend ourselves as we wished was completely withdrawn from us. At the beginning of the day we had been liable to a civil suit for, defamation and trespass. By the end of the meeting with the BBC solicitor, we were also liable to criminal charges of perjury, conspiracy, contempt of court and tax evasion.

We were later to learn about the Californian law on “quasi-government agencies” - and we then realised what had actually been going on. In California, “public entities” *cannot be held liable for punitive damages*.

The deal was nothing to do with paying punitive damages to Martin and me.

The BBC was to argue that, although it was a “foreign” corporation and non-profit oriented, it could shield itself under this statute like an American public entity. It would further argue that as such a public entity it qualified under the Californian law which stated that “agents and employees of a corporation cannot conspire with their corporate principal or employer”

Unless we ourselves paid any punitive damages awarded in the case against us, the BBC would lose that immunity. Martin Young and I had entered into a criminal conspiracy to lie to the American court.

We had understood that this would be simply *to protect us from the punitive damages*. But it had transpired that we would be lying *to protect the BBC against punitive damages*.

We *had* to take separate representation - not for our good - but because that was the only way that the BBC could benefit from the US law on “quasi-governmental” organisations. We were told that it was illegal for the BBC to give us the money to pay off punitive damages. That seems not to have been the case.

The main claims by Roark and Fitzpatrick were for punitive damages - \$15 million in all. Much of this resulted from the alleged conspiracy between the BBC and the two of us. If the BBC could set this aside for itself, it could force us to accept any outcome of the case. Condemned of one of the worst crimes for a journalist, subject to criminal action by the American authorities, we would then have our punitive damages paid to us off in secret.

So, by offering to pay our punitive damages - and keeping such secret - the BBC was hoodwinking the American Court. This was done so that the BBC could emerge from the case with its hands completely clean, whilst forcing us to take all the blame implied in a settlement. It opened up the prospect of very dire consequences for both of us.

We wondered what we had done to deserve this perfidy - after all, all we had done was help free an innocent man.

## **CHAPTER 10.**

### **THE FINAL IGNOMINY**

Because of the BBC's deal we were lying to our American lawyer within days. On August 14th, with our knowledge, our attorney Alan Mirman wrote to Craig Hentschel about the indemnification by the BBC. He wrote "it is understood that punitive or exemplary damages are specifically excepted from the indemnification provided by the British Broadcasting Corporation". That kept the BBC clean under Californian law, but put us entirely in the BBC's hands. What had been clear from the start of the proceedings was that we would contest the BBC's opinion as expressed by Bill Cotton, regarding our behaviour. We had also decided that we would cite as part of that the behaviour of the BBC in dealing with the matter. The BBC now had an effective way of keeping all of this out of court.

The verbal agreement on cooperation of August 1986 was later set out in a letter from Hentschel to Mirman on January 22nd 1987. Hentschel wrote: "it is in their best interests that defense counsel exchange information, including confidential information, and pool their respective work product in a joint defensive effort."

Nevertheless, within a fortnight of the first meeting with the American lawyers in August 1986 the BBC went behind our backs - offering Fitzpatrick's lawyer a deal. On August 22nd 1986 Alan Mirman wrote to us. He thanked us for sending the programme files to him and added that Craig Hentschel had advised him that he had spoken with Attorney Hawkins (who represented Fitzpatrick) and sounded him out in general terms regarding the availability of a "nuisance value" settlement. Neither Martin Young nor I had been informed that such an approach would be made. Making this approach seriously affected our own position. It also encouraged Fitzpatrick and her lawyer. More importantly, it caused a breach of trust between the BBC and the two of us.

However, there was a pleasant side to working with the American lawyers. They were keen to hear our side of the argument - against Fitzpatrick at least..

Just before the Mycock appeal, I had received a letter from a Reverend David Tripp in Lincoln that I had been trying to persuade other people to read - but no one listened.

When the American lawyers saw it, they grinned. Craig Hentschel said "We've got a reverend on our side, in the United States that's a big plus." "Our side", of course, was the BBC's side -- which was slowly but surely becoming different to what Martin Young and I considered to be "our side".

What Dr. Tripp had to say was fascinating. We had had no contact with him whatsoever. He had seen the programme, but not even thought to contact us directly. He had written to Sir Edward Gardiner, one of our interviewees. His evidence, which we soon firmed up, changed the whole feel of the Californian court case. Here was a lecturer in Liturgy and Tutor at the Theological College in Lincoln writing about his personal experience of Anne Fitzpatrick:

He wrote:

*"For a short period in the Summer of 1981, I knew Miss Ann Fitzpatrick, through her contact and mine with a colleague from the hospital where I was a Chaplain, whom I visited just before leaving Manchester in August of that year. My acquaintance was short, but left me with a distinct impression of a very disturbed personality indeed. My observation is not that of a specialist in psychiatry, but of a fairly experienced pastor, and I had recently served an eight year spell of Chaplaincy in Manchester hospitals, with frequent contacts with patients in the psychiatric as well as in the acute and geriatric areas.*

*Miss Fitzpatrick gave me reason for considerable concern. She was in a constantly agitated state, and at least in September and October of that year, as I learnt from her through telephone conversations, was receiving psychiatric help for some sort of emotional disorder. She was excessively attached to the friend whom I have already mentioned and to the nursing colleague with whom the latter shared a*

*house. Her infantile manner of speech, and her exaggerated mannerisms and general impression of anxiety indicated to me a person of a considerable degree of disturbance. She also gave me the impression of being subject to hallucinations; for example, she told me with an air of complete assurance of having had a vision of our mutual friend with her face covered with blood, and went on to say that she had immediately gone to the house, only to find her friend in fact covered in blood after an accident.*

*The sort of behaviour that I observed in her at that time would, if I had been aware of the accusations made against Mr Mycock at a later date, have made it very difficult for me, even after so short an acquaintance, to believe any statement that she might make. If I read her behaviour with any degree of accuracy, she would have believed any such story that she might tell, despite there being no ground for it except in her own troubled imagination.*

*I had imagined that this sort of information would have already been available to your investigating team, and to the defence counsel appearing for Mr Mycock.*

*Now that I learn that there may be some delay in the case against Mr Mycock being re-opened, I thought I ought to mention these matters to you, with a request that you transmit them, if you will be so good, to the solicitors who are acting for Mr Mycock. Sir Edward Gardiner is unable to tell me who they are, and suggested that I might communicate with them through you. This information is, naturally, of limited value, since it is not the testimony of an expert witness. It may, however, be of some assistance in making a complete picture of the events which led to Mr Mycock's conviction. There must be other people who have knowledge of Miss Fitzpatrick's mental state in 1983, in addition to any information that might cover her previous history."*

When we considered this with the evidence of Dr. Devlin, it was clear that Fitzpatrick's credibility would be severely undermined in the courtroom in Los Angeles.

The key moment in the trial procedure was the taking of depositions from Anne Fitzpatrick and Sue Roark in early February 1987. For this, the BBC sent Glen Del Medico over to California; Martin Young and I were not allowed to go.

Anne Fitzpatrick was well prepared for the deposition. She testified with confidence that there has never been any doubt in her mind that the burglary occurred on May 30, 1983. She said that she was correct in telling the trial court and the Court of Appeal that the burglary had occurred and that Antony Mycock was the perpetrator. She said that her memory was clear with regard to the events of May 1983 (the time of the trial) and July 1985 - when Martin Young and I went to California. She appeared to have forgotten that the Lord Chief Justice had decided that Mycock was not the perpetrator.

There were several key points, but the most important one concerned an important element in the entire approach of the BBC in dealing with Martin Young and myself during 1985 and 1986. It seems to have been assumed throughout the internal investigation that the tape recordings Martin Young and I had made of the conversations with Fitzpatrick and Roark had been made illegally - contrary to Californian State law. This had been made more clear after Craig Hentschel had met with BBC managers on August 8th 1986. At that meeting Hentschel mentioned that his firm had advised us on Californian law and that he understood from the documents that we had tapped a telephone conversation after receiving this advice. Needless to say, we were never given the opportunity to answer this allegation, indeed we never received official notice of the meeting nor of what had been said at it.

Worse, it seems to have been assumed that all the conversations we had with Fitzpatrick and Roark came into this category. That was far from the truth. There were two main conversations with the women - on 4th and 6th of July - each lasting well over an hour. They covered 142 pages of transcript. These formed the bulk of the transcript evidence used in the Court of Appeal. There was one phone call from Martin Young to Sue Roark comprising 3 pages of transcript and three calls from Fitzpatrick to Martin Young covering 25 pages of transcript. The content of these calls was not referred to in the Court of Appeal.

Contrary to what the BBC told us and Craig Hentschel, **all** of these telephone conversations took place **before** we received the detailed briefing from the American lawyers on July 3rd. Moreover, it seems that someone inside the BBC believed that taped telephone conversations and taped face-to-face



conversations are the same under Californian law; they are not. Finally, the face-to-face conversations were taped by agreement with Fitzpatrick and Roark - indeed, they themselves taped the July 4th conversation. I made a direct reference to the taping of this conversation on page 3 of the transcript of it. As Martin Young went to the bar for drinks, I said, referring to the piped radio in the lounge:

“Can you turn the radio off as well, Martin - it’s interfering with our tape recording here, and I want a clean copy of all this.”

The very idea that we had committed a criminal act surprised Martin Young and myself because we thought we were very well briefed on the law in Britain and in California on the recording of telephone conversations. The recordings we had taken were:

- a) not confidential,
- b) for use as notes, not for transmission,
- c) primarily a record of what *we had said to Fitzpatrick* rather than what *she had said to us*,
- d) for use in our defence against any allegations she might make and
- e) always from our own phones.

We understood that, given these limitations, the recordings were within the law.

The BBC held a different view. On the day before the meeting of August 9th, I was told that the view was that we had broken the law in California - and that this was a legal opinion given by the American lawyers. Martin Young and I had no way of checking the legality of what we had done before the meeting with Anthony Jennings. We accepted what the BBC told us and went into the deal with the BBC on that basis. We assumed that we had been mistaken in understanding what the American lawyers had told us when we were briefed by them. That advice had been verbal and though we had taken notes, we accepted we could have been mistaken.

The view on this affected the entire BBC strategy. It was a second, or perhaps prime, reason for turning on us. Believing, in its ignorance, that Martin Young and I were guilty of illegal telephone tapping, the BBC set about separating the Corporation from us.

I believe that this was the key mistake in the entire dealings with the Fitzpatrick/Roark claim. Nevertheless *we were never questioned inside the BBC about the basis of the recordings*. In the initial internal investigation we were never given the chance to explain the ethical and legal basis for any of our actions. The BBC had been primarily concerned with internal BBC procedures - which they had either ignored or discovered were not formulated.

We could have told them that in California we had conducted ourselves as the lawyers had told us - and that such was legal. In particular, we had told Fitzpatrick and Roark that we were journalists. We had been very clear to her about our purpose - far too clear for the likes of many. We had also *not* tapped into wires in California - though we knew how to do this. The telephone conversations had been recorded by placing a tape recorder *near the mouthpiece* of the telephone - not even near the earpiece. No BBC manager ever listened to the original tapes; the above would have been plain to anyone who had taken even five minutes to listen to one of them.

As soon as we got our own American lawyer, Alan Mirman, we asked him for advice on this point. He told us that the penal code involved only related to “confidential” communications - and since we had announced ourselves as journalists, no communication with the women could be regarded as “confidential”. Mirman concluded “It would be difficult for the plaintiff to argue that she had a reasonable expectation of privacy in communication which she knew was to be promulgated by the BBC reporters”.

The second point was that the tapes were recorded as “notes”. Mirman pointed out that “the *use* made by the BBC of the communication by Fitzpatrick to the reporters is the same whether such communication is recorded on paper, which is not prescribed by the statute, or by electronic means.”

This was exactly what we had understood when we were briefed in California. I can only speculate how the mistakes in dealing with this had occurred. From my own experience, I think Craig Hentschel was an honest lawyer who was probably fed inaccurate information - or had been mis-interpreted after

giving an opinion. On the other hand my experience with senior BBC managers leads me to the conclusion that the management team were unaware of even the basic points of law regarding journalists, never mind the finer points such as recording telephone conversations. In other words, I feel that the fault in this misunderstanding was entirely within the BBC. This was a fault that could have been cleared up if only the BBC managers involved had informed, listened to and considered their staff members. Just as with the BBC judgement of December 1985 - which had been made without reading the courtroom transcripts - the later judgments were rushed into without due consideration of the full facts.

This managerial mistake clouded and prejudiced many parts of what occurred during the entire "Rough Justice" affair. However, the Fitzpatrick deposition, now taken in Los Angeles, confirmed that, contrary to what the BBC had been telling us for a year, we had acted perfectly within the law. We had been right to do what we had done.

The Fitzpatrick deposition confirmed that before talking to either of us she learned from Roark that we were journalists. She had also soon learned (from Martin Young in his first conversation with her) that we were journalists *from the BBC*. She added that she did not believe that she ever said anything to either of us that was intended as confidential. She knew at the time that reporters make their living by passing along information to the public.

From this moment on, we felt confident of winning the case. Moreover, Alan Mirman had added some thirty provable lies from Fitzpatrick to the seventy or so we had already compiled.

The rest of her deposition contained some embroideries of her original evidence. For example, she now said that at the time of the burglary, the identification parade, and the trial, Antony Mycock was wearing a gold stud earring in his ear. She had claimed this when describing the burglary, but she had always omitted the earring in her later evidence. This was no doubt because the police knew by then that Mycock did not have pierced ears, and was not known to wear earrings.

She also added to the story of her dog which she had claimed the burglars had kicked. She now said that the burglars kicked the dog so hard that he hit the ceiling, banked off the ceiling onto the wall, and then back onto the ground, where he continued barking and crying. None of this had been reported before and there had been no bruises or wounds on the dog indicating it to be true. She had told the police her dog was simply "nervous". It was simply another example of her embroidery to bolster a lie.

As to the story about the hands being tied, she reverted to her original story. She said that while she was trussed up, with her wrists tightly bound to her ankles, she was able to jump up and ring the doorbell several times with her head. She had clearly forgotten that even the Lord Chief Justice had remarked "We shall never know how, if she was trussed up as she said she was, she managed despite that to ring Kitty Prow's door bell."

She admitted finding the television set and the box of records behind the garage, disposing of them and not telling either Marine Marshall or the police. She admitted she sold Maxine's television set "because she felt like it". She admitted she signed her visa application, knowing that it contained incorrect information about her prior employment.

She claimed that when Inspector Halligan from the Home Office inquiry team from the Manchester Police spoke to her in late 1985 - prior to the appeal - he told her that she would be arrested and put in jail upon her return to England. She also said that Halligan did not give her any assurances that the charges would be dismissed with merely a fine or suspension.

She claimed that at the Holiday Inn meeting on July 4th, I (Peter Hill) had said that perjury was extraditable. She claimed I said that I would expose her "relationship" with Sue, that I would broadcast the film in California, and that unless she did a taped interview that same day, I would have her extradited immediately.

Alan Mirman's remark, having outlined this, was "how is that for a pack of provably false lies?" Most of the lies were provable as such by simply listening to the tape; however, but there was the further evidence of the contract we had all four signed - which *limited transmission*, specifically excluding the States.

Fitzpatrick finally admitted that neither Martin Young nor I had used the word “gay” or “lesbian”. However, she claimed one exception - the chance meeting in the hotel corridor when she was putting the paper packet under my door. Both Fitzpatrick and Roark claimed that I used the words “gay relationship” during this conversation. This was the only occasion when we had not recorded the conversations - because what the encounter had been so unexpected.

Fitzpatrick’s flights of fancy provided yet another lie - easily disproved by reference to the tapes. She said that at the July 4 meeting at the Holiday Inn a reference was made to a prior Rough Justice investigation which revealed the actual murderer living in Jamaica. She now claimed that she interpreted that reference as a threat that Martin Young and I would have the murderer come over and take care of her.

It also emerged that Fitzpatrick had tried to kill herself twice in the previous few months. Both times she took an overdose of medication. On the first occasion she was hospitalized for several days. It also seemed that she was fired by her employers. Several days before she returned to England to testify at the appellate hearing in November of 1985, she became drunk while taking care of their two year old child. She called the child’s grandmother for help and was then taken by ambulance for treatment for alcohol abuse. This was the information that led us to consider whether she might be suffering from Munchhausen’s syndrome. It also made us wonder how her physical and mental state when she gave evidence to the Court of Appeal.

As for Sue Roark, she also freely admitted that nothing confidential had been said during our conversations, and that she knew we were journalists doing a story. Although she admitted that conversations with us were never said to be “off the record”, she did not regard the July 4 meeting at the Holiday Inn as an “interview”. This was the discussion which she herself had taped. Roark’s recounting of the July 4th 1985 meeting substantially matched Fitzpatrick’s testimony.

It was here, right at the end of the testimony in the entire proceedings that we finally reached the clue about where the lesbian slur had originated. For Roark told the story (mentioned above) about the local Orange County journalists who, she claimed, said to Anne: “Isn’t she your lover?”

Fitzpatrick and Roark had been pressed on this point by Alan Mirman with regard to Martin Young and myself. Significantly, during these depositions, neither could point to any disclosure by us of their gay relationship prior to the time that Anne brought it up in testimony in England in early December of 1985. They no longer claimed that either of us “made public” their gay relationship. As their story stood, the “going public” was clearly done by Anne while testifying in England. They did claim however, that the events of July 1985 set in motion the events which lead to that disclosure - and that may be true. However we should remember the phrase Mycock’s counsel used - “this witness had placed herself in such a position *that she could not be approached by any party without being under some sort of pressure.*”

But it seems that the first time any mention of this relationship was, according to Fitzpatrick and Roark, the occasion on which the two American journalists approached them.

These two depositions signaled the end of the case.

On 27th May 1987 the BBC legal department sent me a letter in which it said that the plaintiff’s claim was now reduced (from \$17 million) to \$600,000. The BBC was offering \$75,000 as a “nuisance value” settlement. The letter added that senior management at Broadcasting House thought the offer should be increased.

A further letter arrived on 24th June. This said “If an increase is offered, I do hope that it will be enough to kill this case and to prevent any further expensive legal work undertaken by our excellent Californian lawyers. The costs do mount up, which can only lead to a sense of futility on the part of senior management who cannot see victory at the end of this case.”

On October 15th we received a copy of a letter written to Craig Hentschel and Alan Mirman by Richard Hawkins, Fitzpatrick’s Attorney. In it he proposed travelling to England to take depositions,

estimating the costs of both sides as being “from \$150,000 to £250,000”. He offered to settle the entire case for \$250,000.

On October 28th I had a conversation with Glen Del Medico in which he told me that Craig Hentschel had suggested settling for \$125,000. A meeting had been arranged at which Michael Checkland (by then DG), John Birt, Bill Cotton, Michael Grade, Peter Ibbotson, Anthony Jennings and Glen Del Medico had been present. They had decided to accept the figure. Martin Young and I were not invited to the meeting, nor were our views solicited. Alan Mirman told us that this figure was less than the attorney’s fees on Fitzpatrick’s side.

The following clause was put into the final settlement at our insistence:

*“Hill and Young do not admit that their defenses are not determinative. No admissions whatsoever are to be implied from any of the terms of this Agreement.”*

Fitzpatrick was forced to agree to keep the figure involved confidential. She was prevented from “selling her life story” and from giving interviews to the Press - either British or American. For our part however, we were free to publish anything we liked about the case. It was described to us as an “honourable solution”. It was not the kind of honour Martin Young and I had been living by up to that point in time.

I had issued a statement in December 1985 that I now turned to again. I had quoted the German poet Hermann Hesse as an indication of my view of what had happened.

*“The dignity of man stands and falls with his ability to set himself goals in the realm of the unattainable; and his tragedy lies in the fact that he has the ways and practices of the world against him.”*

The goal of providing the proof that Anthony Mycock was an innocent man, jailed by the evidence of Anne Fitzpatrick, had been bordering on the realms of the unattainable. The chief witness was an arrant liar who was certainly schizophrenic and possibly, if examined for such, suffering from an even deeper psychological illness. The steps we had taken to protect ourselves and the BBC from the possible risks involved in dealing with her, had been used against us when the case came into the first political arena - that of the Court of Appeal. The “ways and practices of the world”, in Hesse’s words, were against us.

The “evidence” provided by the Court of Appeal fueled another political attack inside the BBC, for at that time there was an attempt to change the output of the Current Affairs Department - this was taken as an excuse to do part of that work.

We were given rough treatment by the BBC. Management disregarded staff procedures - and fair play. These actions were not what I expected of the BBC. The public statements, in turn, fueled the Californian law suit, which I understand is still the largest the BBC has ever had to defend. This law suit finally foundered simply because *there was no case for us to answer*. The cost of it was magnified by the error the BBC made about the recording of telephone conversations in California.

The worst aspect of this whole affair however lay in the principle of appeal. Ironically, the “Rough Justice” affair began because Parliament decided in 1908 that someone found guilty should have the right to appeal against the conviction. We were found guilty by the Lord Chief Justice - against whose opinion there was no appeal. We were found guilty by the BBC - and denied any right to appeal.

It took an American court to give us any rights of reply whatsoever. This single fact is a stain on British justice - and one of Britain’s greatest institutions, the BBC.