

RJT 49

**LEGAL DEPARTMENT  
FILE NOTE**

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**FILE NO:**

**DATED:** 15 April 2005

**SUBJECT:** MOTORMAN

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PJT attending Blackfriars Crown Court in respect of the sentencing of the participants in Operation Glade.

The matter was heard at Blackfriars Crown Court in Court 9 before his Honour Judge Samuels QC.

Judge

There are some names in this mitigation material which are known to me I am not embarrassed but in particular I refer to Mr O'Connor's statement where it mentions Kroll Associates. I know a Director of the company who is a member of the Bar and happens to be married to a QC.

Riel Karmy Jones

The Crown has no objection or difficulty in that. I have sent my opening note by email this has been agreed and can be taken as the opening. The representation is as follows:-

Whittamore is represented by Mr Matthews and Mr Upton, Mr Boyall is represented by Mr Millican-Smith and Mr McGee, Mr King is represented by Mr Anthony and Mr Marshall is represented by Mr Williamson.

This case involves unlawful disclosures from the Police National Computer. The Police National Computer is common to all Law Enforcement Agencies, it is confidential, and those with access to it are reminded in their contract of employment of this confidentiality as well as when they log-on. On 12 May 2002 The Sunday

Mirror featured an article on [redacted] who is known as TV's [redacted]. The article was entitled [redacted]

[redacted] On 19 May 2002 an article appeared in relation to a riot between Millwall fans and Birmingham City Fans, also The Mail On Sunday featured a similar article. On 21 July 2002 The Sunday Mirror featured an article on [redacted]. On 1 December 2002 The Sunday Mirror ran an article in respect of [redacted] and in February 2003 an article was run in relation to the means of transport used by the [redacted]

[redacted] All of the information in those stories came from the Police National Computer and it was all provided by Stephen Whittamore. On other occasions checks were made for other purposes. Stephen Whittamore obtained information through the chain of Boyle, King and Marshall. Paul Marshall had access to the Police National Computer and carried out checks. He passed his findings up the chain ultimately to Stephen Whittamore who disseminated it for financial reward. There are 19 incidents covered by the indictment, 12 in respect of Criminal Record Office offences (CRO's) and 7 in relation to vehicle checks.

Suspicion arose in November 2002 when the Information Commissioner's Office and the Devon & Cornwall Police searched the premises of Data Research. Data Research was a private investigative agency in Horley in Surrey. During the search documents were seized with entries suggesting that vehicle checks had been made, against the number were the initials SW or Steve W. There were over 100 registration numbers so marked. At the top of the first page was SW and the phone number and mobile telephone number, these were identified as

Stephen Whittamore as his company was registered with the Information Commissioner's Office as J J Services. As a result of this, on 5 March 2003, the Information Commissioner's Office carried out a search warrant of Stephen Whittamore's premises – 4 ledgers were found, workbooks and other documents were seized. Stephen Whittamore was not arrested or interviewed and following that Senior Investigating Officer of the Information Commissioner's Office, Alec Owens, examined the documents. He noted the passing of information to the press to the provision of registered keeper details and CRO details. The invoices showed payment. These showed use of the Police National Computer because of the references to CRO's. Boyall's name was next to some these entries. Stephen Whittamore sub-contracted work to him. The information passed on to the Metropolitan Police which commenced this investigation was compiled from Stephen Whittamore's ledger. It was discovered that checks were made on the Police National Computer and there was a common factor, the same Metropolitan Police civilian linked all the searches. The number linking them was C066958 which related to Paul Marshall, a civilian employee at Wandsworth. His duty sheets were checked and he had been working on those 19 days.

Following on from that the Police made a coordinated series of arrests on 28 August 2003. Marshall was arrested and cautioned, his computer, palm pilot and telephone billing was seized as well as his mobile phone. One mobile phone was seized and this was relevant. When interrogated it showed that it had called another number only and its number was 07905 ---3. Marshall said that this phone was not his. When the police

checked Marshall's correspondence tray at work he was then suspended and following on from that he apologised for his actions.

Stephen Whittamore was arrested at his gym. His mobile telephone was seized, in addition Boyall's addresses (home and office) were searched and his mobile telephone was seized. When these items were analysed a number of discoveries were made. Marshall's palm pilot contained the registration number [redacted] In addition his computer had 5 registration numbers and one name on it. These all related to specific offences. All these were found in Stephen Whittamore's ledgers, against 4 Boyall's telephone number was found.

In addition, Kings telephone number was found in Marshall's computer. Marshall's mobile also called a very similar number, this was stored under the name "the other side", that telephone was not found. However, both of these phones were pre-pay and both were activated on the same day, the phones only called each other, the support from that assertion comes from two texts from Marshall's phone from that other number and this is therefore offence 19. On his legitimate mobile telephone details of offence 18 was found in his text sent messages box. In addition, Marshall's home telephone number called King on two occasions.

As for the Whittamore documents these show within them a list of contacts of National Press, journalists, mobile telephone numbers, and office numbers. There are references to Boyall in the ledgers and in the filofax, also Boyall has 3 numbers stored on Stephen Whittamore's mobile telephone. In addition, Boyall's telephone was

interrogated and was found to contain Stephen Whittamore's and Alan Kings numbers. His papers only showed costs otherwise, however, there was a lack of evidence found at his premises.

King was arrested in November and he was cautioned and made no reply, his property was searched. He had a paper in his wallet which had two numbers of Boyall on it. His office was searched and shelves were found to contain a file marked Metropolitan Police Data Received. It should be noted that King joined the Metropolitan Police on 25 April 1965 and was at Wandsworth Police Station during the time that Paul Marshall was also at Wandsworth Police Station.

I now turn to the telephone evidence. Sufficient evidence was seized to allow the Investigating Officer to locate the telephone numbers attributable to the defendant. Telephone billing was found and cell site analysis was conducted on the 055 number. The 055 number was the one called by Marshall. Cell site mapping was done and this showed the movement of two phones based on those calls. There were nine occasions when the telephone was in the same area as King's telephone and this therefore suggests that the telephone was in King's possession. In addition there was significant contact between the defendants on or around the time spans of the searches.

The first check related to an [redacted] and the check was made on 25 May 2002 at 4 p.m. [redacted] of The Sunday Mirror sought the information. [redacted]

[redacted] was the partner of the actress who plays [redacted]

Judge I am concerned that it is not suggested by the Crown that those who seek this information in this way are anticipating it falls foul of the criminal law and are not party to the conspiracy.

Riel Karmy Jones This would be right if that could be proven.

Judge What steps were taken?

Riel Karmy Jones A number of journalists were interviewed, these were disclosed to the defence. A decision was taken that there was insufficient evidence to base charges against those individuals.

Judge I will accept that the matter was investigated as you have described. If the Crown investigated the journalist seeking the information and felt that the criminal proceedings were inappropriate then a presumption of innocence applies and their names should be protected. I am concerned that there is an implied criticism of journalists and that the Crown say that what they did was not criminal conduct, there is no half-way house on this.

Riel Karmy Jones The request by  was made by The Sunday Mirror, this was shown in Stephen Whittamore's ledger, this also appeared in his notebook. The telephone evidence showed a call from Stephen Whittamore to Boyall, a fax followed and Marshall undertook the Police National Computer check at 4.08 p.m. He linked it to an unrelated motorcycle attempted theft; no reason was given for the PNC. Marshall entered false information onto the CAD report, Marshall also falsified information on the computer system to cover his tracks. Whittamore then called Boyall at 7.57 p.m. and 7.58 p.m. and calls

were made to The Mirror the next day; however no article appears to have resulted.

The second check was made on [redacted] she was due to appear at the British Soap Awards and the article in contained within the bundle you have. A check was undertaken on 9 May 2002 in the morning, this was shown in Stephen Whittamore's ledger with results of the enquiry. A similar entry appeared in Stephen Whittamore's workbook with details of a registration number. In addition, there are details of two convictions and Boyall's name. Marshall did a PNC check at 10.31 the next day he links it to a different CAD number. 25 minutes later Whittamore called the Mirror Group and sent a fax to Boyall at 12.31. The Mirror then featured the article on [redacted]

The third check was on [redacted] on 16 May 2002, again it was the Sunday Mirror. This related to a violent disorder following a football match, the journalists name appeared in Whittamore's ledger and below that was an entry in relation to [redacted] That forms offence number 4. On 15 May 2002 Marshall's land line called King's mobile number twice.

Judge

All these matters are set out in the lengthy schedule is it in the public interest to go through these?

Riel Karmy Jones

In that case I will turn to page 26 of the Summary and deal with the interviews.

Judge

My summary ends at page 19.

Riel Karmy Jones It was emailed twice to your Honour. (The judge then found that his bundle was un-paginated).

Stephen Whittamore was interviewed on 28 August 2003 on the day of his arrest at Charring Cross Police Station. He had no legal representation. He answered questions in relation to his employment stating that he ran J J Services and was an enquiry agent. He provides information and finds out things other people want to know. The Crown accepts that some of this is legitimate. He stated that he believes the CRO data came from court records, and stated that he had agreed a price, he never met his agent and he stated that he had always believed and still believed that it came from court records. He said that up to twelve clients had requested this information. He drew a cover of client confidentiality when he declined to name them.

Whittamore stated that he didn't know how the information was obtained, he never asked, and he didn't want to know because it might have crossed his mind that it was illegal. He stated that he met Boyall in 1970 and then again in 1997, and said that Boyall wasn't the agent who did the vehicle checks. He stated that only one person was used for vehicle checks. He confirmed that the ledgers were his but couldn't understand why Boyall's name appeared next to vehicle checks. He declined to answer some questions and stated that he believed CRO stood for Court Records Office.

He was interviewed again in relation to previous conviction data and he stated that he thought someone ploughed through court records.

Judge

Are court records as not confidential as the Police National Computer? If a person applies to Court for conviction data they will get it but SW's activities as described conjures up someone going through data held by the Court's in files and that activity would not be lawful.

Riel Karmy Jones

I would agree that would depend on how it was gone through, it would then fall to be personal data within the scope of Section 55 of the Data Protection Act 1998. He stated that he would use Boyall for other information. Boyall was interviewed the same day at Charring Cross Police Station, he had a solicitor, he exercised his rights to silence and again made no comment on the 4 November 2004. King was interviewed, he had a solicitor, at the start his representative read a prepared statement in which he stated that he had never heard of Stephen Whittamore or of J J Services but that he knew Boyall.

He was interviewed again on 4 February 2004 and again a prepared statement was read.

Marshall was interviewed following his arrest. These were lengthy interviews and it was discovered that he had joined the Police as a civilian employee in 1992 and worked in Tooting. It was agreed that he was aware of the Data Protection Act and aware that Police National Computer data was confidential. He denied being asked by anyone outside of the Metropolitan Police to check anything, he denied knowing Boyall or Whittamore. He confirmed that the checks against which his number is recorded would have been made by him and made no comments to some questions. He didn't know King, in

the Information Commissioner's Office and we had nothing to do with the issue of those summonses.

Judge That makes it more unsatisfactory. The Hearing identified in those summonses straddles the period identified in Whittamore's guilty plea on a reckless basis and I need to be satisfied that there is not a degree of actual overlap.

Riel Karmy Jones The Crown's position is that they do not know the degree of factual overlap. The difficulties that exist would impact upon those proceedings and not these.

Judge You have not seen them, they don't know what the factual basis is. If Whittamore is not challenging the material in those summonses I need to know what the Magistrates' will do about it or not.

Riel Karmy Jones I do not know the exact details of those.

Judge This came as bolt from the blue to me this morning.

Mr Matthews It came as a bolt for us as well. My client has heard nothing from the Information Commissioner's Office at this time, it is wholly unsatisfactory and it smells of flying in the face of laws against double jeopardy. The subject of the discussions with the Crown Prosecution Service was to see what the position was with the ICO, this was before my client entered his guilty plea and Counsel for the Crown could say nothing about what she intended to do.

Judge There is an indivisibility of the Crown.

Mr Matthews            You are right. This coming as it did was drafted the day after Whittamore entered his guilty plea.

Judge                    As to when that was drafted that cannot be gainsaid.

Mr Matthews            It is impossible to take instructions to this. There has been no advance disclosure. They have chosen to summons Mr Whittamore for indictable only offences and he can make no argument in the Magistrates'.

Judge                    You could advance with some degree of success, the link between this and the pending prosecution in Blackfriars Crown Court and it would be anomalous that these be sent to a different Crown Court.

Mr Matthews            With that in mind it is best to sentence today and we will make an argument there and seek to have the matter transferred here.

Judge                    What if the Information Commissioner's Office digs in. The Magistrates' have no jurisdiction at all. At that stage they will commit to the local Crown Court either at Winchester or Southampton. It is a mess. Then you would have to start all over again with what I have a good deal of sympathy about to persuade a Judge with no knowledge of the case that the case should be sent here.

Mr Matthews            If unsuccessful we would then advance a Beady (?) Argument.

Judge                    The only respect in which I am minded to part company with you is that you invite me today to sentence Mr Whittamore as a result of the circumstances beyond the

control of all in this Court, and what I expected would be a concluding sentencing exercise has been derailed.

Mr Matthews If the proper course of action is to adjourn Mr Whittamore's sentence I would struggle to oppose you.

Judge If you represented a client on a standard offence and he had been charged with further offences then you would invite the Court to have one Sentencing Hearing.

Mr Matthews In a situation where another arm of the state act in this way it smacks of abuse. That argument might have to be heard.

Judge I might be better to deal with it rather than some Court afresh.

Mr Matthews That is still some way off. If not an abuse and Whittamore enters a guilty plea submissions will be that the additional matters should not add to his sentence.

Judge I am not minded to sentence Whittamore today as I don't know if the pending matters are significantly more serious than those here.

Mr Matthews The penalty in these are fine only.

Judge You will say that he cannot pay however.

Mr Matthews Mr Whittamore is of limited means and is a man of hitherto good character and in a state of depression. The stress of this Hearing over him has not helped. He is not coping well and he is not helped by the only penalty being a fine.

Judge

I am not sure that that is the only penalty. It can't be custodial, but other non custodial disposables may be available.

Mr Matthews

The only disposables available are a fine or a discharge only.

Judge

That is what I had in mind.

Mr Matthews

If you are minded to fine, I would invite you to fine below the Magistrates' Court threshold.

Judge

That is for another day. There is another problem area for the other defendants but not so stark. I feel boxed into a corner by circumstances. I could be frank, two defendants admit the full offence, two admit lesser Data Protection Act offences. They are covered by a financial penalty alone. One defendant has admitted the full offence and is under a suspended sentence. I also asked at an early stage for the theft case to be after this, and I also see that the theft prosecution was raised with the Recorder and that sentence was for me. I asked the Recorder not to do what he did, I asked him not to sentence Mr Marshall.

Mr Matthews

It isn't just Whittamore's summonsed, there are co-defendants the matter is therefore very complicated. I invite you to sentence Mr Whittamore today and it means that Mr Whittamore may lose you as a Judge in subsequent matters but that the public purse will have to make up for that to appraise the Judge in Southampton by preparing various chronologies.

Judge                    You have strong grounds to invite the Court because of procedural inappropriateness that that matter really ought to be here, and bearing in mind the CPS knew nothing.

Mr Matthews            They knew of it, but not of the decision.

Riel Karmy Jones      We didn't know the summonses were going to be sent.

Judge                    This is highly undesirable. The right hand didn't tell the left hand.

Mr Matthews            I invite you to sentence today. Mr Whittamore's means are limited, he is a depressed individual. He relies heavily on his mother-in-law and is reclusive now. He rarely leaves his house, and he is seeking alternative employment. He has acted as a conduit for a long time for newspapers and insurance companies who sought information to trace people. He has now become untouchable through the publicity. The Association of Profession Investigators have suspended him, and his work as an Enquiry Agent has dried up. His wife is seeking employment as a book keeper. I would invite you to make a conditional discharge and that this matter could have been dealt with in the Magistrates' Court, any fine should be a small sum payable over an extended period.

Mr Millican-Smith     Have you read the mitigation bundle and statements. In the light of what is in the bundle I will make short submissions. I invite the Court to give fullest credit for Mr Boyall's plea and if put on this basis would have been dealt with a long time ago. I would ask you to look at the delay and the publicity. The basis of plea is significant. Riel Karmy Jones did save the assistance given by the

defence on the two statements. I invite the Court to take into account the steps taken by Boyall in getting advice on the various strategies that he carried out and the statement also from Rosemary Jay. Mr Boyall is a 52 year old man of good character. In looking at the last paragraph of Mr Lynch's reference I couldn't approve upon that which he urges. You know of the fostering and the family situation. It is appropriate in the circumstances for the Court to punish by way of a conditional discharge rather than a financial penalty. The circumstances of the case merit that on that basis. He can pay a fine, he does have some earnings, but the impact on his business is not insignificant.

Judge

I have two questions – Riel Karmy Jones has mentioned nothing about costs. I invite her to make an application, and the second issue is in relation to a recovery of defence costs order (RDCO), I have no paperwork in relation to that.

Mr Millican Smith

Against the background the Court should have an eye to what the position would have been if the matter had been dealt with on the first occasion as a Data Protection Act Offence.

Judge

This is where it gets complicated. An RDCO would be significant to identify the costs reparable to the matter in relation to the guilty plea and the totality of the costs your solicitors have incurred in investigating the primary matter.

Mr Millican Smith

It is complicated and I would need time to assist with the specifics.

- Judge If I make an RDCO limited to that which the defendant has pleaded to and I pass it to a taxing officer that could work.
- Mr Milican Smith That would only be a small fraction.
- Judge What is the Crown's application in relation to costs?
- Riel Karmy Jones I have no instructions in relation to the application for costs. The Crown Prosecution Service's case worker is making enquiries in relation to this. In relation to the defence costs I would make the observations that the Crown reached a decision on the charge based on the disclosure made by the defence at a late stage. He didn't assist at an early stage, for example, he gave a no comment interview. There was sufficient evidence on the papers to make the decision to prosecute. The Crown should not be penalised for making the decision that it did. The size of the papers are significant and the length of the proceedings are such that an application for costs would be for £5,000.
- Judge I must tailor that to the matter admitted.
- Riel Karmy Jones The evidence is the same, the £5,000 would be divided by the four defendants. The evidence and preparation would have been the same to defend.
- Mr Milican Smith The Court has to have an eye to totality and will bear in mind the costs imposed. We would apply for the Magistrates' costs equivalent.
- Mr Ashley You have received the bundle in relation to Mr King containing his character references, all three referees are

In Court, most of what I would say is contained in the bundle. He has pleaded to the main offence. He is a man of impeccable character who has served the public for 30 years in the Police, at 58 he has lost everything as a result of these matters. He has lost his good name, his wife and his family. There is at present a divorce petition issued by his wife. He will lose his house in the divorce, she is not a well woman and she was shocked at this after 27 years of marriage, she is near a nervous breakdown. Mr King is using his savings to support his wife and house and is not claiming benefit. He is working 12 hour night shifts in an office block as a receptionist come night watchman. He has the disgrace of this brought to his name. He might also lose his employment today as a result of the publicity. He hopes to work again in the future. He has substantial debts and I ask you to look at the matter as a whole, I ask you to deal with him as leniently as possible.

Mr Williamson

It was not at my behest the Recorder sentenced Mr Marshall.

Judge

I have the medical report. I don't invite elaboration, and this does explain why the Recorder thought it appropriate to suspend sentence.

Mr Williamson

In pleading Mr Marshall pleaded nearly a year ago. He realised he betrayed the trust of colleagues and brought his career to an end and his life crashing down around his ears. The Crown proceeded with the thefts, we were told that the thefts were considered to be as more serious than this, so I would ask you to look at the benchmark set in the theft proceedings. Those who breach trust find it sits ill to refer to their previous position. Mr Marshall

faces a lonely and uncertain future. He will never be well again. A suspended sentence was passed on him previously and if the Court passes one of suspension or one which does not disturb it then I need not say anything further.

Judge

You need say nothing further.

Please stand up Mr Whittamore, Boyall, Marshall, King, you are due to be sentenced, I need say little about the matter. It has been fully and fairly opened by Miss Karmy Jones on behalf of the Crown. The vice of the primary conspiracy was to make known to the press information which on any view ought to have been confidential, and was bound at its lowest to cause immense embarrassment to members of the public who required the state to maintain confidentiality in their affairs. It is an interesting comment that some of you refer to such concepts as client confidentiality, all of you must have realised if the information on individuals who the press were interested in there would be an impact in their lives and their lives would be adversely affected. The Crown had provided a number of authorities as precedents in these cases, there are not many to be found in other cases relating to misconduct in a public office. The Court decided that imprisonment is suitable to those who plead to the misconduct. Nothing should diminish the validity of the sentencing in the other Courts and these proceedings today should not be seen as a toleration of that behaviour by this Court. A message needs to go out that such conduct will result in a custodial sentence. However, I have regard to the realism of the appropriate sentence in Court today. Mr Whittamore and Boyall have pleaded guilty to the offences under Section 55 of the Data

Protection Act, these offences limit my powers. All I can do is fine if I think it right or to discharge. In relation to King and Marshall, they do face the possibility of custody.

Nevertheless, I have regard to a number of factors peculiar to this case. First, Marshall, out of this investigation was found to have Police property and faced theft charges and was convicted in this Court last year. His defence was that there was no intent to permanently deprive. This was rejected by the Jury. Because of his personal circumstances and medical evidence a custodial sentence whilst appropriate was suspended. It is inappropriate in my judgement if, having been convicted of an offence where he received a suspended sentence in January, and the view of the Police was that theft was the more serious, than the conspiracy to which Marshall has pleaded guilty to at the first opportunity. I also have regard in the case of King to the more general sentencing observations by the Court of Appeal in Cefford on 5 March 2002. I cite from one paragraph of that judgement the message is that imprisonment should only be imposed where necessary and for no longer than necessary.

I have considered short sentences for that they have admitted and recognising the dates. I conclude it is not necessary in either case because Paul Marshall is already subject to a suspended sentence and for reasons Mr Williamson referred to. He is far from well and the prognosis is unsatisfactory. Therefore in Mr King's case given the events in Court it would be manifestly unfair to deprive him alone of his liberty today and I decline to do so.

I refer to the vice and I do so again as a warning to others, others cannot expect leniency as seen today.

I mark the activity as each defendant by a conditional discharge in each case. Each defendant has had a punishment as a result of these matters coming to light out of all proportion to that which they envisaged when they set out on their course of conduct.

Mr Whittamore is probably a broken man. I hope that is over emphatic. He faces other proceedings, he is not out of the woods, he cannot make a contribution to the cost of the prosecution or of a RDCO, I make no RDCO and I order that he receive a conditional discharge for two years.

Mr Boyall, he too will receive a conditional discharge for two years. The prosecution application for costs against him stands he will contribute £1,250 and in his case I will make an order for a RDCO limited to those defence costs related exclusively to the Section 55 offences in respect of the matter of obtaining personal information.

Mr King will receive a conditional discharge of two years. I have reviewed his financial circumstances, it is clear to me that he is not in the position to pay costs, therefore it is inappropriate to also ask for a RCDO in his case.

In relation to Marshall, he too will receive a conditional discharge of two years with no RCDO, he cannot meet it and therefore no contribution should be payable to costs either.

The defendants should realise that if no further offences are committed they will hear no more of this. If they commit further offences then the Court dealing with any other offences at that time would deal with those offences and also this matter.

Mr Matthews

I ask for an Order under the Contempt of Court Act 1981 in respect of Whittamore because of the ongoing proceedings.

Judge

Do you have any observations Miss Karmy Jones.

Miss Karm Jones

It is not necessarily appropriate. I don't stand in the defence way, those proceedings are elsewhere and I leave it in your Honour's hands.

Mr Matthews

There is national press interest here today.

Jude

Paradoxically the press are here to the extent that you do have interesting submissions to make as to an abuse if I decline to stay reporting of this case under the Contempt of Court Act. It can only work to your advantage if I decline to make such an order, and I decline to make such an order.

Miss Karmy Jones

I ask the remaining offences against Whittamore and Boyall lie on the file.

Mr Millican Smith

I understood that no evidence was to be offered.

Judge

What is the point in lying them on the file?

Riel Karmy Jones

It is an appropriate way to deal with it.

Judge I understand the course outlined by Mr Millican Smith would have been adopted.

Riel Karmy Jones In that case your Honour I offer no evidence.

Judge Mr Whittamore and Mr Boyall you have been found not guilty of Count 1.

The Court rose at 11.55 a.m.

PJT  
20.04.05