

Grand Cayman Marriott Beach Resort
389 West Bay Road
Grand Cayman
Cayman Islands, BWI
Cayman Islands

Friday, 8th May 2009

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**CAYMAN TRIBUNAL RE: SECTION 493
OF THE CONSTITUTION**

AND

LEVERS J

- - - - -
Before The Tribunal:

Sir Andrew Leggatt (Chairman)
Sir Philip Otton
Sir David Simmons

- - - - -
MR TIMOTHY OTTY QC (instructed by Messrs Clifford Chance LLP)
appeared as Counsel to the Tribunal.

MR STANLEY BRODIE QC (instructed by Messrs Stuarts Walker
Hersant) appeared on behalf of Madam Justice Levers.

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PROCEEDINGS
DAY TWO

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1 THE CHAIRMAN: Yes, Mr Brodie. Before we begin, I understand
2 that there are those in the room not capable of hearing me
3 or by whom I am not heard. I can only say that I do my
4 best to make myself understood and, in the event that
5 anybody wants to know what it was that I said, they can
6 have recourse to the transcript, because the shorthand
7 writer appears not to share their difficulty.

8 MR BRODIE: I do not understand that that comment was directed
9 at anybody in my team.

10 THE CHAIRMAN: Certainly not. I direct it only at myself in the
11 nature of an apology or, perhaps, I should say
12 explanation.

13 **CAROL ANNE ROUSE**

14 **Cross-examination by MR BRODIE (continued)**

15 MR BRODIE: Mrs Rouse ...

16 A. It is Ms Rouse, actually.

17 Q. Ms Rouse, I am so sorry. I think that we were talking
18 yesterday about the case of [REDACTED]. Do you remember
19 that?

20 A. Yes.

21 Q. And there was a dispute between - I say "dispute", there
22 was a contest on the evidence between yourself and, I
23 think, it was either Nora Ebanks or Lorna Allen, to the
24 effect that you could not have seen Madam Justice Levers'
25 facial expressions because you would not be able to see
26 that if she were looking towards the jury. Do you remember
27 that?

28 A. Yes, I do.

29 Q. I would just like to ask you about the configuration of
30 the court /to see if we can agree about that. Madam
31 Justice Levers would sit, obviously, in the centre, in the
32 judge's seat.

33 A. Yes, sir.

34 Q. And is it right that you would sit just a little bit
35 behind her to her left?

36 A. I would sit to her left, but not behind her.

37 Q. When I say "behind her", just a little way back from the
38 front of the bench, effectively - at a sort of angle,

1 perhaps.

2 A. Where the judge and myself and the clerk and the marshal
3 sit is at a big desk that is sort of curved, slightly
4 curved.

5 Q. Yes.

6 A. So I am sitting, I would not say I am sitting ahead of the
7 judge but at a slight angle.

8 Q. Yes. But certainly to her left?

9 A. Yes, certainly.

10 Q. And when the video link took place, the screen was further
11 to the left, was it?

12 A. No. Well, there was a big screen for the jury to see
13 further to the left, but the screen that I look at is a
14 computer monitor that sits on my desk between myself and
15 the judge.

16 Q. Certainly. So you would have your own monitor for the
17 witness.

18 A. That is right.

19 Q. But the one for the judge and jury would be to the left
20 further away from you?

21 A. Almost behind me.

22 Q. And the jury, of course, were at the other side of the
23 room on Madam Justice Levers' right?

24 A. Yes.

25 Q. If she was looking towards the jury, her face would be
26 turned towards the right, would it not?

27 A. At times, definitely.

28 Q. But away from you?

29 A. At times, definitely away from me, but not all the time.

30 Q. But, if she was going to be doing the kinds of things you
31 were talking about, rolling her eyes at the jury and
32 making jokes and all the rest of it, she would be doing
33 that facing the jury, would she not - or do you not accept
34 that?

35 A. I do not accept that.

36 Q. OK. Fine.

37 A. Not necessarily.

38 Q. I suggest to you that it is perfectly obvious that, if she

1 is doing the kind of things that you say she was doing,
2 which of course is not accepted, her face would be towards
3 the jury and not towards you?

4 A. Well, she would sit, for example, here and the jury is all
5 along the side. The way I was sitting, slightly ahead, not
6 much, but slightly ahead, and I was facing her. I was
7 watching and I saw it. I saw the rolling of the eyes.

8 Q. Well, that is what you say, but, certainly, for a good
9 part of the time, if she was doing what you say she was
10 doing, she would be facing the jury and not you - do you
11 agree with that - some of the time?

12 A. Some of the time.

13 Q. At least that?

14 A. Some of the time.

15 Q. Yes. We have your evidence, Ms Rouse. I shall make
16 comments about it later.

17 A. As far as Nora, Nora Ebanks and Lorna are concerned, they
18 would not necessarily be watching at all. My job is to sit
19 in the courtroom and take a verbatim record of everything
20 that is being said, so I am paying attention to
21 everything. A lot of times, no disrespect to them, they
22 have their heads down, they are on their telephones, on
23 their Blackberries and not paying attention to what is
24 happening in the courtroom, whereas I am paying attention
25 to everything that happens in the courtroom or trying my
26 best.

27 Q. Is there anything else you would like to add to the case
28 that you want to put against Madam Justice Levers?

29 A. I am not trying to put a case against Madam Justice
30 Levers.

31 Q. Oh yes you are, Ms Rouse.

32 A. I have worked in front of over 50 judges and I have never
33 ever complained until now.

34 Q. Would you just like to go to bundle 2, page 592, please?

35 A. Yes.

36 Q. Do you see that?

37 A. Yes. I have not read it.

38 Q. I do not want to read it in detail, but that is, in

1 effect, a précis of the same complaint you are making now
2 addressed to the Chief Justice, is it not?
3 A. Yes, sir.
4 Q. One notices the dates are April 29th to May 2nd 2008.
5 A. Yes, sir.
6 Q. Were you aware at this time that Elizabeth Webb had made a
7 complaint to the Chief Justice?
8 A. Not aware ...
9 Q. I should rephrase that, I am sorry. Were you aware that
10 Elizabeth Webb had sent a memorandum to the Chief Justice
11 on 29th April?
12 A. No, I was not.
13 Q. Did you talk to Elizabeth Webb at all at this particular
14 moment in time, period of time?
15 A. I do not think so, but I do not have a specific memory of
16 that.
17 Q. You did not?
18 A. I said I do not have a specific memory of that, of
19 speaking ...
20 Q. Is it possible that you did?
21 A. I work in a small courthouse with Ms Webb, it is possible
22 I did, but I ...
23 Q. You were not aware that Mrs Webb was making allegations
24 against the judge at that particular moment in time?
25 A. No, I was not.
26 Q. Would you now go, please, to paragraph 22 of your first
27 witness statement. This is to do with the case of The
28 Queen -v- Bryan. Do you remember that?
29 A. Yes, I do, clearly.
30 Q. And there you allege that Madam Justice Levers made some
31 observations which you thought were inappropriate. is
32 that right?
33 A. That is right.
34 Q. And you say Justice Levers seemed to turn the focus of the
35 proceedings on to the female victim and seemed to indicate
36 that she had brought it on herself. I had never seen
37 anything like this in my 14 years of court reporting. In
38 my opinion Justice Levers appears to have a problem with

1 Jamaican women. Is that your view?
2 A. Yes.
3 Q. Would you now look at core bundle page 200.
4 A. Am I done with the small bundle?
5 Q. Yes, you are. The core bundle at page 200, please. Do
6 you see there that is Madam Justice Levers' response to
7 the Chief Justice. Yes?
8 A. OK.
9 Q. Have you seen it before?
10 A. Never.
11 Q. This is what the learned judge says to the Chief Justice
12 in response to the complaint that was made. The next
13 matter is the Queen -v- Bryan which was heard on the 14th
14 May 2007. Your remarks, gratuitous disparagement of
15 female victims, slurs on her character, just no way in
16 issue in the proceedings, she was nearly beaten to death,
17 suggestion of ethnic bias against her and the defendant in
18 appropriate judicial comment. I wonder if you would turn
19 back in the bundle to page 186.
20 A. Yes.
21 Q. Do you see there that there is a table which was produced
22 by the Chief Justice?
23 A. Yes, sir.
24 Q. Did you have any input into this table?
25 A. Absolutely not.
26 Q. So the remark, "gratuitous disparagement of female
27 victims", that did not come from you?
28 A. No, sir.
29 Q. Did you provide the transcript?
30 A. Yes, sir.
31 Q. So you gave that to Mrs Myren for onward transmission to
32 the Chief Justice?
33 A. I cannot believe - I cannot believe ... I cannot be sure
34 if that is the one that I gave to Ms Myren. I believe that
35 I took it directly to the Chief Justice.
36 Q. Oh you did.
37 A. I believe so.
38 Q. Yes. Presumably, taking it to him ...

1 A. I believe that is the first one I took to him. I was very
2 upset.

3 Q. On taking it to him, you presumably identified to him the
4 kind of complaint that you thought arose out of that
5 transcript?

6 A. I am sorry, could you repeat the question?

7 Q. On taking the transcript to the Chief Justice, you would
8 no doubt have identified to the Chief Justice the
9 complaint you said arose out of the transcript.

10 A. I took the transcript to the Chief Justice because I was
11 upset at what happened in the court room, what I thought
12 to be inappropriate comments, and I wanted to bring it to
13 his attention. It was upsetting for me.

14 THE CHAIRMAN: It is being suggested to you that in addition to
15 handing him the transcript you may have given him some
16 account of the circumstances in which your complaint
17 arose.

18 A. I would have prefaced it. I would not have just walked
19 into his office with the transcript and put it on his
20 desk.

21 MR BRODIE: No. And you would have told him the kind of things
22 that one finds at page 186. It is not exactly your
23 language, but that is what you were telling him, was it
24 not?

25 A. It is definitely not my language.

26 Q. Is it the sense of what you were saying to the Chief
27 Justice?

28 A. Possibly. I definitely was upset at the way the victim
29 was being spoken about and went to the Chief Justice - I
30 was upset. I would have directed him to specific portions
31 of the transcript but I left the transcript with him. I do
32 not think it was a lengthy transcript, under 30 pages, I
33 believe.

34 Q. At any event, you were the informant as far as the Chief
35 Justice was concerned which resulted in this description
36 that one sees at page 186. You accept that presumably?

37 A. That I was the informant? Yes. Yes.

38 Q. Which resulted in the description one finds at page 186.

1 A. I do not know. I went in and I said ...

2 Q. Come on, Ms Rouse, it is fairly obvious. If you go to the

3 Chief Justice with the transcript and you are making a

4 complaint and you look at this language, it exactly

5 represents what you are telling him, does it not?

6 A. It could have been somebody else complaining that was in

7 the courtroom, I do not know. I do not know why the

8 specific words were written. I do not disagree with that.

9 Q. You do not disagree with them?

10 A. I do not disagree with them, no.

11 Q. Let us go back to page 200, shall we, now?

12 A. Yes, sir.

13 Q. This is Madam Justice Levers' response. "Your remarks,

14 'gratuitous disparagement of the female victims, slurs on

15 her character, just no way in issue in the proceedings,

16 she was nearly beaten to death. Suggestion of ethnic bias

17 against her and the defendant, inappropriate judicial

18 comment'". Now, you certainly were supporting a

19 suggestion of ethnic bias because you say so at paragraph

20 22 of your witness statement, do you not?

21 A. Yes, sir.

22 Q. "When I spoke of 'these people'", she said, "I referred to

23 the criminals in general. I said this because criminals

24 tend not to respect the law of the country which they are

25 visiting and that was the only reason it was said. (It

26 just so happened that he was Jamaican.) Had he been

27 Indian, Sri Lankan or Canadian, I would have said the same

28 thing. If my language was over zealous, then I may be

29 guilty of that, but certainly not bias or prejudice

30 against anyone. I dealt with the accused as I thought

31 fit, giving him ten years for the fact she was nearly

32 beaten to death. It was a domestic violence issue and I

33 was anxious to ascertain whether she was living with him,

34 how the quarrel developed, in order to assess whether

35 there was any provocation or contribution to the assault.

36 It was because I found there was none on her part that I

37 gave him ten years". What is wrong with that?

38 A. My problem with the proceedings was that the victim, who I

1 understand had no criminal record at all, the way she was
2 spoken about, when it came to the judge's attention that
3 the woman was applying for Caymanian status, she said,
4 "Lord, but can't somebody object?" I mean, the transcript
5 is there somewhere, but words to the effect, "What's a
6 woman like that doing getting Caymanian status?" I
7 thought this is a woman that was beaten 20 times and then
8 beaten with a metal bicycle pump. Nobody said that she
9 brought it on herself. I think the Crown attorney at the
10 time, Ms Lees mentioned that. It was comments like that
11 being made and in the beginning she said - she started off
12 saying, "Where is he from? Where is she from? What do they
13 do in life?" I understand trying to get some background
14 but to complain about a victim trying to get status in the
15 country, when she was the victim, I did not understand it.

16 Q. Well, maybe it is because you are not a judge that you did
17 not understand it. Did that ever occur to you?

18 A. Pardon me.

19 Q. Maybe it is because you are not a judge that that did not
20 occur to you. Do you understand that?

21 A. I am not a judge.

22 Q. It is important when you are sentencing someone to a long
23 period of imprisonment to have it in mind to probe the
24 background of the various people involved. Do you agree
25 with that?

26 A. I do agree with that.

27 Q. And all that Madam Justice Levers was doing, she says
28 perhaps over zealously, was probing the background of the
29 people concerned - I think it was Ms Hunter who then
30 became married and she got beaten up and I think that the
31 Caymanian man, I think, was run over deliberately by the
32 Jamaican defendant and that kind of thing - and Madam
33 Justice Levers wanted to probe, to see what the background
34 was, who the people were, what kind of people they were in
35 order to judge a sentence. What is wrong with that?

36 A. Well, she also mentioned that the woman was spreading her
37 goodwill around.

38 Q. Yes.

1 A. I thought that it was an inappropriate comment to make.
2 Q. Well, do you not understand in a domestic violence case
3 the morals of the lady concerned might be quite relevant?
4 Do you not understand that? **(Pause)** No, you do not, do
5 you?
6 A. There was nothing to suggest that she was still living
7 with her husband. All sorts of cases come before the
8 court. I thought that, in my opinion, the way it was
9 handled was inappropriate. I had never seen anything like
10 it before. I was upset and I made a complaint.
11 Q. The girl concerned, she has not made a complaint, has she?
12 A. I have no idea if she has or not. I do not believe she
13 was in the courtroom at the time. I am not aware as to
14 whether or not any of the comments were brought to her
15 attention. This is a guilty plea so she was not
16 necessarily there.
17 Q. In all these cases where you produced transcripts none of
18 the parties ever complained. Do you understand that?
19 A. I do understand that.
20 Q. The only person who complained or the only people who
21 complained are you and Mrs Myren.
22 A. I have no idea.
23 Q. Let us go on, shall we? We will look at paragraph 27,
24 shall we?
25 A. Paragraph 27?
26 Q. Of your statement. Jensen. Do you see that one?
27 A. Yes, sir.
28 Q. You talk about the judge did not like the complainant and
29 the way that she was answering questions put to her. At
30 one point during her evidence, Justice Levers threatened
31 to send her to the cells. In summing up, Justice Levers
32 displayed bias towards the defendant. Then there is this
33 comment that you say she made, "I couldn't have done any
34 more for him, could I?" I suggest to you that that is
35 completely untrue.
36 A. It is absolutely true and I was shocked when she said it.
37 Q. I see. You were shocked, were you; another piece of shock,
38 was it? Let us just go and see what happened in Jensen,

1 shall we? Go to the core bundle at page 105. I am just
2 going to start at the bottom of 104, line 18, in fact,
3 just before that, Madam Justice Levers says, "Madam, that
4 was not asked of you", because she had not answered the
5 question correctly. Then Mr Dixey goes on, "I am asking
6 you to answer the question. The question was you didn't
7 say to him, did you, would you like to come with us or can
8 I bring Bob with us was the question? (A) I was trying to
9 avoid Bob as much as possible. (Q) So you didn't say
10 that? (A) Certainly not. Would you invite somebody you
11 were trying to avoid? (Q) All right. All right." Then
12 Madam Justice Levers intervenes and says, "Ms [REDACTED],
13 you don't want me to order a mistrial, do you, because
14 that is what you are heading for. Just answer the
15 question, please". Did you understand what the learned
16 judge was saying there?
17 A. Absolutely.
18 Q. She was saying that, if you are not careful, you will say
19 something to the jury which will lead to a mistrial.
20 A. Yes.
21 Q. That is what the learned judge was trying to avoid. Do you
22 agree with that?
23 A. Very possibly.
24 Q. Well, do you or do you not? You do not seem very
25 positive.
26 A. I remember this witness. I remember she was an irritating
27 witness. I remember she would not answer the questions and
28 it was taking a long time. I understand the frustration.
29 My complaint ...
30 Q. Well, never mind about your complaint.
31 A. OK.
32 Q. Just go to page 107, would you, please, at the bottom of
33 the page there, line 20, the matter arises again.
34 A. Sorry, bottom of which page?
35 Q. 107.
36 SIR PHILIP OTTON: Which is the internal page?
37 MR BRODIE: Page 48, I am so sorry. Bottom right hand side
38 of the page. Mrs Kristoffoson, I said it to you before,

1 you are not a lawyer, you might say something that would
2 result in a mistrial. Will you answer the question,
3 please. Nothing impolite about that, is there?
4 A. No, sir.
5 Q. What she is trying to get the witness to understand if she
6 is not careful there will be a mistrial.
7 A. Yes, sir.
8 Q. And that is exactly what was going on in this trial, was
9 it not, the lady concerned was attempting to give evidence
10 which would have possibly resulted in that? As you have
11 said she was a difficult witness.
12 A. She was a difficult witness.
13 Q. The judge is entitled to try and control her court, is not
14 she?
15 A. Absolutely.
16 Q. We will leave that one. Then would you go now to the case
17 ---
18 A. I am sorry, R -v- Johnson, my complaint was for comment
19 after the summing up to the jury, that he could not have
20 done anything more for him. It was to me such a one sided
21 jury charge where three pages of a 17 pages summing up
22 were dedicated to his good character, and comments she
23 made during the summing up I found -- When the summing up
24 was done I assumed it would not take the jury long to come
25 back with their verdict, and it did not, it took 15
26 minutes, and it only took 15 minutes because defence
27 counsel had to go and see the Chief Justice on another
28 matter. They had to wait for him to return. I believe
29 the jury had their verdict within 8 minutes.
30 Q. I would like to ask you a question and you need not answer
31 it. You are a court reporter, are you not?
32 A. Yes, sir.
33 Q. Are you legally qualified?
34 A. Pardon me?
35 Q. Are you legally qualified?
36 A. legally qualified to be a court reporter?
37 Q. Are you a lawyer?
38 A. No, I am not a lawyer.

1 Q. And you are not a judge.

2 A. And I am not a judge, I mentioned that yesterday. I am
3 not a judge and I am not a lawyer.

4 Q. Do you regard yourself as qualified to pass judgement on
5 judges?

6 A. I consider myself qualified to have an opinion as to
7 whether or not certain things are appropriate. This was
8 just something that I found remarkable that happened and I
9 did not bring that to anybody's attention until later on.
10 it was when everything together was very upsetting and
11 that was one of the things that I specifically remembered.
12 The judge saying to me after her summing up I could not
13 have done anything more for him, could I?

14 Q. I suggest that that is a figment of your imagination.

15 A. Absolutely not a figment of my imagination.

16 Q. So your position is that not only are you a court
17 reporter, but you are somebody with whom the learned judge
18 discusses her cases. Is that what you are saying?

19 A. She did many times.

20 Q. Can we now go on to Irvalyn Bush, please, which you will
21 find referred to at paragraph 26. This is a case in which
22 you say at the top of the following page The way Justice
23 Levers questioned the expert and the way she summed up the
24 case clearly showed she was biased in favour of the
25 defendant. The defendant was a young girl who had clearly
26 touched the gun as her DNA was on it and was facing a
27 charge which could lead to ten years imprisonment. The
28 defendant was acquitted. Although I felt satisfied with
29 the result of the case as my personal opinion was the gun
30 did not belong to the defendant, Justice Levers conduct
31 was clearly biased. What do you mean by that?

32 A. The defence counsel in that matter was Nicholas Dixie and
33 Justice Levers in my opinion favoured Mr Dixie, and it
34 showed when he was in the court room. I had actually --
35 well, I do not want to say anything that is not in my
36 statement but the ---

37 Q. Do please, Ms Rouse, say what you like.

38 A. I had been speaking to defence counsel just before they

1 started the trial and I was joking with them and saying Oh
2 , we are going to go ahead with this trial, and he said,
3 Oh, I am not going to win, and because of the DNA, and it
4 was just a casual conversation and I could not quote
5 exactly what he said. It was just a casual conversation
6 and then things definitely turned in his favour it seemed
7 when the judge took over the cross-examination of the DNA
8 expert.

9 Q. Had it not occurred to you that the learned judge's
10 approach might have been conditioned by the perception
11 everyone had of the merits of this case?

12 A. I did not specifically consider that.

13 Q. Let me just remind you of what the facts were. This was
14 an 18 year old girl, was it not?

15 A. Yes.

16 Q. Who had a baby and was expecting another one - right.
17 There was a minimum sentence of ten years.

18 A. Yes, sir.

19 Q. It became obvious, did it not, that it would be an
20 appalling thing if a young girl in that situation went to
21 prison for ten years - do you agree with that?

22 A. Absolutely.

23 Q. Do you not consider that it is a humane thing for a judge
24 to do when she sees that kind of situation to look to see
25 whether the prosecution really must succeed?

26 A. I am sorry, could you repeat that.

27 Q. Do you not think that it is humane for a judge faced with
28 that kind of possible tragedy to see if there are ways and
29 means in which the prosecution may not succeed?

30 THE CHAIRMAN: I am not that clear myself. What do you mean by
31 "ways and means"?

32 MR BRODIE: Well, yes, I take your lordship's point. Let me put
33 it this way, Sir Andrew has very kindly corrected me on
34 the form of the question. When one looked at the merits of
35 this particular case, the consequences of conviction were
36 pretty horrific, were they not?

37 A. Definitely, I was not upset that she was acquitted. I
38 frankly felt sorry for the girl. I did not want to see

1 the young girl go to prison for ten years.

2 Q. So if the learned judge had an approach to this case that
3 was sympathetic to the defendant she could not be blamed
4 for that, could she? I think that that is a fair question
5 for her.

6 A. I do not know how to answer that question. I just expect
7 the judge to come in and listen to the evidence and be
8 neutral and base their decisions on the law.

9 Q. I mean, this was a case which turned on whether - well,
10 first of all, the defendant's DNA was found on the gun,
11 was it not?

12 A. Yes, I believe she was the major contributor.

13 Q. And the question at issue was how did the DNA get there.

14 A. Yes.

15 Q. And one possibility was transference, was it not?

16 A. Yes, I believe so.

17 Q. You see, what I am putting you is this. Whatever Madam
18 Justice Levers' attitude was to this case, why are you
19 saying that she was bias in favour of Mr Dixey?

20 A. She favoured Mr Dixey. It was clear when he was in the
21 courtroom - I do not know if you say fond, but how fond
22 she was of him. My feeling was that the female
23 complainant was favoured because she was Nick Dixey's
24 client.

25 Q. Of course, the defendant was a woman.

26 A. Yes, sir.

27 Q. Your view is that she is antipathetic to women, is it not?

28 A. Often times.

29 Q. Not on this occasion?

30 A. Not on this occasion, it was Nick Dixey's client.

31 Q. Right. Would you now go on, please, to paragraph 33 of
32 your statement?

33 A. Yes.

34 Q. This is concerned with the incident relating to Mr
35 Keightley.

36 A. Yes, sir.

37 Q. Do you remember that? You say this, "in the case of R v
38 Williams on 5th January 2007, a matter being heard on the

1 same day as the Queen and Sharpe, Justice Levers yelled at
2 George Keightley, Crown counsel, for walking into the
3 courtroom while putting his wig on. Justice Levers' tone
4 and manner was extremely harsh. Mr Keightley had been in
5 attendance well before the hearing started but had just
6 been outside the courtroom to discuss matters in relation
7 to the case of R v Sharpe with counsel. I mentioned this
8 incident to the Chief Justice". Did you?
9 A. Yes, sir.
10 Q. Did you take the transcript to him as well?
11 A. I eventually would have, I am not sure - I am not sure
12 when I took it to him, but ...
13 Q. But you did take the transcript in Sharpe to him, do you?
14 A. I am not sure if I took it to him personally. I might have
15 given it to Ms Myren to take to him.
16 Q. At any rate, you certainly sourced the transcript, can I
17 put it that way?
18 A. I prepared the transcript.
19 Q. When the Chief Justice questioned Mr Keightley he admitted
20 that he had not been gowned properly. When do you say that
21 the Chief Justice questioned Mr Keightley?
22 A. What do you mean "when"?
23 Q. You say that the Chief Justice questioned Mr Keightley and
24 he admitted that he had not been gowned properly. Where do
25 you get that from?
26 A. I cannot remember specifically, but I did not take - this
27 was not a transcript that was given at the time it
28 happened, it would have been months later, possibly months
29 later, I am not exactly sure. I am sorry , I did not make
30 a note of exactly when I provided the transcripts.
31 Q. And then you go on, you say that, "In my opinion, as Grand
32 Cayman is a small island, many attorneys are too concerned
33 about getting a bad reputation with one of the three
34 judges, therefore do not complain about Justice Levers'
35 behaviour". Do you see that?
36 A. Yes, sir. I also wrote something in my supplementary ...
37 Q. Yes, we will come to that.
38 A. OK.

1 Q. Why do we not come to that?
2 A. Thank you.
3 Q. Could you now go to bundle 2A, 14.1??
4 A. Yes.
5 Q. Have you seen this before?
6 A. No, I have not.
7 MR BRODIE: I am sorry, my lord, I have mine split into A and B
8 and your lordships have only one bundle 2. It is tab 3.
9 THE CHAIRMAN: I am sorry, Mr Brodie, I interrupted you through
10 my failure to locate the bundle.
11 MR BRODIE: Have you seen this document before?
12 A. I believe I have.
13 Q. Well, let us see what Mr Keightley wrote to the learned
14 judge. You note he is Crown counsel at the bottom.
15 A. Yes.
16 Q. "Dear Mrs Justice Levers, as discussed, it has come to my
17 attention that a complaint has been made about a brief
18 exchange between us at the start of the trial of Marion
19 Sharpe in January of this year".
20 A. I believe it is Merlyn Sharpe.
21 Q. Merlyn, is it?
22 A. Yes, sir.
23 Q. Not Marion. "As I recall, Nick Dixey and I were in the
24 robing room when your ladyship entered court. At the time
25 neither of us was fully robed. On realising court was
26 sitting, we came into court but were then asked to leave
27 and return when properly dressed. This we did and I
28 apologise for not being in court when your ladyship had
29 arrived and for keeping your ladyship and the jury panel
30 waiting. In the circumstances, your ladyship had every
31 right to expect counsel to be properly dressed and in
32 court when you arrive. I did not feel I had been unusually
33 or unfairly treated and thought little more about it".
34 Pausing there, that does not sound like someone who has
35 been yelled at, does it?
36 A. He is letting her know that he is not upset.
37 Q. Sorry.
38 A. He is letting her know that he was not upset by it and he

1 did not find it upsetting.

2 Q. You have painted a picture of this judge coming into court
3 and yelling at counsel. That is what you said.

4 A. Yes, and she did.

5 Q. Mr Keightley does not seem to have thought that he was
6 being yelled at, did he?

7 A. As I say, many attorneys did not want to rile the judge
8 and get a bad reputation.

9 Q. I see, let us ...

10 A. There are not many Grand Court justices here.

11 Q. Let us go back. "I am somewhat surprised that a complaint
12 in these terms has been made and particularly that I was
13 not consulted or notified". What do you say about that?

14 A. I did not feel I had to consult Mr Keightley to make a
15 complaint about behaviour in court. I was not really
16 upset. As you see in my amended statement or my
17 supplementary statement ----

18 Q. I will come to your amended statement.

19 A. - I was not upset on Mr Keightley's behalf, but it set the
20 tone for the day. Everybody was on edge. Justice Levers
21 was not even sitting down yet. She was walking through the
22 door. Crown counsel had a full day, I believe, he was
23 standing in the back hallway with the defence counsel,
24 Nick Dixey, who was on the following case, the Marilyn
25 Sharpe case. I believe that he was just trying to tidy up
26 some matters that were going to happen at ten o'clock on
27 that matter and he could not speak in front of the jury
28 panel. The courtroom was full so they were just standing
29 outside. When Justice Levers walked in, she was still
30 walking to the bench, and Mr Keightley came through the
31 other door and was putting on his wig. He was gowned, but
32 he was just putting his wig on his head and she made him
33 leave. I do not know if it was because he was Crown
34 counsel - it seemed to be an ongoing problem with Crown
35 counsel - or it was just she was stamping her authority on
36 the court, I do not know, but the court staff, myself
37 specifically, was on edge from that moment on and it
38 continued into warrants for jurors prior to ten o'clock

1 and to have them arrested - jurors. Jurors are not
2 supposed to be there until - they do not have to be there
3 until ten o'clock - to arrest them? I found that
4 upsetting.

5 Q. Well, we are not talking about arresting jurors at the
6 moment. I know that you would like to talk about all sorts
7 of bad things about Madam Justice Levers.

8 A. I am just trying to explain.

9 Q. But, you see, what I am putting to you is that what you
10 have said in your witness statement does not accord with
11 what Mr Keightley has written in this email to Madam
12 Justice Levers. Did you see that?

13 A. I saw the email, yes, I did.

14 Q. And your response to that is - never mind about what Mr
15 Keightley says - he is only saying that because he does
16 not want to displease the judge. That is what you are
17 saying, is it not?

18 A. I feel that he did not want to displease the judge. It
19 was not too long after that that he was leaving the
20 Crown's office and was going to be a defence counsel.
21 Maybe he was worried about future clients. I do not know.
22 I am saying I was upset by what happened and I may have
23 worded it wrong by focussing too much on Mr Keightley. It
24 was how the day started, yelling when she came through the
25 courtroom, speaking harshly at Crown counsel and it just
26 continued throughout the day.

27 Q. You do not say that in paragraph 33 of your witness
28 statement, do you?

29 A. Say which?

30 Q. You do not talk about the tone of the day being set.

31 A. I do in my ...

32 Q. I said in paragraph 33.

33 A. No, I do not.

34 Q. Your supplementary witness statement was served after the
35 opening submissions had been served on behalf of Madam
36 Justice Levers.

37 A. Yes.

38 Q. And your supplementary witness statement is in response to

1 that, is it not?

2 A. Yes, sir.

3 Q. Let us look at that, shall we? That is at 41A, I think,
4 of the bundle. It is paragraphs 12 and 13 of your
5 supplementary statement.

6 SIR DAVID SIMMONS: Is this in the core bundle?

7 MR BRODIE: No, it is witness statements, divider 41A. I am
8 sorry, it is 41.1.

9 SIR DAVID SIMMONS: Thank you.

10 MR BRODIE: Shall we just look at paragraph 12? "I refer to the
11 Queen and Williams in paragraphs 33 and 34 of my original
12 statement. Upon re-reading those paragraphs, I do not
13 think they really reflect why it was that I was concerned
14 about the incident with Mr Keightley, who was Crown
15 counsel at the time. My concern was not so much for Mr
16 Keightley, because, as a result of this incident, the tone
17 of the court for the whole day was set". Just pausing
18 there, are you saying then that the fact that Mr Keightley
19 was yelled at was not something that should have concerned
20 him at all? Is that what you are saying?

21 A. It was not something that ... I cannot say what would
22 concern Mr Keightley.

23 Q. But now you seem to be changing your evidence and saying
24 that what your concern was was not so much Mr Keightley,
25 but, as a result of this incident, the tone of the court
26 for the whole day was set.

27 A. I was not concerned for Mr Keightley's feelings. I was
28 concerned for the treatment of Crown counsel, and ongoing
29 harsh treatment of Crown counsel. Strange that it was to
30 a male Crown counsel, I guess, because it was usually Ms
31 Lobban or Ms Johnson who seemed to take the brunt of it,
32 but from the moment court started that day she seemed to
33 be in a bad mood.

34 Q. "And then the judge was entering the courtroom and still
35 walking to the bench when she chastised Mr Keightley who
36 was robed". Well, you see, that is wrong. He was not
37 robed. Mr Keightley said so.

38 A. He was just putting his wig on. I understand he is

1 supposed to have his wig on before the judge walks through
2 the door.

3 Q. He has said in his email that he and his opponent were not
4 robed. That is what he said.

5 A. Well, if you are saying that Nick Dixey was his opponent,
6 Mr Dixey was not due until the ten o'clock matter, but I
7 remember Mr Keightley walking through the door, he was
8 robed and he was just setting his wig on his head. He had
9 his wig in his hand and he was putting his wig on his head
10 as he walked through the door and I believe she took
11 offence to that. I guess he was not robed, but it was the
12 harshness with which it was dealt that started the day.

13 Q. I am not going to take any more time on this. Ms Rouse, I
14 suggest to you that your evidence is hopelessly
15 inconsistent and simply is not true.

16 A. Would you like a response to that?

17 Q. Yes.

18 A. I disagree.

19 Q. Let us go on to other things. Would you go to paragraph 9
20 of your supplemental statement, please. At paragraph 9
21 you say I remember Ms Myren asking us the transcripts
22 which highlighted incidents of Justice Levers unusual
23 behaviour so that she could take them to the Chief
24 Justice. As she was my supervisor I did not think this
25 was an unusual way to proceed. In fact when an incident
26 of concern did arise I felt it was my duty to report the
27 matter to Ms Myren so that she in turn could take the
28 matter further if she deemed it necessary. On what basis
29 do you consider that you as a court reporter had any such
30 duty?

31 A. Well, as far as this is concerned I felt somebody had to
32 do it, and it was highly upsetting behaviour that I felt I
33 saw. I of course would speak to my supervisor about it.
34 We shared trials, there were only three court reporters at
35 the time and it became habit specifically with Justice
36 Levers court for the reporter that was in in the morning
37 to say, describe what her mood was so that we knew what we
38 were in for when we went into court, and some of the

1 matters, for example the Regina -v- Bryan matter, the
2 [REDACTED] in person matter, the Alton Philips matter,
3 were extremely upsetting, and we had discussed, but he
4 must not know about these things, how can this be, how can
5 a judge treat people this way. You will have to ask Ms
6 Myren why she eventually went to the Chief but it became
7 too much for us.

8 Q. So does it come down to this; that the two people who
9 were upset by this supposed behaviour were you and Ms
10 Myren?

11 A. I do not know who else has complained.

12 Q. There is no evidence that anybody else has complained,
13 apart from you and Ms Myren. Do you understand that?

14 A. I have no idea who has complained other than I am only
15 aware of Ms Myren and myself. Nothing else.

16 Q. Who was responsible for putting forward what I may call
17 the vegetable case; was that you?

18 A. I do not believe so. I was on the matter. I reported I
19 believe a morning or an afternoon or maybe an entire day's
20 proceedings.

21 Q. And did you take offence and were you upset by the term
22 vegetable in that case?

23 A. I was upset by the use of the word. I did not think that
24 Justice Levers had any malice towards anybody, it was just
25 I believe a crass way it was said, and I ...

26 Q. What do you mean by a crass way?

27 A. I just felt it was unfeeling towards the family, but I am
28 not -- I guess I do not have too much to say about it.
29 That was just one small thing out of many, many things
30 that happened, and taken together as a whole it was just
31 one part of very upsetting behaviour over the years.

32 Q. You do understand that no one in the family, the
33 plaintiff's family, has complained about the use of the
34 word vegetable. Do you understand that?

35 A. I have no idea if the family have complained or not.

36 Q. The word was used in the first instance by counsel for the
37 plaintiff.

38 A. Yes, Mr Alberga.

1 Q. Have you seen the letter from Mr Russell?
2 A. I believe I have.
3 Q. In which he praises the learned judge for her sensitive
4 approach to the case.
5 A. I believe she was trying to be fair to the party
6 definitely, I believe she was trying to help them.
7 Q. But you were upset by it?
8 A. Just by the word, the use of the word.
9 Q. Let us go back paragraph 9 of your statement. The next
10 question I want to ask you is this: I have mentioned the
11 question of Justice Levers behaviour with Justice
12 Sanderson. Why did you discuss it with him?
13 A. I cannot remember why I did. It might have been that it
14 had just happened. I am fairly sure of that, it would
15 have been fairly recent in my memory and I respected
16 Justice Sanderson greatly. He was the first judge that I
17 had met when I moved to the Island and he was friendly and
18 cordial and I might have sat down and had a coffee with
19 him and brought it up because I was upset.
20 Q. And then you do on, I knew that Ms Myren had done so and
21 was aware that his view was it was not for us to raise the
22 issue.
23 A. Yes, sir.
24 Q. Then why did you?
25 A. Because something had to be done.
26 Q. Here is the learned judge who advises you not to. Was not
27 that something that ought to have weighed with you?
28 A. I am sorry, was it not something that ..
29 Q. That ought to have weighed with you if a learned judge
30 said it is not for you to complain.
31 A. Well definitely. I still made Ms Myren aware of things
32 that had happened in court. I had the majority of Justice
33 Levers' trials, not all of them but the majority of them,
34 and I would be upset coming out of court and would speak
35 to her as my supervisor and as a colleague. I would also
36 speak to my other colleague and say I cannot believe what
37 happened. I did not go to the Chief Justice and raise the
38 issue, you will have to speak to Ms Myren about that.

1 Q. But in this piece of evidence you have given, you were
2 aware of the fact that Ms Myren like yourself had
3 discussed the supposed problem with Justice Sanderson and
4 he had advised you against raising the issue. The
5 question is why did not you take that advice?
6 A. He did not say that to me.
7 Q. He said it to Ms Myren.
8 A. You will have to ask Ms Myren about that.
9 Q. Very well. Can I take you to paragraph 17 of your
10 supplemental statement. You see there you make reference
11 to the [REDACTED] proceedings.
12 A. Yes, sir.
13 Q. And there was, was not there, a problem with those
14 proceedings in relation to an affidavit filed by Mrs
15 DaCosta.
16 A. Yes, sir.
17 Q. And Mrs DaCosta gave evidence about that yesterday.
18 A. I believe so.
19 Q. Were you present?
20 A. I was present for part of her evidence. I believe I was
21 present during the part where she was questioned about
22 that.
23 Q. And what happened was that an affidavit was filed to which
24 Madam Justice Levers took exception.
25 A. Yes, sir.
26 Q. Because it suggested that she was being manipulated by Mr
27 [REDACTED]. Do you remember that?
28 A. Yes, sir.
29 Q. And she contacted the Chief Justice about it and the Chief
30 Justice agreed with her. Yes.
31 A. I do not know if the Chief Justice agreed with her or not.
32 Q. We saw the transcript yesterday and I am not going to go
33 back to it.
34 A. I know what she said the Chief Justice said. I did not
35 speak to the Chief Justice about it.
36 Q. And at the bottom of the page you say "In my opinion on
37 that occasion Justice Levers demonstrated real hatred
38 towards Ms [REDACTED]". Is that in relation to the

1 problem with the affidavit you are speaking of?

2 A. I think she was punishing Ms [REDACTED] through Ms
3 DaCosta. She spoke to her very harshly and made some
4 snide comments throughout the proceeding here and there.
5 And on a break during the matter Justice Levers said to me
6 Can you believe I have to share a washroom with that
7 woman.

8 Q. I will come back to that in a moment. Go on. You see, I
9 asked Mrs DaCosta about this yesterday and she said she
10 had not seen anything that demonstrated real hatred
11 against [REDACTED].

12 A. I cannot speak for Mrs DaCosta.

13 Q. And I suggest to you that this comment about sharing a
14 washroom with [REDACTED] is pure invention by you.

15 A. It was absolutely said, and I did not even know who
16 [REDACTED] was at the time and I still do not know her, I
17 do not think I have been introduced to her. But I
18 remember at the time thinking Wow! What has this woman
19 done, and I found out later that it was [REDACTED] who had
20 to share the washroom and her office was on the same
21 floor. Until the time when Justice Levers said Can you
22 believe I have to share a washroom with that woman I did
23 not quite know what she meant.

24 Q. You will say anything, will not you, Ms Rouse, which is
25 damaging to Madam Justice Levers?

26 A. I am only speaking the truth.

27 Q. And I suggest to you that your allegation about showing
28 real hatred towards Mrs [REDACTED] in the context of the
29 problem that arose in Mrs DaCosta is a good example of it.

30 A. No, sir, I disagree.

31 Q. Did you ever know about the circumstances in which Mrs
32 [REDACTED] actually got appointed to the job in the Court
33 administration?

34 A. No. I have read certain things in the paper and comments
35 and that sort of thing but I did not know any of the
36 circumstances of her getting the position.

37 Q. Do you not know that in fact Madam Justice Levers assisted
38 the Chief Justice in getting Mrs [REDACTED] appointed?

1 A. No, I do not know that. I had no knowledge of any of that.
2 Q. Would you just go now to the core bundle, 133? I am very
3 nearly at the end of this cross-examination.
4 A. Yes.
5 Q. This is a memorandum sent by Ms Myren to the Chief Justice
6 on 23rd March. It is headed "Re: enclosed transcripts".
7 Do you have that?
8 A. Yes, sir.
9 Q. "Please find enclosed several excerpts of trial and
10 chambers transcripts. Although these transcripts are an
11 accurate record of what was said during the proceedings,
12 they do not depict the overwhelming tension that prevails
13 and dominates throughout". Have you seen this document
14 before?
15 A. Yes, sir.
16 Q. Did you see it when it was sent to the Chief Justice?
17 A. Probably. I cannot specifically say but probably.
18 Q. So do I get this picture that the gathering of transcripts
19 was a joint enterprise between you and Ms Myren?
20 A. I would not say it was a "joint enterprise", but, because
21 I was responsible for most of the transcripts - I would
22 not say "most of the transcripts", but a good amount of
23 them I did them up and provided them to her.
24 Q. And she got some for herself?
25 A. I believe so.
26 Q. Let us go on. "The trial itself becomes secondary to the
27 constant theatrics, bullying, hurtful and inappropriate
28 comments that are generated. Women in particular are
29 insulted, castigated, demeaned and humiliated for no
30 particular reason. This results in such an unpleasant and
31 unfair environment that people are traumatised after the
32 experience. The court staff is publicly chastised for not
33 moving fast enough, for not swearing in a juror quickly
34 enough before someone has had a chance to challenge them.
35 It becomes apparent very early on that she has really made
36 up her mind about the case, almost always in favour of
37 male defendants, to the point of coddling them as if they
38 were victims. Justice is rarely seen to be done and,

1 sadly, public confidence has been destroyed as right-
2 minded people have gone away thinking that the judge was
3 indeed bias".

4 Do you agree with all that?

5 A. Yes, sir.

6 Q. If this is correct, the comments you are referring to must
7 be on the transcripts, must they not?

8 A. I am sorry, which comments?

9 Q. Well, the comments, "inappropriate comments", "court staff
10 publicly chastised".

11 A. Yes.

12 Q. Apart from the incident with Lorna Allen that you referred
13 to, I think that you refer to it in your supplemental
14 statement, can you think of any other transcript that you
15 can produce that shows court staff being publicly
16 chastised?

17 A. Well, I have some documents with me, I can go through
18 those, but I ...

19 Q. But is there any evidence before this Tribunal, any
20 transcript in which the court staff are chastised?

21 THE CHAIRMAN: She cannot answer that.

22 A. I handed in many transcripts with those, I do not know ...

23 MR BRODIE: If this statement is correct, do you not find it
24 surprising that no member of the legal profession in this
25 jurisdiction has made these complaints?

26 A. Do I not find it surprising?

27 Q. Yes.

28 A. I am not surprised. I am disappointed in them, but I am
29 not surprised. It is a small jurisdiction and we have had
30 in our office different lawyers say how shocked they were
31 at what happened in court. We had a lawyer say, "You know,
32 you don't want to get a bad reputation for your firm, you
33 have got to think of your future clients". I am
34 disappointed that more lawyers have not come forward. I am
35 certainly disappointed in their note taking in court, that
36 nobody seems to have a note.

37 Q. What do you mean by that?

38 A. Well, comments that I have made in my statement, the

1 rolling of the eyes and this sort of thing, it is ...

2 Q. You see, nobody has made any of these kind of complaints

3 except you and Ms Myren, do you understand that?

4 A. Yes, sir.

5 Q. No parties have made any complaints. Do you agree with

6 that?

7 A. I do not know who has made complaints.

8 Q. No court staff have made any complaints; no lawyers have

9 made any complaints; no jurors have made any complaints.

10 Do you understand that?

11 A. I do not know who has made complaints.

12 Q. Would you like to look, please, at bundle PL, if you can

13 find that one.

14 A. OK.

15 Q. Would you go, please, internally to pages 68 and 69 in

16 bundle PL?

17 A. Yes.

18 Q. Do you see this document here?

19 A. Yes.

20 Q. 28th July 2008. "We, the undersigned staff of the

21 judicial department, wish to submit the following on

22 behalf of the Honourable Justice Priya Levers. We have

23 worked with the Honourable Justice Priya Levers since she

24 has taken up office in the Cayman Islands. We find her to

25 be efficient, courteous and well mannered in our day-to-

26 day contact whether in the court or out of court. Her

27 ladyship controls her courtroom and has brought much

28 dignity to the bench. On no occasion can we say that she

29 is not courteous to any person attending court. We find

30 her to deal with members of the public with a lot of

31 patience, consideration and is courteous to them at all

32 times. These Islands should feel privileged in having this

33 lady sitting as a judge and we enjoy working with her".

34 And that is signed by something like seven or eight of the

35 staff.

36 A. Yes, sir.

37 Q. You say they wrote that because they were too frightened

38 to do otherwise?

1 A. I question why they wrote it. I know nothing about it. It
2 is the first time I have seen it. I have no comment to
3 make on how other people feel.

4 Q. But it is completely inconsistent with what you have been
5 suggesting about how she treats staff, is it not?

6 A. As I said before, I go into court and listen to every word
7 that is said, I do not know which of these people were
8 present during the main allegations that I have made. I do
9 not know how much they were listening at the time these
10 things happened. I do not know.

11 Q. If you go back a couple of pages, you will find - I will
12 not take too much time on it - two letters from jurors,
13 gratuitously sent to Madam Justice Levers. Do you see
14 that?

15 A. I am sorry, which page?

16 Q. Page 66.

17 A. OK.

18 Q. Somebody called Mia Welds sent an unsolicited greeting to
19 Madam Justice Levers. She was a juror. And Eleanor Myles
20 the same. "I, Eleanor Myles, have been a juror on more
21 than one case with Justice Priya Levers and have found her
22 to be a conscientious, courteous and extremely competent
23 individual. Justice Priya Levers conducted herself in a
24 very professional manner and gave everyone a fair chance".
25 That is what a juror is saying.

26 A. I do not know who the people are who wrote these. You are
27 telling me they are jurors, OK. I do not know the people
28 specifically. I do not know their character. I can only
29 speak to what I saw in court.

30 Q. Can we go back now to your supplementary witness statement
31 and, in particular, to paragraph 15?

32 A. The supplementary?

33 Q. Yes.

34 A. Yes, sir.

35 Q. Would you mind explaining to the Tribunal what the
36 relevance of paragraph 15 is?

37 A. I feel that Justice Levers believes herself to be better
38 than other people and I believe that her treatment of her

1 helper that day was appalling. The lady was on speaker
2 phone.

3 Q. I am sorry.

4 A. The lady was on speaker phone. I was sitting in Justice
5 Levers' office and we were on a break. I was going to go
6 back to my office. She had asked if I would stay. She
7 invited me to stay and I did. Sometimes I would have some
8 interesting chats with her and she just happened to make
9 this call to her helper and it was on speaker phone and
10 she made some comments and I mentioned that, "She's on
11 speaker phone, she can hear you".

12 Q. What language was she speaking in to her helper?

13 A. English, I believe.

14 Q. But the helper is Sri Lankan.

15 A. I did not know that. She answered, "Yes, Justice Levers".
16 To answer your question, it might be that she did not
17 understand everything that was being said. It did not make
18 it any better, even if the woman did not understand,
19 Justice Levers was saying the things that she did.

20 Q. Madam Justice Levers has Sri Lankan staff. Do you not
21 know that?

22 A. No.

23 Q. And many of them do not speak English. Do you know that?

24 A. The comment she made was "She's too stupid to understand
25 what we are talking about". I thought it was rude and
26 discourteous.

27 Q. It is another example of something you can put forward to
28 try to damage Madam Justice Levers, is it not?

29 A. I am not trying to damage Madam Justice Levers. I have no
30 reason to.

31 MR BRODIE: That concludes my cross-examination.

32 THE CHAIRMAN: Thank you, Mr Brodie. Mr Otty.

33 MR OTTY: Sir, I do not have any further questions for Ms Rouse.

34 THE CHAIRMAN: Is this a suitable moment for a break?

35 MR OTTY: Sir, before we rise could I just mention one point for
36 the record? I do not consider it to be an appropriate
37 matter to question Ms Rouse about the volume of different
38 complaints in the bundle and the sources of them.

1 THE CHAIRMAN: One moment then. Thank you, madam, for giving
2 your evidence.

3 **(Witness withdrew)**

4 MR OTTY: But it was repeatedly put to her by Mr Brodie that the
5 only complaint had come from her and Ms Myren and that no
6 lawyers or court staff had been involved in any
7 complaints. For the record if I could just mention Mr
8 Adam Roberts, Crown Counsel, complained in relation to the
9 case of Alton Philips. the reference is core 567. Ms
10 Lees who the Tribunal will hear from later today
11 complained in relation to the cases of Dilbert,
12 [REDACTED] and Bush. Her witness statement is at 129.
13 Miss Collins, the deputy clerk of the court, also
14 complained, as did Yasmin Ebanks , the court listing
15 officer. That is a matter that can be dealt with in more
16 detail in submissions, but I think it appropriate to
17 mention it at this stage.

18 MR BRODIE: That was obviously my fault. The questions were
19 intended to be directed to the transcripts which had been
20 produced by Ms Myren and this lady. There were obviously
21 complaints from the three ladies, [REDACTED], [REDACTED]
22 and [REDACTED] obviously, and the ones my learned friend
23 has just referred to. What I was putting to this witness
24 I thought was that in relation to the transcripts they
25 produced.

26 THE CHAIRMAN: I understand, Mr Brodie, thank you. We will
27 break now until 11 o'clock.

28 MR OTTY: And Ms Rouse is formally released?

29 THE CHAIRMAN: Yes, of course.

30 **(Short adjournment)**

31 THE CHAIRMAN: Yes, Mr Otty.

32 MR OTTY: Sir, the next witness is Ms [REDACTED]. Ms
33 [REDACTED], will you affirm or take the oath?

34 THE WITNESS: I will take the oath.

35 **MS [REDACTED]: Sworn**

36 **EXAMINED BY MR OTTY**

37 Q. You will find open in front of you a bundle with a
38 statement in your name. Do you have that?

1 A. Yes.

2 Q. And do you adopt that statement as your evidence before
3 the Tribunal?

4 A. Yes, I do.

5 Q. I would like to address some of the core allegations you
6 make and ask you to comment on the response that has been
7 provided by Madam Justice Levers to some of those
8 complaints. At paragraphs 9 to 12 of your statement you
9 deal with a hearing that occurred in November 2006 and you
10 say in essence that Madam Justice Levers acted in a
11 condescending manner towards you. You were appearing I
12 think at this hearing in person without a lawyer; is that
13 right?

14 A. Yes, I was.

15 Q. You say also in paragraph 12 that the tone in which Madam
16 Justice Levers spoke to you - this is four lines from the
17 bottom - made it clear she had absolutely no interest in
18 hearing your case. What was it about the tone that Madam
19 Justice Levers used that gave you that impression?

20 A. It was just the dismissive way in which she spoke about
21 the proceedings that made me feel there was no interest in
22 hearing anything I had to say or in just hearing me out
23 and listening to my case. I just felt she just dismissed
24 it prematurely before I even had a chance to explain
25 myself.

26 Q. I see. After that hearing you did retain a lawyer to
27 represent you.

28 A. Yes, I did.

29 Q. And the next hearing occurred in April 2007 and you deal
30 with that from paragraph 23 onwards in your witness
31 statement. At paragraph 23 and 24 you say that Madam
32 Justice Levers made an inappropriate remark in respect of
33 your pregnancy and that over the page at paragraph 24 her
34 remarks were filled with disgust as evidenced by the
35 expression she displayed while speaking. Can you describe
36 to the Tribunal the expression that Madam Justice Levers
37 had that you are referring to?

38 A. The expression when the comment was made about my

1 pregnancy was when you look at someone as if you scorn
2 them for the way they look or what they are doing.

3 MR BRODIE: I cannot hear a word of what she is saying, I am
4 sorry.

5 MR OTTY: Could you speak up a little for Mr Brodie, would
6 you repeat that answer?

7 A. Your question was the expression?

8 Q. Yes, in paragraph 24 you say Justice Levers remarks were
9 filled with disgust evidenced by the expression she
10 displayed while speaking. I was asking you to describe
11 the expression that you are referring to there.

12 A. I was saying that the expression on her face when she
13 passed the comment about me being pregnant is when you
14 look at something and you scorn it and you just think that
15 -- you make it clear that you absolutely disagree with
16 what the person looks like or how they are carrying
17 themselves or what they are doing. I just felt scorned
18 and I just felt like there was something wrong with me
19 being pregnant when it is such a natural thing.

20 Q. Thank you. Then in paragraph 25 you say that Madam
21 Justice Levers improperly took into account her own
22 asserted knowledge of medical conditions and treatment
23 costs in favour of your ex-husband, and despite the
24 absence of any evidence on those issues. Madam Justice
25 Levers denies that she acted improperly and she says that
26 there was medical evidence before the court and all she
27 really did was refer to her own experience in passing.
28 How would you respond to that explanation?

29 A. On the information that I was provided with I saw no
30 evidence of what his medical costs were. I can only
31 assume they would be high, but I cannot say whether or not
32 there was evidence, I did not see any, but what exactly do
33 you want me to answer?

34 Q. I think that is as probably as much assistance as you can
35 give, thank you, Ms [REDACTED]. At paragraph 30 you say
36 that Madam Justice Levers made a sarcastic comment to you
37 about the Bible when you were about to take the oath and
38 she said, "It is there. Do you know the Bible?" and you

1 responded that, yes, you did know what the Bible was. Now,
2 as to that we do not know Madam Justice Levers' response.
3 I just wanted to be clear with you how sure you are that
4 that exchange that you have described there, in fact,
5 occurred. How clearly do you recall that?

6 A. It was definitely said, because I was very offended by it.

7 Q. Paragraph 31. You describe what you say were a number of
8 sarcastic comments made by Madam Justice Levers as to your
9 educational record and future intentions. Now, Madam
10 Justice Levers accepts that there may have been some
11 discussion of your studies and she recalls asking whether
12 you were intending to study for "another ten years" or
13 whether you were to commence paid employment, but she
14 denies that her enquiry was in any way sarcastic. How sure
15 are you in your recollection as to the tone that you
16 describe in paragraph 31?

17 A. The tone was definitely sarcasm. With the manner in which
18 it was said and the words that were spoken, it was
19 definitely sarcasm.

20 Q. Similarly, paragraphs 34 to 35, you say that Madam Justice
21 Levers made an inappropriate and sarcastic response to you
22 when you raised the possibility that your ex-husband's
23 business could be made more profitable. Again, Madam
24 Justice Levers accepts that there was an exchange between
25 you relating to this matter, but she rejects any sarcasm
26 on her part. Again, how sure are you from your
27 recollection as to the tone that you have described in
28 those paragraphs?

29 A. I am sure that it was sarcasm the way that I was spoken
30 to.

31 Q. Finally, as far as the hearing is concerned, you say that
32 at the end of the hearing - this is paragraphs 52 to 53 -
33 Madam Justice Levers displayed an inappropriate level of
34 familiarity with your ex-husband and with his advocate and
35 that she made a further inappropriate remark to you in
36 respect of your pregnancy. Now, again, Madam Justice
37 Levers accepts that the exchanges referred to occurred,
38 but she contends they were no more than light-hearted

1 civil exchanges. Again, what would you respond to that?

2 A. Well, as far as I know, whether or not they - in fact, let
3 me just ... It has been a long time since, I am just
4 trying to make sure ...

5 Q. It is paragraph 53 of your statement, if that is helpful,
6 where these exchanges are referred to.

7 A. He was sick and I accepted that. What I did not accept is
8 the way you openly speak, you speak him so much - you are
9 so much more civil towards him but then you are hostile
10 towards me and I had done nothing wrong but to come there
11 and try to secure what my children needed and I just felt
12 that she was just being overly protected of him and, as I
13 said, handling him with kid gloves and then tearing me
14 apart.

15 Q. That hearing took place on 13th April 2007. I think that
16 it is right that you made a complaint about it, in fact,
17 to the Complaints Commission, a Mr Epp, within a few days.
18 Do you recall doing that?

19 A. Yes, I did.

20 Q. If you would like to look at it, there should be another
21 bundle with "Core" on it to your left. If you would go to
22 page 139 in that bundle, you will find your covering
23 letter and then with it the complaint. Do you recognise
24 that?

25 A. Yes, I do.

26 Q. How did you come to make a complaint to the Complaints
27 Commission?

28 A. I figured that that was the right avenue to go. I was not
29 sure exactly where I had to go, which is why I copied it
30 to the Chief Justice.

31 MR OTTY: Thank you very much, Ms [REDACTED]. If you would like
32 to wait there, Mr Brodie will have some questions.

33 Sir, Ms Rushbrook has reminded me that I have failed
34 to mention for the benefit of the press that this is
35 another set of proceedings to which the reporting
36 restrictions that the Tribunal has directed apply.

37 THE CHAIRMAN: Yes, thank you for reminding us.

38 MR OTTY: Thank you, sir.

1 THE CHAIRMAN: Yes, Mr Brodie.
2 **CROSS-EXAMINATION BY MR BRODIE**
3 MR BRODIE: Ms [REDACTED], would you be kind enough to go back
4 to paragraph 11 of your statement? Up until 20th November
5 you had been acting for yourself, had you not?
6 A. I am sorry, can you repeat that, please.
7 Q. Up until 20th November, when you first appeared before
8 Madam Justice Levers, you had been acting for yourself,
9 had you not?
10 A. Yes, I had.
11 Q. And then you thought you could do that quite
12 satisfactorily, did you not?
13 A. I thought I did for what I was trying to accomplish, I
14 did.
15 Q. And when you came into court you were not sufficiently
16 prepared.
17 A. No, I was not.
18 Q. I am sorry.
19 A. No, I was not.
20 Q. In order to enable the court to proceed with the hearing
21 that you wanted. That is right, is it not?
22 A. I did not have an attorney. I did not realise that I had
23 to have one.
24 Q. Exactly. And what Madam Justice Levers advised you to do
25 was to get one.
26 A. Yes, she did.
27 Q. In paragraph 11 you described the remark attributed to her
28 as snide. What was snide about it?
29 A. It is the way in which it was said.
30 Q. Well, what do you mean by that? She was simply saying to
31 you, was she not, "Look, you had better get a lawyer who
32 will put your case in order for you". That is all she was
33 saying, was it not?
34 A. But you can say something, but it is the way in which you
35 say it. It is like, "That is why people hire attorneys for
36 these things".
37 Q. But will you just try to help us as to - was it the tone
38 of voice or what was it?

1 A. I was totally new to this, I had never been to court
2 before.

3 Q. No.

4 A. I accept that I was not prepared. I do not accept that I
5 should have been spoken to in that way. As a superior,
6 you can say to me, "you have to get an attorney" without
7 saying it to me, "That is why people get attorneys for
8 these things". OK. That is the way in which it was said to
9 me. That is what I complained about.

10 Q. So what it comes to is this. You are not complaining about
11 the advice that she gave you to get an attorney, but you
12 interpreted her remark as being offensive. That is what it
13 comes to, does it not?

14 A. Well, I can only tell you how it made me feel, the way
15 that I was spoken to.

16 Q. But why should Madam Justice Levers speak in an offensive
17 way when all she was doing was giving you helpful advice
18 about getting an attorney?

19 A. I cannot answer why she would speak to me in that way. I
20 can only tell you that she did.

21 Q. I would suggest to you that you simply misinterpreted what
22 she was saying to you.

23 A. I am sorry, I do not accept that.

24 Q. So you are saying to this Tribunal that when Madam Justice
25 Levers said to you you need an attorney, you need to hire
26 one, for no good reason whatsoever, it was said in a
27 wholly offensive manner - that is what you are saying, is
28 it?

29 A. I cannot tell you what the reasons were. I can only tell
30 you that it was said to me in that way and I did take
31 offence to it.

32 Q. Eventually, a hearing did take place on 13th April, did it
33 not?

34 A. Yes, it did.

35 Q. Yes.

36 A. Yes, it did.

37 Q. Would you mind speaking a little louder please, because I
38 have difficulty hearing you?

1 A. I am sorry, my voice is not very loud, I will try to speak
2 louder.

3 Q. By that time you had engaged the services of Stacey Parke,
4 had you not?

5 A. Yes, I did.

6 Q. When you arrived before the learned judge with Ms Parke,
7 the judge said to Ms Parke, "You know, don't you, that I
8 have the same illness as Mr Evans?" Do you remember her
9 saying that?

10 A. I do not recall that being said when we arrived. If it
11 was said to her, then I did not hear it.

12 Q. And what she said to Ms Parke was, "If you are
13 uncomfortable with that, let me know". Yes - do you
14 remember that being said?

15 A. I was made aware of it before we arrived at court from my
16 lawyer. How she became aware of it I do not know.

17 Q. And then the learned judge, Madam Justice Levers, enquired
18 of your lawyer as to whether she was comfortable with that
19 or whether she wished her not to hear the case. Do you
20 remember that?

21 A. I was not aware of that.

22 Q. And certainly Madam Justice Levers made no secret of the
23 fact that she understood the illness that Mr Evans had
24 because she had the same one. She made that quite clear,
25 did she not?

26 A. This all happened during the hearing, it did not happen up
27 front. When it came out - I already knew before the
28 hearing started that this was the case. OK, I was
29 starting to think that maybe this would cause a problem
30 for me, because - it is a serious illness, but I do not
31 feel that you can take this personal, I mean, yes, he was
32 sick and I did sympathise with him and I almost did not
33 really want to go ahead with the hearing, but I owed it to
34 my children, but, because you as the judge are also sick,
35 you cannot take that - in my opinion, I would think that
36 you cannot take that into account.

37 Q. Well, can I just ask you, but I think you have given us
38 the answer, you knew that she was a fellow sufferer before

1 you got to court.

2 A. Shortly before, the day before.

3 Q. And did your counsel advise you that you could have asked

4 the judge not to hear the case because she was a fellow

5 sufferer?

6 A. I was not aware that I could have asked for a change.

7 Q. I mean, it was known to you and known to your counsel and

8 the learned judge referred to it, you could perfectly well

9 have asked her not to sit, could you not?

10 A. I did not know that I could ask her not to sit.

11 Q. Would you just now go, please, to the bundle that Mr Otty

12 took you to, which is your complaint, which you will find

13 at page 139? Have you found that?

14 A. Yes.

15 Q. I think that in the following pages, right the way through

16 to page 147, one finds the complaint more or less in the

17 same terms as the witness statement as we had before us -

18 is that right?

19 A. Yes, it is.

20 Q. If you go to page 509, you will find a response from

21 Stacey Parke. Have you seen this before?

22 A. No.

23 Q. What happened was that if you look in the body of this at

24 page 509 Mrs Parke says on Thursday 31st July at

25 approximately 4.15 p.m. I received a copy of Ms

26 [REDACTED]'s complaint from Ms Nicole Petite of the legal

27 department and she was asked to make comments on your

28 complaint. Do you see that?

29 A. I see that.

30 Q. If one reads this through one sees what she says about

31 what happened, and one of the things that was discussed

32 was the state of your ex-husband's business. is that

33 right?

34 A. Yes, it was.

35 Q. You see at paragraph 3 the question of Madam Justice

36 Levers' illness was raised, was it not? She raises it.

37 A. Which paragraph are you on?

38 Q. At paragraph 3 page 510. Would you go to paragraph 9,

1 where she says I verily believe that my client did not
2 instruct me on her pregnancy and I believe I was only made
3 aware when she was p[regnant a few days or weeks of the
4 hearing and therefore no mention was made of it in her
5 affidavit. The judge may have asked at the beginning if
6 my client's pregnancy was related to these proceedings
7 because our affidavit did not disclose such and I would
8 have indicated it did not and that the petitioner is not
9 the father of the unborn child, and I had no instructions
10 on the same. Do you see that?

11 A. I see that.

12 Q. It was in that context, was it not, that the learned judge
13 enquired about the paternity of your baby, was it not?

14 A. I do not know why she enquired as to who the father of my
15 child was. I can only tell you that I felt it had
16 absolutely nothing to do with the proceedings because I
17 was not there for that, I was there for two children, two
18 existing children from a past marriage.

19 Q. If you look at paragraph 8 above, I do not recall the
20 statement in paragraph 2, page 3 being made by the judge,
21 so we now have to go back to page 142 for that. If you go
22 to page 3, paragraph 2 your evidence is --

23 A. I am lost, I am not sure where you are.

24 Q. it is page 142.

25 A. I am on page 142.

26 Q. Top of the page, second paragraph.

27 A. Yes.

28 Q. And you attribute to the learned judge the statement "I
29 see there is another member of the human race on the way"
30 and enquired who the father was. Your attorney at
31 paragraph 8 says she does not recall the statement that
32 you attribute to the judge. Do you see that? I am sorry
33 to dart back and forth.

34 A. I see what you are talking about and I cannot tell you
35 what she did or did not hear or what she did or did not
36 remember. I can only tell you what I knew, what I heard
37 and what I remember.

38 Q. And if you would go to paragraph 12 at page 511 she says

1 with reference to pages 3 and 4 of Ms [REDACTED]'s
2 complaint statement I have no recollection of those direct
3 statements being made by the judge, i.e. the one stated in
4 quotations. So we go back to pages 3 and 4 at 142 and
5 143, and the allegation you make about the Bible, for
6 example, she has no recollection of that. Do you see
7 that, and what do you say to that?

8 A. I say to that that for as closely as she was sitting to
9 me, as near as she was sitting to me she would have had to
10 hear, the whole court room was silent when I took the
11 Bible and when the question was put to me.

12 Q. And then at the top of page 4 you say in your complaint
13 and again in your witness statement I think that Justice
14 Levers remark I spent ten years in school and then stated
15 with sarcasm that is some commitment, how long before you
16 finish, another ten years. She has no recollection of
17 that, according to Stacey Parke. What do you say to that?

18 A. Like I said I know it happened and what Stacey hears or
19 remembers she should have heard and she should have been
20 listening, she was my attorney, and what she remembers I
21 cannot know what she does or does not remember. I can
22 only say what I know I heard and what I remember and what
23 I documented not very long after this took place.

24 Q. If you go back to page 510, paragraph 2, at p 2 Stacey
25 Parke says this: "I recall these proceedings were
26 particularly tense and well contested on both sides.
27 However the exact words and comments uttered by the
28 honourable judge, opposing counsel, petitioner Ms
29 [REDACTED] and even myself is not recalled in its
30 entirety. I know my client was very disappointed by the
31 final orders." One gets the picture here of fairly tense
32 proceedings with high feelings on both sides. Is that
33 right?

34 A. Yes, there was.

35 Q. And if you go to paragraph 17 at page 512 the matter was
36 fairly lengthy, approximately two hours, and during that
37 time I felt I was given the opportunity to address the
38 issues and thought we made a clear for our enforcement

1 breach and variation, but the honourable judge was not
2 persuaded by our position. So Ms Stacey Parke seems to
3 have thought you had a pretty fair hearing, did not
4 succeed but a fair hearing. Do you disagree with that?

5 A. I absolutely disagree with that. Stacey. she opened her
6 mouth and several times made statements to ask me
7 questions and she was basically shot down before she could
8 even finish saying what she was saying. In my opinion
9 that is not a fair chance to state my case.

10 Q. That is not quite how Stacey Parke saw it because if you
11 go to paragraph 5 at page 510 she says the Hon judge
12 further informed me that because of the petitioner's
13 health she was going to limit my cross-examination of the
14 petitioner to matters relating to his business and
15 financial affairs only. Do you remember that?

16 A. I remember that.

17 Q. And then Ms Parke goes on I believe the judge also made a
18 comment that she was doing so because she was concerned
19 that I could be particularly aggressive at times. I took
20 no offence to this comment because I believe within that
21 week or so I might have been before the same judge in a
22 few highly contested matters. I also recall although I
23 was initially advised to limit my questioning of the
24 petitioner during the proceedings I was allowed to ask the
25 petitioner several questions outside the range set by the
26 judge. Do you agree with that?

27 A. I do not really recall everything that was asked and
28 whether or not I knew it was outside the range allowed. I
29 cannot make a comment on that.

30 Q. Mrs Parke seems to take the view that she got a pretty
31 fair hearing on your behalf, does not she?

32 A. I would have to say that her view is totally different
33 from mine because like I said there were several times
34 when she started to say something or ask something and she
35 was cut off.

36 Q. Just one or two other questions. Not only was your ex-
37 husband ill but his business had begun to go downhill, had
38 it not?

1 A. I was not aware of that until the hearing.

2 Q. I think in the end you decided because you learned how ill
3 he was not to pursue your application for an increase in
4 maintenance. Is that right?

5 A. Yes, I did, I am not an inhuman person. I understand that
6 he was sick and I would not expect him to pay if he was
7 sick, he had medical bills. My problem was simply the way
8 that the whole thing took place.

9 Q. And you in the course of your evidence made some
10 suggestions as to how his business might be improved. Did
11 you?

12 A. I just started to say -- I am not a business owner so I am
13 no one to give any professional advice. I am just saying
14 there were certain things that anyone would know, that if
15 a business is started to fail there are certain steps you
16 can take to try and save it. That is all I was saying, I
17 was not trying to be an expert or anything.

18 Q. it is suggested I think that you said the employees might
19 be encouraged to work harder.

20 A. Well, there are certain incentives you can give your
21 employees to work harder, if you know how to manage
22 people.

23 Q. You were expressing views about how the business might or
24 how the employees might be encouraged to work harder and
25 the judge was not very impressed by that. That is the
26 position, is it not?

27 A. Well, that was my humble opinion and I am not an expert on
28 it, because I am not a business owner. I was just saying
29 there are certain steps you can probably take to try and
30 save your business if it is starting to fall apart. I was
31 not trying to condemn anyone or tell anyone how to do
32 anything.

33 Q. But if in fact you were making suggestions of that sort
34 which did not find favour with the judge she was perfectly
35 entitled to indicate that, was not she?

36 A. She is fair to indicate that but like I say it is the way
37 in which she speaks to people that matters.

38 Q. The other problem was to do with access, was it not? Was

1 not that discussed on this occasion?
2 A. Access to the children?
3 Q. Yes.
4 A. Yes, it was.
5 Q. By your ex-husband.
6 A. Yes, it was.
7 Q. And oddly enough in your case you were wanting your
8 children to have greater access to your former husband.
9 is that right?
10 A. Yes, I was because I had more responsibility for them, I
11 was in school in the evenings and it was hard for me.
12 Q. And he was resisting that I think?
13 A. He was resisting in the past. What happened in the
14 hearing is where she gave him an option of whether or not
15 he would like the visitations to begin again and he
16 responded that it would be too stressful. I took offence
17 there on those grounds to him, because how can you say
18 that it is too stressful to have your children around.
19 Q. Well, was not the position that he had married again.
20 A. Yes, he had.
21 Q. And there were two children, not his children, but they
22 were more or less adopted, I think, by him.
23 A. That is correct.
24 Q. So his household consisted of himself, his new wife and
25 two children.
26 A. Yes, it did.
27 Q. And his view was that it would be very difficult and
28 stressful for him, especially as he was ill, to have to
29 have your children as well - that was the point, was it
30 not?
31 A. That was his point.
32 Q. You cannot force someone to have access to the children,
33 can you?
34 A. I cannot force. I simply said that I would not like to
35 see the relationship between them break down, nobody wants
36 to see their children and their father - at least I
37 certainly do not want to see them estranged from their
38 father and I was disappointed for my children that he

1 would take that view.

2 Q. But there is nothing that Madam Justice Levers could have
3 done about that, was there?

4 A. My complaint was not - I cannot say that she should have
5 made him take them. My complaint was not based on that;
6 that was a small part of my complaint.

7 Q. You see, my suggestion to you is that you had a perfectly
8 fair hearing before Madam Justice Levers, did you not?

9 A. I have to disagree with that.

10 Q. And, if you were worried about the fact that she had an
11 illness similar to that of your former husband, you could
12 have objected to her hearing the application.

13 A. Like I say, I was not aware that I could have asked for
14 another judge to hear it. I did not know that.

15 Q. Your counsel did not tell you that?

16 A. I was not aware of that.

17 Q. So you have no recollection of the learned judge at the
18 outset of the hearing saying to Mrs Parke, "Are you
19 comfortable with me hearing this"?

20 A. No, I do not.

21 THE CHAIRMAN: You have already put that question once.

22 MR BRODIE: Thank you very much.

23 THE CHAIRMAN: Thank you, Mr Brodie. Mr Otty.

24 MR OTTY: Thank you, sir, I have no further questions.

25 THE CHAIRMAN: Thank you, madam, you are released.

26 **(Witness withdrew)**

27 MR OTTY: Sir, the next witness is Ms [REDACTED]. Her witness
28 statement is at tab 21 of the bundle. Again, this is
29 another family matter to which the reporting restrictions
30 apply.

31 THE CHAIRMAN: Yes.

32 MR OTTY: I should also mention, sir, at the outset that Ms
33 [REDACTED] has difficulty with hearing and so I would ask
34 Mr Brodie to take that into account.

35 MR BRODIE: Mr Akiwumi will be asking the questions.

36 MR OTTY: OK. Mr Akiwumi will be doing the questioning.

37 **[REDACTED], sworn**

38 THE CHAIRMAN: Ms [REDACTED], will you try to shout at counsel

1 when he asks you questions because you have a very soft
2 voice and everyone must hear the evidence you give?

3 A. Yes.

4 **Examination in Chief by MR OTTY**

5 MR OTTY: Ms [REDACTED], I understand also that English is not
6 your first language, so, if any of my questions are not
7 clear to you, then please do so and I will try to simplify
8 them.

9 Ms [REDACTED], you will find in the bundle in front
10 of you your witness statement which is at tab 21. Do you
11 adopt that witness statement as your evidence before the
12 Tribunal?

13 A. Yes.

14 Q. And your complaints in relation to Madam Justice Levers
15 relate to two hearings, as I understand it, one in
16 November 2006 and one in April 2007. We see that in
17 November 2006 addressed at paragraphs 9 to 12 of your
18 witness statement. Do you see that?

19 A. Yes, I do.

20 Q. You say here that Madam Justice Levers treated you with
21 sarcasm, principally I think by her remark in responding
22 to your comment that your siblings were in the Cayman
23 Islands, your brothers and sisters were in the Cayman
24 Islands, and had their own family so you could not go and
25 live with them. Is that right?

26 A. Yes.

27 Q. Now, that allegation has been denied in general terms by
28 Madam Justice Levers. I wanted to ask you how sure you
29 were in your recollection as to the tone of the comments
30 you describe. How sure are you of the sarcasm that you
31 have described?

32 A. When we came up into the inside of the chambers ...

33 Q. If you could speak up a little, Ms [REDACTED]. I will not
34 take offence if you shout at me.

35 A. Justice Levers mentioned to me that she cannot give me the
36 property because I have the siblings here in the property,
37 but I told her that my family they have their own family
38 and they have their own house, right, and she replied to

1 me, "Oh, you found them a husband". I said, "No, I found
2 them a job here in Cayman Islands, but it just happens
3 they just got married in here".

4 Q. I see. Thank you. Later on in your statement, beginning
5 at paragraph 22, you deal with a hearing that occurred in
6 April 2007. You refer there to a comment that Madam
7 Justice Levers made, "So you want more money, why don't
8 you just go back to the Philippines?"

9 A. Yes.

10 Q. Is the Philippines where you are originally from?

11 A. Yes, sir.

12 Q. Now, Madam Justice Levers has denied that she made any
13 such comment and I wondered, given that English is not
14 your first language, how sure you were in your
15 recollection of this comment having been made.

16 A. OK. On that day, when I came there asking another - to
17 separate us in the house.

18 Q. Yes.

19 A. And then I gave him some summons on that day and then she
20 told me when we came inside the chambers, "Why do you come
21 back here again? Are you asking for more money?" I said,
22 "No" and she just mentioned, I don't know why she just
23 mentioned like that, that I have to go back to the
24 Philippines, because I have two children here in Cayman
25 and he have an order that I cannot take my children out of
26 the Island.

27 MR OTTY: I see. Thank you, Ms [REDACTED]. Mr Akiwumi will
28 ask you some questions.

29 THE CHAIRMAN: Yes, Mr Akiwumi.

30 **Cross-examination by MR AKIWUMI**

31 MR AKIWUMI: Thank you, my lord. Ms [REDACTED], I will ask a
32 number of questions, I will try to make them as quickly as
33 possible. The hearing on 27th November 2006, which my
34 learned friend Mr Otty has referred to, at paragraph 9 of
35 the bundle that you are looking at, that was a hearing in
36 which you were seeking an order in relation to the
37 matrimonial property, was it not?

38 A. Yes.

1 Q. And you wanted all the property?
2 A. No, we just want a house.
3 Q. You wanted 50:50?
4 A. 50:50.
5 Q. Now what happened at that hearing is that you got 40 per
6 cent.
7 A. Yes.
8 Q. And your husband obviously got the other balance.
9 A. Yes.
10 Q. And you were not very happy about that, were you?
11 A. No, I am not, because we are working together for 11 years
12 that we lived together and I work in the bar, I get staff
13 rate on the bar, and when we have a loan - when he had a
14 loan in Cayman National Bank me and him went to the place
15 where I work and we take some loan over to pay everything
16 with that loan.
17 Q. The short point is that you were not happy with the order
18 that Madam Justice Levers had made in relation to the
19 division of the property.
20 A. Yes, that was before, but now, because I am happy now, I
21 take that and I do not want to pursue anything any more
22 with my ex-husband.
23 Q. At that time you were not happy?
24 A. Yes, at that time. I am not unhappy any more.
25 Q. Now, that concern you had with her order continued to the
26 next hearing which was in April 2007. Do you remember the
27 hearing in April 2007 which is referred to at paragraph
28 22?
29 A. Yes.
30 Q. You wrote, did you not, a letter to the clerk of the
31 court, a letter which I think is dated 3rd April 2007.
32 A. Yes.
33 Q. Now, just to help you about that, if you pick up bundle 2,
34 if you turn to tab 36, this is six months after the
35 original order that Madam Justice Levers made you write to
36 the court. Have you got that?
37 A. Yes.
38 Q. It is page 646.

1 A. Yes.

2 Q. It is a letter that is dated 3rd April 2007.

3 A. OK. Yes.

4 Q. It is addressed to the clerk of the courts.

5 A. Yes.

6 Q. And that is your signature at the bottom of the letter.

7 A. Yes, sir.

8 Q. In that letter six months after the hearing in November

9 you are saying that the judge made certain sarcastic

10 comments against my family which I find hurtful and

11 irrelevant to this matter. You also then go on to say

12 that it was obvious that I was not given a fair judgment

13 by the said judge who seemed to favour my Caymanian

14 husband and showed a strong sleight to non-Caymanian.

15 Were you asking in that letter for a different judge

16 to hear your application, your summons in court?

17 A. Yes, I sent the letter.

18 Q. Now, you also filed an affidavit in relation to that

19 letter which you will find at page 633. If you look at

20 page 636, that is your signature, is it not?

21 A. Yes.

22 Q. Now, in that affidavit there is no mention whatsoever of

23 any of the comments that you have attributed to Madam

24 Justice Levers in your evidence today. Do you want to read

25 it? The only thing that you said is that you were not

26 satisfied by the order made by Justice Levers - this is

27 paragraph 5 - in particular the part where I am only

28 getting 40 per cent of the net proceeds of the former

29 matrimonial home. Do you see that?

30 A. Yes.

31 Q. Then at paragraph 9 you are maintaining your argument, "I

32 am also requesting that both parties have a 50:50 share in

33 the net proceeds of the former matrimonial home as my

34 contribution to the household during the course of the

35 marriage is equal or may be more than the petitioner's".

36 That is what you say. There is not one word mentioned by

37 you in your affidavit to the court dated 10th April 2007

38 in which you say that Madam Justice Levers was sarcastic

1 to you in any way.

2 A. OK. (Pause)

3 THE CHAIRMAN: Yes, well, we have got that point.

4 MR AKIWUMI: And I am suggesting to you, Ms [REDACTED], that

5 when you say that Madam Justice Levers on 27th November

6 2006 she made reference to "So you found them husbands

7 here", that was not said by the judge.

8 A. Can you repeat the question?

9 Q. Madam Justice Levers did not say to you that you found

10 them husbands here in reference to your siblings.

11 A. Yes, she did.

12 Q. How many siblings did you have in the Cayman Islands or do

13 you have in the Cayman Islands?

14 A. Six.

15 Q. Six siblings. Was it not put to you by the judge in the

16 context of your application for 50 per cent of the

17 property, did she not ask you, "Are your siblings all

18 married?" or words to that effect?

19 A. No. Whatever I say there that is what she say.

20 Q. Pardon.

21 A. Whatever I put there, the words, that is what she told me.

22 Q. Well, you and I disagree about that, because I suggest to

23 you that what was said was - you were asked, "Are they all

24 married?" and then you said something about them having

25 jobs, and that was all said in the context of the property

26 application. That is what I am suggesting to you

27 happened. It was about the house.

28 A. Yes, it was about the house, because she tell me that she

29 cannot give it to me because I have the siblings here and

30 then she answered me that way, "Oh, you find them a job -

31 a husband here?" I said, "No, I found them a job here".

32 Q. All right. On 11th April 2007, you were complaining still

33 that you had not got your fair share of the house - yes?

34 A. Yes.

35 Q. And it was not suggested to you or said by the judge, "So

36 you want more money, why don't you go back to the

37 Philippines?" That is not what the judge said.

38 A. Yes, that is what she said to me. When we came inside she

1 say, like, "Why are you here again? Asking for more
2 money?" I said, "No", because ...

3 Q. Did you have ...

4 THE CHAIRMAN: Let her answer.

5 MR AKIWUMI: I am sorry.

6 THE CHAIRMAN: Go ahead, please.

7 A. I said No, I just came here asking to a separate and
8 asking for the payment because of the violence that I
9 experienced with my ex-husband, but I still never get
10 granted that. Even though I showed all the pictures that
11 I had bruises and everything.

12 MR AKIWUMI: But that was not an issue, the fact that you had
13 been in an abusive relationship with your husband, and
14 there is no dispute about that, was not an issue before
15 the judge.

16 A. It is related on to that and that is why I was asking to
17 get the money already so I could get out of the place.

18 Q. Did you have a lawyer representing you on that occasion?

19 A. I had the lawyer but I cannot first but I cannot afford
20 any more and that is why I represent myself, and so I said
21 to the court that I represented myself.

22 Q. Maybe I did not understand but on the 27th November 2006
23 did you have a lawyer representing you?

24 A. The first, yes, Stacey Parke.

25 Q. On the second occasion did you have a lawyer representing
26 you?

27 A. No, I did not have any money.

28 Q. I suggest to you that those comments were never made by
29 the judge. When did you decide to make a complaint to the
30 Tribunal of Inquiry?

31 A. When I see something in the newspaper and I said to myself
32 I came in here, I want to give a statement, written
33 statement on the desk, just to express what I experienced
34 to the court. So other people cannot experience any more
35 what I experienced.

36 Q. When did you decide to make a complaint to the solicitors?

37 A. I cannot remember the date, it was something like about
38 September.

1 Q. So in September 2008?
2 A. I cannot say yes, but it is something like that, 2008
3 Q. And that was almost two years after you claim that these
4 remarks had been made against you by Madam Justice Levers?
5 A. Yes.
6 Q. Turn to tab 20 in the first bundle that you had, paragraph
7 4. Read that to yourself.
8 SIR DAVID SIMMONS: Do you mean the first witness statement of
9 Stacey Parke?
10 MR AKIWUMI: That is right. Have you seen that statement
11 before?
12 A. Yes, sir.
13 Q. You have?
14 A. Yes.
15 Q. Do you remember, and if you look at the last sentence of
16 paragraph 4, do you see that sentence, I cannot remember
17 the words that she used, what she said was to the effect
18 that I was robbing Mr [REDACTED] of his money. Do you
19 see that, paragraph 4, the last sentence?
20 A. Yes. Can I say something about this because I just said I
21 have seen it but I do not see this one, this is the first
22 time.
23 Q. That is fine, you can read that paragraph again. Have you
24 read it?
25 A. Yes.
26 Q. That is a statement by counsel who represented your
27 husband on the other side.
28 A. Yes.
29 Q. And she has no note of Madam Justice Levers having said
30 what you claimed that Madam Justice Levers said.
31 A. No, I never mentioned to her that she is robbing my ex-
32 husband, Mr [REDACTED], of that money.
33 Q. You never ..
34 A. I never saying that later. I came to her office to sign
35 the marriage -- I cannot remember now, the document.
36 Q. The document of transfer?
37 A. No, about the marriage, to annul the marriage.
38 Q. I see.

1 A. The decree.
2 Q. Decree absolute.
3 A. Yes. That is the only thing, but she do not want to sign
4 it, and one of the secretaries, that was the only one I
5 spoke to. And she told me I am acting like a lawyer in
6 what I did because I am representing myself and I am just
7 asking her to sign that decree, document, that I sign it,
8 and she did not sign it, that is all, I never mentioned
9 anything.
10 Q. So when she says that she said that you said to her that
11 she was robbing Mr [REDACTED] of his money --
12 A. No, like I said --
13 Q. You never said that?
14 A. I never said that. Like I said I just came over there to
15 sign, asking her to accept the document.
16 Q. One last question. Do you remember when you were
17 appearing before Madam Justice Levers the judge asked for
18 a marshal to come to court. Do you know what a marshal
19 is? An usher. Did the judge ask for an attendant to come
20 into court, do you remember that?
21 A. She asked me to go into the court?
22 Q. you do not remember?
23 A. No, I do not.
24 MR AKIWUMI: Thank you.
25 THE CHAIRMAN: Thank you, Mr Akiwumi. Yes, Mr Otty?
26 **RE-EXAMINED BY MR OTTY**
27 Q. Just to be clear on the last point, I think it is a matter
28 you dealt with in paragraph 24 of your witness statement
29 if you would like to turn to that behind tab 21.
30 A. Yes.
31 Q. Do you stand by the account that you have set out there?
32 A. Yes.
33 MR OTTY: Thank you. Thank you, sir, no further questions.
34 THE CHAIRMAN: Thank you, madam, you are released by the
35 Court.
36 **(The witness withdrew)**
37 MR OTTY: Sir, the next witness is Ms Lees, if I could ask
38 her to come forward. Ms Lees, will you affirm to take the

1 | oath?
2 | THE WITNESS: Affirm.
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MS ELIZABETH LEES: Affirmed
EXAMINED BY MR OTTY

Q. If you would like to sit down you will find open there a statement in your name. Do you have that?

A. Yes.

Q. And do you adopt that as your evidence before the Tribunal?

A. Yes.

Q. I would like to ask you one or two supplemental questions in relation to it. In paragraph 7 of the witness statement you deal with the case that is called The Crown -v- Bryan.

A. Yes.

Q. On which we have heard some evidence this morning, and you say that you have nothing else to add that is not reflected in the transcript. I would like to show you some passages in the transcript and ask you one further question in relation to them if I may. You will find to your left a core bundle. If you go in that bundle to page 149 you will find at the beginning of the transcript or extract from transcript in this case. I do not know whether you were in the hearing room when Ms Rouse was being questioned this morning.

A. Yes, I was

Q. Mr Brodie was asking her a number of questions about the transcript but did not actually go to it. I would like to direct you to a number of passages. First page 150, where we have the court at line 11 saying "Now, Pauline Hunter". Pauline Hunter was the victim of one of the assaults in issue in this case. Is that right?

A. That is right.

Q. And the question "Is she a Caymanian?" And you say "She is a Jamaican". The Court: "And Anthony Bryan" - he was obviously the defendant - "is also Jamaican". "(The Court) And Ramoon?" Who was Ramoon?

A. The argument had started over Ramoon, Ramoon was effectively one of the people who had been there at the

1 time or around the time so he was mentioned during the
2 course of the facts.

3 Q. I see. And you were asked about his nationality as well.
4 Then further on in the transcript we see at page 152
5 beginning at line 20 you were outlining the serious
6 injuries received by the victim in this case, and then
7 page 153 at line 11, we have The Court, Madam Justice
8 Levers, saying "You see Ms Lees, these people get away
9 with it, they don't come here and have a savings account.
10 they send it all back home, so what are we going to do?"
11 And then further down at line 19 "I just wonder why Cayman
12 has to feed these people ...

13 MR BRODIE: Could you read the other line.

14 MR OTTY: By all means. "They send it all back home", going
15 back to the passage I started with. You see, Ms Lees,
16 these people get away with it. They don't come here and
17 have a savings account, they send it all back home, so
18 what are we going to do, and even if I sentence him to 50
19 years in prison he is not going to make 8,000". You start
20 to respond and then Madam Justice Levers continues "I just
21 wonder why Cayman has to feed these people. We must get
22 some arrangement where they go back and do time in jail
23 there. Why should we keep them here?" Then further on at
24 page 157 we have a comment from the court apparently
25 relating to Ms Hunter, 14 to 16, The Court "I tell you
26 this woman was spreading her goodwill around. Yes." And
27 then paragraph 161 beginning at line 3 we have Mr
28 [REDACTED], the other counsel in the case, addressing the
29 court and he says "Mr Bryan [the defendant] like many
30 people from Jamaica has obviously come here in order to
31 work and send money home, as you have indicated, and
32 actually try and make something of himself. He had a
33 profession, he had a trade". And then the Court, Madam
34 Justice Levers, intervenes, "But this is the problem I
35 have. They don't make anything of themselves. It's all
36 about money. They come here, they make use of the country
37 and then they just send their money back. They don't -
38 they stick to each other, they don't integrate into the

1 community and they bring their violent ways with them.
2 This is the problem, Mr [REDACTED]. This is why we run
3 away from Jamaica because of the violence. And what are
4 they doing to this beautiful island now? The same thing
5 they do to Jamaica in Jamaica, it really saddens me,
6 because they have the golden opportunity to improve
7 themselves." Now, one of the allegations with which the
8 Tribunal is concerned is whether on certain occasions,
9 including this one, Madam Justice Levers made remarks
10 indicative of bias on grounds of nationality, and in this
11 context clearly the allegation is remarks indicative of
12 bias on ground of Jamaican nationality. I wonder if you
13 can assist the Tribunal with your perception of the
14 hearing and those remarks at the time in that context?

15 A. The comment that obviously stands out from these sections
16 that have been referred to today, was the one in relation
17 to the victim herself, and whether she had Caymanian
18 status, because although it maybe said that there was some
19 relevance to where the defendant had come from and what
20 his position was, there did not seem to be any relevance
21 at all to where the victim came from, what her status was
22 and whether anything could be done about that status, and
23 I think it was at that stage that I said there is not any
24 suggestion that she has brought this on herself because I
25 could not understand why there was any reference to be
26 made to her status and what might happen to her, because
27 it was completely irrelevant.

28 Q. That passage I think I failed to highlight and you will
29 find it beginning at page 154 and going through to page
30 155, just below line 13 Madam Justice Levers asking is she
31 working here, and then there is a continuing exchange.

32 A. And you will see here this has come from Detective
33 Inspector Bailey. That was not something that I would be
34 aware of or would need for the purposes of this sentencing
35 hearing. He was the officer who assisted me and it was
36 him who then said she is about to get Caymanian status,
37 and then the Court says "But can't somebody object?" And
38 then you will see on the next page which is 155 by the

1 bottom numbers that is when I said I do not know if there
2 is any suggestion that she has brought on these injuries,
3 because I could not understand why any question was being
4 asked of her status, whether somebody could object to her
5 getting status and how that could possibly arise out of
6 the facts that had just been opened.

7 Q. And then the response to you is you are married, you live
8 with this man, you know, and I bet you he has beaten her
9 before, but she sticks there, you know, I mean, the only
10 way she is getting permanent residency and all this sort
11 of thing is she was married to a Caymanian. Having made
12 use of him now she has gone on to her own kind, and then
13 you make then point or it may be because she has been here
14 for 19 years. Well, yes, I guess. Against the background
15 of that comment and the other comments what was your
16 perception as to whether or not any remarks were being
17 made indicative of bias on grounds of nationality?

18 A. Yes, for me that firstly it was irrelevant and secondly it
19 seemed to be that the reference was also being made here
20 either to the money that might come depending on the
21 nationality or this reference to I bet he has beaten her
22 before, and I also did not know where that had come from,
23 I did not know if that was because of where she comes from
24 and is this the explanation that is being given for the
25 objecting to the Caymanian status, when that was not any
26 of the facts that were before the court. Could I just add
27 one further point.

28 Q. Yes.

29 A. You asked me about Ramoon. In relation to the victim that
30 we had been talking about with the Caymanian status he was
31 someone who was there at the time. Also just to give a
32 full picture it was also the case that he was also a
33 victim and this was a sentencing for two matters. So he
34 was related to both, just so you have the full picture.

35 Q. There had been two assaults?

36 A. Yes.

37 Q. Another of the cases you address in your witness statement
38 is that of the Crown -v- Irvelyn Bush and you do that at

1 paragraphs 8 through to 23 of your witness statement.
2 Again as the Tribunal has already heard and as you have
3 explained in your witness statement, the case concerned a
4 charge of possession of a firearm with a lengthy sentence
5 which would follow upon conviction. Do you recall this
6 case?

7 A. Yes.

8 Q. I think the first issue of concern you have identified in
9 your witness statement is in relation to the judge's visit
10 to the crime scene and her speculation that the weapon the
11 subject of the prosecution might have been planted, and
12 you address that in paragraph 10 of your statement. I
13 think it is also correct that once you had objected to
14 Madam Justice Levers doing so she did not refer to the
15 issue of planting of a gun before the jury.

16 A. The use of the word planting, no, there was never the use
17 of the word planting, but I referred later on when I go
18 into the summing up, I do say at paragraph 20 of my
19 statement, the third sentence, she further stated that the
20 jury may think that the police knew exactly what they were
21 looking for and stopped when they found it.

22 Q. And you took that to be an allusion to the possibility of
23 planting, did you?

24 A. I did not see any other possibility.

25 Q. In those passages, as you have indicated, you make a
26 number of criticisms of Madam Justice Levers' summing-up.
27 You say at paragraph 22, "Despite the errors made,
28 although it would have been open to you to correct these
29 errors, you did not do so as by this point it was clear
30 that the outcome of the case would not be affected". Now,
31 you accept then that you had ample opportunity to
32 intervene to correct errors on the part of the judge?

33 A. When you say "opportunity", it was not case where someone
34 was asked if they had any comments to make, but it is
35 always open to counsel to stand up and say, "There is
36 something that I would like to say", which I did do in the
37 later case of Craig Dilbert.

38 Q. Yes.

1 A. In this particular case, the first thing that happened
2 that you have referred to was the judge saying that she
3 had visited the scene and she called myself and defence
4 counsel into her chambers and told us that, which took me
5 completely by surprise. The next day, as you mentioned, I
6 then raised it with her again and it was agreed that no
7 mention of this planning issue would be made before the
8 jury. I have referred to various other sections in my
9 statement. By the time it came to the summing-up there
10 really was a feeling of this is a hopeless cause, so many
11 things had been said and done that - I mean, I have to
12 take responsibility for the fact that I had probably got
13 to the stage where I just thought, is there any point in
14 raising anything else? There was also the issue, for
15 example, I referred to the judge saying that the police
16 were called to a report of two males and that was not in
17 evidence.

18 Q. Yes, this is paragraph 20 of your witness statement.

19 A. Paragraph 20. Matters of that nature would have been
20 something that I probably would have chosen not to raise
21 and have reiterated, so, although there were a number of
22 smaller points, some of them I would have thought it is
23 not worth raising that and having it corrected and drawn
24 more to their attention now and others, such as the DNA,
25 we had been through this and we had had the arguments
26 throughout the trial, also in relation to the law of
27 possession, we had been thought that throughout the trial
28 and I tried to raise my concerns and establish what the
29 law was and had it agreed before. By the end of the
30 summing-up, I thought, well, I tried to do what I can,
31 what actually is going to be achieved now? That was the
32 position.

33 Q. Thank you. The last case that I wanted to ask you about is
34 that of Craig Dilbert. That you address at paragraph 24
35 through to 41 of your statement.

36 A. Yes.

37 Q. One of the allegations that you make there in paragraph
38 25(a) is that the judge would often roll her eyes and make

1 inappropriate hand gestures and you believed she did so at
2 this time, that is at the time when there was an exchange
3 about seating the jurors, as I understand.

4 A. Yes.

5 Q. When you say you believed that she did so, do you actually
6 recall seeing her making some sort of gesture?

7 A. I recall her doing it throughout that trial, particularly,
8 but also in other trials and I think that this was one of
9 the times during that trial. It certainly was ongoing
10 throughout this trial. When I say I believe it was at
11 that time, it occurred several times and I think that that
12 was one of them, but I could not say with certainty at
13 which exact point of the trial - points - this had
14 happened.

15 Q. What do you mean by "inappropriate hand gestures"?

16 A. For example, an indication that this was not important or
17 to be dismissed, a dismissive kind of ...

18 Q. I see, a wave of the hand.

19 A. A wave of the hand. "Yes, yes". Or "let me make a note
20 of that" whilst looking at the jury and making a very
21 careful gesture that this was something that needed to be
22 noted and everybody look and this is what I am doing now,
23 so using the hands to reiterate what was being said, and
24 also to express a view so the rolling of the eyes would be
25 a view that this is nonsense.

26 Q. I see. At paragraphs 25(b) to (f) you set out a series of
27 examples of exchanges between Madam Justice Levers and the
28 bar.

29 A. Yes.

30 Q. In which both you and Mr McGhee, your opposing counsel,
31 are referred to. Now, in relation to those, I wonder if
32 you could just comment on this suggestion. I do not mean
33 it with any disrespect, but I wonder when reading the
34 exchanges that you have set out and the transcript
35 references you have put there, whether you were, in fact,
36 displaying something of an overly sensitive attitude to
37 what were ultimately no more than perhaps robust comments
38 from the bench.

1 A. Well, perhaps to explain that, I can explain how this
2 layout has come about. My concern at the end of the Craig
3 Dilbert trial was that this was a trial in which the
4 public could have no confidence in the judicial system and
5 I was not going to sit by and make complaints orally to
6 people or be upset without doing something about it and I
7 decided that I had to put this in writing, and that was
8 something that I felt very strongly about. My concern,
9 therefore, was with the overall trial, the appearance that
10 was given. When I came to lay that out, I tried to break
11 it up into these sections.

12 Q. I see.

13 A. I am not necessarily saying that any one of these
14 criticisms of me are something that I was either over
15 sensitive about or felt particularly upset about. What I
16 was trying to do was to lay out the picture of what went
17 on so that one could see, I hope, without being there that
18 the overall picture was this is not fair and this is not
19 how justice should be done. I think that if they are put
20 into context and although each one may seem small, because
21 they are constantly coming up again and again and things
22 are being said in front of the jury, you know, I have a
23 reference there to people being kept in custody because of
24 the delays that were being caused when I was being told
25 off about something, why does the jury have to wait for
26 these admissions, when, in fact, the admissions were ready
27 to be read out, and it seemed to me that these were
28 unnecessary criticisms, which when done in front of the
29 jury created the impression that the prosecution was doing
30 everything wrong. The reference to custody, you know,
31 could very easily put in the minds the jury this
32 prosecution is keeping people in custody and I think that,
33 if you take that as a whole, I hope that I have tried to
34 break it down to try to explain the overall picture.

35 Q. I see, thank you. You deal at paragraphs 26 to 31 with a
36 recusal application that you ultimately, in fact, made to
37 Madam Justice Levers in relation to this trial. She
38 refused to recuse herself. I wonder whether you can assist

1 me, was it open to you, as a matter of Cayman Islands
2 legal procedure, to appeal against her refusal to recuse
3 herself?

4 A. The Court of Appeal law allows an appeal by the
5 prosecution against an acquittal by a judge alone or by a
6 jury on the direction of the judge or a discharge by the
7 judge, so we would have to have reached the end of the
8 proceedings. Obviously, these proceedings resulted in a
9 conviction, so I did not, in fact, have anything to
10 appeal.

11 MR OTTY: I see, yes, I understand. Thank you very much.
12 Thank you, sir, I do not have any more questions. Mr
13 Brodie will have some questions.

14 THE CHAIRMAN: Yes, Mr Brodie.

15 MR BRODIE: My lord, may I say straightaway that we do not
16 propose to ask any questions about the case of Craig
17 Dilbert. The reason for that is that, if your lordship
18 will go to paragraph 65, the Tribunal, via Mr Otty QC, has
19 made a number of concessions in respect of that particular
20 case. It does not seem to us appropriate to take up the
21 time of the Tribunal with something which, on the face of
22 it, is not going to cause Madam Justice Levers any
23 difficulty.

24 THE CHAIRMAN: I understand. Could you repeat your reference?

25 MR BRODIE: Paragraph 65 of my learned friend's opening
26 submissions. It is at page 34.

27 THE CHAIRMAN: Yes.

28 MR BRODIE: Your lordships will see that he says that the
29 proceedings resulted in a conviction and a transcript of
30 the hearing indicates it. Consideration of each area of
31 criticism of Levers J indicates that considerable caution
32 may be required before concluding that they could found or
33 contribute to a finding of misbehaviour capable of
34 warranting removal from office.

35 THE CHAIRMAN: Thank you.

36 MR BRODIE: Your lordship will find (a) (b) (c) and (d) are then
37 referred to. Then Mr Otty says, "further questions from
38 Ms Lees in respect of these matters may include the

1 following. How certain is she of the allegation that
2 Levers J made inappropriate facial and other gestures,
3 whether she was in truth displaying an overly sensitive
4 attitude and then the last question, Cayman Islands legal
5 procedure, the point that has just been raised. Since Mr
6 Otty has already asked those residual questions, I do not
7 consider it appropriate for me to ask them again.

8 THE CHAIRMAN: Thank you, Mr Brodie.

9 MR BRODIE: To be perfectly candid, I have not prepared any
10 cross-examination on that case because I have other things
11 to do than to spend time on issues that do not appear to
12 be in issue.

13 THE CHAIRMAN: No, I understand.

14 MR BRODIE: I am not proposing to direct any questions to that.

15 **Cross-examination by MR BRODIE**

16 MR BRODIE: Ms Lees, I would just like to go back to the case of
17 the Queen and Bryan, your criticism of some of the remarks
18 made by the learned judge were that the remarks were not
19 relevant.

20 A. I was asked about comments in relation to nationality and
21 whether they were indicative - I think the question - of
22 racism and I said ...

23 Q. You were not asked that question. You were asked about
24 bias.

25 A. Bias, whatever I was asked, but I said in my answer that I
26 think that that must be the case, because they were not
27 relevant to anything else, so that is why I said they were
28 not relevant.

29 Q. I made a note at the time. As I understood your answers,
30 the first answer you gave was that the remarks attributed
31 to Madam Justice Levers were irrelevant. Then the next
32 thing you said was that they were also indicative of bias.
33 That was the note I made at the time. Is that wrong?

34 A. I do not think so.

35 Q. Well, if a judge happens in the course of a discussion
36 about sentencing to say something that may not be that
37 relevant, is that a matter of serious concern?

38 A. I think that it is a matter of serious concern if the

1 comment is not only irrelevant but goes further than that,
2 as in this case, to suggest that a victim, there may be an
3 objection to a victim getting status, so it is not the
4 fact that it is irrelevant, which is upsetting, it is the
5 fact that it is irrelevant and it is offensive.

6 Q. Are you suggesting that the issue of bias, as you put it,
7 had any effect on the sentence that was ultimately passed?

8 A. I do not think that it did have any effect on the
9 sentence.

10 Q. Against whom is the bias, against the young woman, was it?

11 A. Well, the comment was against the woman, yes.

12 Q. So it was a comment?

13 A. Are we talking about the comment about the Caymanian
14 status?

15 Q. I understand you to say that what Madam Justice Levers
16 said indicated bias against the female victim.

17 A. Yes.

18 Q. And the bias, apparently, was simply to do with the fact
19 that she was Jamaican, perhaps was not of a particularly
20 high moral standing, and was seeking Caymanian status and
21 she did not think much of that. That was the comment made,
22 was it?

23 A. Well, I think that she went further than she did not think
24 much of that, she asked if someone could object to that.

25 Q. I am sorry.

26 A. She asked if somebody could object to her getting
27 Caymanian status.

28 Q. Yes.

29 A. So I think that it went further than she did not think
30 much of that.

31 Q. But she did not take any steps to implement that, did she,
32 stop her getting Caymanian status?

33 A. I have no idea. Certainly not through me.

34 Q. What the learned judge was doing was, as it were,
35 ventilating certain thoughts in her mind in relation to
36 the factual situation that she was presented with. Is that
37 correct?

38 A. I do not know what she was thinking when she said it or

1 why she said it; all I can tell you is that in my
2 experience it was completely inappropriate and there was
3 no relevance to the sentencing hearing, so there is
4 nothing I can say that can justify that comment. I cannot
5 tell you why she said it. I can only say that it was not
6 relevant to the sentence and it was not something that I
7 thought was appropriate or should have been said. Can I
8 just confirm one more point? The victim was not in court
9 and the victim, as far as I know, was not told of those
10 comments.

11 Q. I see. Would you like to go now to the core bundle, page
12 200? This is Madam Justice Levers' response to the Chief
13 Justice. Your remarks "gratuitous disparagement of a
14 female victim, slurs on her character just no way in issue
15 in the proceedings, she was nearly beaten to death,
16 suggestion of ethnic bias against her and the defendant,
17 inappropriate judicial comment". The learned judge says,
18 "When I spoke of these people I referred to criminals in
19 general. I said this because criminals tend not to respect
20 the law of the country which they are visiting and that
21 was the only reason it was said. It just so happened he
22 was Jamaican. Had he been Indian, Sri Lankan or Canadian,
23 I would have said the same thing. If my language is over
24 zealous, then I may be guilty of that, but certainly not
25 bias or prejudice against anyone. I dealt with the accused
26 as I thought fit, giving him ten years for the fact that
27 she was nearly beaten to death".

28 That does not show any kind of bias against the
29 female victim, does it? She measured the sentence by
30 reference to the treatment that the unfortunate woman had
31 received, did she not?

32 A. The sentence itself I did not have an issue with.

33 Q. The remarks that you are complaining of appear to have had
34 absolutely no effect on the sentence whatsoever, do they?

35 A. I could not say that they did have an effect on the
36 sentence. I am not sure that that means that, therefore,
37 they were appropriate or acceptable.

38 Q. What are you trying to say? Is this some kind of

1 political correctness that somehow or another a judge
2 should not say things like this?

3 A. I suppose it depends on your definition of "political
4 correctness", but if someone has been beaten very severely
5 and spent a long time in hospital by a man with whom she
6 has a relationship, to suggest that now on top of that she
7 has done something which may affect her status by being a
8 victim, I think that that goes further than political
9 correctness.

10 Q. But she does not say that, does she, she is not
11 quarrelling with Caymanian status, because she is a
12 victim, is she?

13 A. Well, there is nothing else on the face of the papers that
14 would suggest a reason for objecting to her Caymanian
15 status.

16 Q. Look at the rest of it, will you, please, at page 201?

17 A. Yes.

18 Q. "It was a domestic violence issue and I was anxious to
19 ascertain whether she was living with him" - right. That
20 may relate back to the comment "she is passing her
21 goodwill around", may it not?

22 A. I do not see that.

23 Q. If she is interested to know whether she was living with
24 him, that is the man who beat her up or somebody else or
25 whatever, that might be a relevant factor, might it not?

26 A. You mean that if you are with someone else, then you are
27 passing your goodwill around?

28 Q. "And how the quarrel developed in order to assess whether
29 there was any provocation or contribution to the assault".
30 That is a relevant matter for sentence, is it not?

31 A. That is a relevant matter for sentence. I have not seen
32 this before, but I would like to go back to the
33 transcript.

34 Q. I would like you to just apply your mind to this. What the
35 learned judge has written there is wholly relevant to
36 sentence, is it not?

37 A. How the quarrel developed and whether someone is still
38 with the person with whom the quarrel took place is

1 relevant to sentence .

2 Q. And what about provocation and contribution to the
3 assault?

4 A. If there was provocation, that would be relevant. There
5 was no suggestion of provocation in this case. I will go
6 back to the transcript. I do not remember being asked
7 questions about any of these things.

8 Q. Will you read the next sentence please?

9 A. "It was because I found that there was none on her part
10 that I gave him ten years", but there clearly was none.

11 Q. That indicates, does it not, that she explored various
12 factors and came to the conclusion that there was no
13 provocation as far as she was concerned and so she gave
14 the man ten years in prison. What is wrong with that? Can
15 you tell me?

16 A. In asking whether the victim was Jamaican and in finding
17 out that she was applying for Caymanian status, only
18 because the officer happened to know that and happened to
19 mentioned it, to say "Can I object to that?" suggests that
20 there is a reason for objecting to it. "Can someone do
21 something? Can this be stopped?" As it says here, "it was
22 because I found there was none on her part that I gave him
23 ten years". There was no provocation, so there was
24 absolutely no reason to query her status, whether she
25 should get it or not or anything of that nature.

26 Q. But do you not understand that from time to time judges
27 may say things that are not entirely relevant every day of
28 the week? Do you understand that?

29 A. I accept that people may sometimes say things that are not
30 relevant, I accept that.

31 Q. The short point here is that the learned judge explored at
32 some length the background to this particular fight and
33 the assault and so on, she may have asked or raised at
34 times some issues that may not have been directly
35 relevant, but she discovered there was no provocation, no
36 contribution by the woman and, because of that, she meted
37 out a pretty good sentence, did she not?

38 A. Well, you seem to be suggesting that the questioning

1 around whether there was provocation is the question about
2 the Caymanian status and I cannot see that link at all.

3 Q. What I am suggesting to you is that, given that you cannot
4 fault the result which I take it you accept.

5 A. Right.

6 Q. Your residual criticisms are pretty footling, Ms Lees, if
7 I may say so.

8 A. I do not accept that at all. I do not accept that just
9 because the result is one that cannot be argued in law,
10 the procedure, what was said, is acceptable. I do not
11 accept that.

12 Q. I see. I will leave that there. I want to go to some
13 other subject matter and that is the case of Iryalyn Bush.
14 You were Crown counsel in that, were you not?

15 A. Yes, I was.

16 Q. And Mr Dixey, I think, was counsel for the defence, is
17 that correct?

18 A. That is correct.

19 Q. If you turn to divider 15, you will find Mr Dixey's
20 statement.

21 A. Divider 15 of which bundle?

22 MR BRODIE: Volume 1. My lord, I see it is half past 12,
23 would this be a convenient moment?

24 THE CHAIRMAN: Yes.

25 MR BRODIE: I am about to embark on something totally new. I am
26 wondering if this is a convenient moment to stop.

27 THE CHAIRMAN: Very well. In that event, we will resume at 20-
28 past 1.

29 MR BRODIE: It is 45 minutes, is it?

30 THE CHAIRMAN: Yes.

31 MR BRODIE: I am perfectly happy to go on, if your lordship
32 wishes to.

33 THE CHAIRMAN: No.

34 MR BRODIE: I did understand that the timetable required us to
35 ...

36 THE CHAIRMAN: Yes, you are perfectly all right, but we are a
37 little behind schedule, so we are in the process of
38 catching up.

1 MR BRODIE: I think that you can rely on me to do my best to
2 achieve that.

3 THE CHAIRMAN: We knew we could rely on you, Mr Brodie.

4 **(Adjourned for a Short Time)**

5 THE CHAIRMAN: Mr Brodie, before you resume may I make one
6 statement on behalf of the Tribunal. Before I do so I
7 just confirm with you that you have had the opportunity of
8 course of reading paragraph 1 of the directions which Mr
9 Otty was proposing which are concerned with oral evidence
10 to be heard by the Tribunal, and we were proposing to
11 confirm that that paragraph of directions that he is
12 seeking save for the sub-paragraph which relates to Mr
13 Dale Sanderson Q.C. whose availability has not yet been
14 established.

15 MR OTTY: Sir, there are two matters in fact that were
16 outstanding in relation to Mr Sanderson. First his
17 availability. In fact that now has been confirmed. But
18 the second is Mr Brodie is still due to produce the list
19 of issues upon which he would wish to question Mr
20 Sanderson. It is for that reason that I have asked for
21 that to be stood over. I am sorry I did not make that
22 clear.

23 MR BRODIE: I am sorry I have not dealt with that but I do
24 have quite a few things to do.

25 THE CHAIRMAN: Of course you do and it is not a matter for
26 reproach for a moment.

27 MR BRODIE: I asked Mr Akiwumi to deal with the question of
28 directions, so maybe he could help your Lordship about
29 that.

30 THE CHAIRMAN: Then could I ask you, Mr Akiwumi, are you
31 content that we should make the directions in paragraph 1
32 save for sub-paragraph (d) relating to Mr Dale Sanderson?

33 MR AKIWUMI: My Lord, I am content save for paragraph (d) and
34 may we come back to you on (g)?

35 THE CHAIRMAN: I see. Thank you. Very well, in respect of
36 the oral evidence to be heard by the Tribunal the Chief
37 Justice of the Cayman Islands, Mr Randall and Mr Seales
38 shall give evidence before the Tribunal on the 13th May

1 2009, Mr Randall shall be paid his reasonable travel
2 expenses to and from the video conferencing suite he is to
3 attend in order to give evidence. Ms Myren is giving
4 evidence before the Tribunal on the 9th May. Ms Scott
5 shall be removed from the list of witnesses to give
6 evidence before the Tribunal. The unsigned statement in
7 her name shall be withdrawn from the Tribunal bundles and
8 the summons issued in respect of her shall be withdrawn.
9 A decision on whether so to remove Mr Christopher Levers
10 shall be deferred until after the evidence of Ms Webb. I
11 apologise for that interruption, Mr Brodie.

12 MR BRODIE: It is always a great pleasure to be interrupted
13 by the tribunal.

14 THE CHAIRMAN: Can we now proceed. Thank you.

15 MR BRODIE: Ms Lees, could I now turn to the case of Irvelyn
16 Bush.

17 A. Yes.

18 Q. And would you please go to Mr Dixey's evidence which you
19 will find at divider 15 in the witness bundle. Just to
20 set this in context I will read to you paragraph 5 of Mr
21 Dixey's statement to see if you accept that as an accurate
22 as it were scene setting of this story. "To put the case
23 in context, it was my client's 18th birthday on the day of
24 her arrest and she was of good character. She seemed
25 simple and soft spoken and notwithstanding my advice did
26 not appear to me to fully comprehend the enormity of the
27 allegations against her. I recall that she had a young
28 child and was pregnant at the time of her arrest. (Her
29 baby was born two months later.) Although my client
30 denied any knowledge of the gun or ammunition in her
31 interview she was charged on the basis of her DNA was
32 purportedly detected on the weapon. Her live-in boyfriend
33 Jose Sanchez (who had a number of c bis convictions) was
34 also initially charged due to the apparent presence of his
35 DNA on the weapon. The Crown later discontinued
36 proceedings against Jose Sanchez following representations
37 by his attorneys because it was conceded that the
38 reliability of the DNA results implicating him was not of

1 a sufficient standard. The Crown however proceeded
2 against my client."

3 He goes on "The penalty for possession of a lethally-
4 barrelled unlicensed firearm at that time was imprisonment
5 for a maximum of 20 years, subject to a mandatory minimum
6 period of ten years. At that time there was no judicial
7 discretion to impose a lower sentence even after a guilty
8 plea or where exceptional circumstances were present.
9 Though obviously not referred to in front of the jury,
10 this draconian penalty had been well publicised in the
11 community. I recall that I found the case testing on a
12 professional and personal level as I considered the
13 potential penalty and the consequence for the client and
14 her children by extension to be in no way commensurate
15 with her alleged conduct".

16 Do you agree with the sentiments that Mr Dixey
17 expresses there?

18 A. In relation to the first paragraph, paragraph 5, which
19 sets out the background, I do not remember the details of
20 the birthday or things of that nature, but that seems to
21 be correct. In relation to the second paragraph,
22 paragraph 6, yes, the mandatory minimum period was ten
23 years.

24 Q. But do you accept the other comments he makes that the
25 draconian penalty has been well publicised in the
26 community?

27 A. There was certainly discussions and there have been
28 discussions in relation to that ten-year minimum. I am
29 not sure what time they took place, but there was
30 certainly questions being raised as to whether that ten-
31 year minimum should remain, whether there should be a
32 discretion.

33 Q. At any rate, leaving that aside for the moment, the trial
34 started on 15th August, did it not?

35 A. Yes. I think so.

36 Q. And I think evidence was led, much of it was agreed, I
37 think. Is that right?

38 A. That is right.

1 Q. At four o'clock in the afternoon you were invited, with Mr
2 Dixey, into the judge's room - is that correct?

3 A. That is correct.

4 Q. And she informed both of you in chambers that she had, in
5 fact, visited the scene - correct?

6 A. That is correct.

7 Q. And did she explain the reason why she had done that?

8 A. She certainly said that she thought that the gun had been
9 planted. I am not sure whether that is the reason she had
10 gone to the scene or whether she had formed that view
11 having visited the scene, but she said that she had been
12 to the scene and she thought that the gun might have been
13 planted.

14 Q. Did she mention to you a case in Bermuda?

15 A. No.

16 Q. A Court of Appeal case there?

17 A. No.

18 Q. You cannot remember her saying, "I am concerned that this
19 gun might have been planted and there was a Court of
20 Appeal case in Bermuda where the conviction was overturned
21 because the issue of plant had not been put to the jury"?
22 Do you remember that?

23 A. No.

24 Q. At any rate, her concern was this, was it not, that there
25 had been an anonymous telephone call to the police, the
26 police had gone to the scene and immediately gone to where
27 the gun was? Do you remember that?

28 A. I remember that she said she was concerned over what she
29 had heard which was the agreed evidence in the witness box
30 of the police officer and I think that that was the reason
31 she gave why she had gone to the scene. There was some
32 concern in her mind over the gun and how it had got there
33 and she had then gone to the scene.

34 Q. And this was a house, was it not, that was on stilts? It
35 was raised up above the ground.

36 A. That is right.

37 Q. And the gun apparently had been concealed beneath the
38 house on the ground or near the ground - is that right?

1 A. Underneath the house, that is right.

2 Q. Underneath the house. And the police when they arrived
3 went straight to the gun - is that right?

4 A. No, that is not right. I would have to refer you
5 specifically to the transcript, but if you want me to give
6 you it in general terms, the evidence was that the
7 officers had got there and then they had split up into
8 different sections and the one officer who gave the
9 evidence, which was Officer Chong, he said he had been
10 given that particular section to search.

11 Q. I see.

12 A. I think that they split it into quarters perhaps and they
13 had each taken a section and he was the one who had found
14 the gun in his section.

15 Q. Well, be that as it may, the learned judge, at any rate,
16 was concerned that it might have been the case that they
17 knew what they were looking for and where to find it. Is
18 that fair?

19 A. She referred specifically to a plant, yes.

20 Q. And, if you could just go to paragraph 10 of Mr Dixey.

21 A. Yes.

22 Q. When she was discussing with you, the middle of paragraph
23 10, "if my recollection is accurate, the judge's remarks
24 in the privacy of her chambers were off the cuff and in a
25 contemplative tone. I suppose that she was concerned about
26 the ease of public access to the area where the gun was
27 discovered. As far as I was concerned, the absence of any
28 supporting evidence, the suggestion that the weapon or DNA
29 was deliberately planted in order to frame my client would
30 not be made by the defence at trial, though the suggestion
31 that the gun had been placed and stored under my client's
32 house by another, perhaps, Jose Sanchez, for later
33 retrieval was, of course, implicit in our defence".

34 You agree with that, do you?

35 A. Yes, I do. Mr Dixey and I had had lengthy discussions
36 before the trial primarily around the issue of DNA, what
37 were the issues going to be and matters of that nature and
38 that is entirely consistent with what we had discussed.

1 Q. The final issue about DNA came to this, did it not,
2 whether DNA could have arrived upon the gun by
3 transference? Do you agree with that? That was one of the
4 matters to be considered by the jury.

5 A. That was one of the matters to be considered by the jury.

6 Q. Now, in fact, the question of the matter of plant was
7 never mentioned in the court at all to the jury.

8 A. Only to the extent that I was asked about before, the
9 comment that I raised about you may have thought the
10 police knew exactly what they were looking for and stopped
11 when they found it.

12 Q. I am sorry, what I am saying to you is that the defence of
13 plant was never raised in open court before the jury, was
14 it?

15 A. Raised by whom? By the defence?

16 Q. A discussion took place in the privacy of the judge's
17 chambers.

18 A. Yes.

19 Q. About her concerns?

20 A. Yes.

21 Q. And she was worried that there might be available a
22 defence of plant and it turned out there was not. Is that
23 right?

24 A. It turned out that the defence of plant, as confirmed by
25 Mr Dixey, was not something that was in issue, it was not
26 something that was going to be raised as a defence or put
27 to any police officer. It was not something that was in
28 issue. He raised that that first day and the second day
29 when we went back again and it was never raised by Mr
30 Dixey.

31 Q. The defence put forward by Mr Dixey was that the gun,
32 although not a plant, might nonetheless have been placed
33 under the house by a third party.

34 A. Yes. Certainly the defence was that it was not the
35 defendant who put it there.

36 Q. And did you take exception to the position that the
37 learned judge was taking in the privacy of her room?

38 A. My main concern was the visit to the scene without

1 notifying anyone and going on her own and then informing
2 us afterwards that she had been. Secondly, that a view had
3 been taken that there may have been a plant which related
4 to the viewing of the scene which had been done by a judge
5 alone without anyone else present and there was also a
6 comments about the structure of the building being the
7 same at that time that she viewed it as it was previously,
8 which was also said to the jury when they visited the
9 scene, which had only come about as a result of a
10 conversation that the judge had had when she was at the
11 scene on her own.

12 Q. But none of that was mentioned to the jury, was it?

13 A. Yes, it was said to the jury at the scene that the house
14 was the same as it was at the time that the incident
15 occurred.

16 Q. You discussed this matter with the Attorney general, did
17 you not?

18 A. The first conversation in chambers took place at around 4
19 o'clock. The next morning I discussed the matter with the
20 Attorney General.

21 Q. And was a decision taken to ask the judge to recluse
22 herself?

23 A. I explained to the Attorney General what had happened. I
24 said that I thought it was right to inform him that I
25 thought that I said make that application and I wanted to
26 let him know and he said he would support me in my
27 deciding to do it.

28 Q. And in fact did you mention that to Mr Dixey?

29 A. I called Mr Dixey to inform him that it would be necessary
30 to see the judge in chambers before going into open court.

31 Q. For the purposes of inviting her to recluse herself, was
32 it?

33 A. Yes.

34 Q. What was Mr Dixey's reaction to that?

35 A. He was swearing.

36 Q. Pardon?

37 A. He was swearing.

38 Q. Could we look at bundle 3, page 51, tab 3. This is a note

1 from your notebook, is it not?
2 A. Yes.
3 Q. And you see at the top of the page, 9.15 discussion with
4 AG, plant visited the scene alone, wants jury to go, and
5 then there is a note inform MD. You do not need to read
6 out what he says but he was suggesting that you were being
7 childish and telling you to grown up?
8 A. He was upset because it was a difficult trial and I had
9 never seen this witness statement before, but as he says
10 there he felt under a lot of pressure and there was a
11 serious penalty, there was complicated DNA issues, and
12 both of us wanted to get on with the trial, and I think he
13 was upset that we were going to have to deal with another
14 issue that had arisen, but after he had said that as soon
15 as we did get to the judge's chambers that morning he
16 immediately apologised in front of the judge to me, and he
17 said he was very sorry for swearing.
18 Q. I am instructed that that is not so, Ms Lees.
19 A. I absolutely 100 per cent remember that.
20 Q. Did he change his mind and say you were not being
21 childish?
22 A. I do not think he went into the details of what he said
23 but he said I want to say in court or in chambers I
24 apologise to my learned friend for comments I made this
25 morning which were inappropriate and I should not have
26 spoken to her like that.
27 Q. Did he specifically withdraw the suggestion you were being
28 childish?
29 A. I do not think he specifically referred to any of the
30 comments he made. He just gave a general apology.
31 Q. Because quite obviously his view was that you had got
32 things out of all proportion.
33 A. I am not sure, you would have to ask him about that.
34 Q. I am sorry?
35 A. I am not sure if that was in fact his view or whether he
36 was just upset at the time. You would have to ask him
37 about that but I can say that he apologised within half an
38 hour of saying that.

1 Q. Ms Lees, if I can go back to your statement at division
2 29. I think you were saying to the judge words to the
3 effect the evidence is agreed and therefore the judge
4 should not be interfering. Was that your view? At
5 paragraph 13. "Following our discussion with the Attorney
6 General I telephoned Mr Dixie and asked him to come along
7 to Justice Levers' chambers and me to discuss a recusal
8 application. Dixey and I returned to Justice Levers
9 chambers just before 10 a.m. on the 16th August 2007. I
10 told Justice Levers that following our discussion in
11 chambers on the 15th August I was considering a recusal
12 application and reminded her that the evidence on how and
13 where the gun was found was agreed". Then she made
14 reference to a newspaper article. But that was the point
15 you were making, was it not?

16 A. The point that ...

17 Q. That this was agreed between the parties and that was it.

18 A. That no issue of planting had ever been raised. It seemed
19 to have now come out of a visit to the scene by the judge
20 alone and my concern was that anything that was not in
21 evidence or properly in evidence was now going to be
22 raised in front of the jury and affect the trial. And Mr
23 Dixey also reiterated, as we have just read in his
24 statement, that this was not an issue and this was not
25 something that he was going to raise, so I wanted everyone
26 to be absolutely clear before it came out in front of the
27 jury that this was not an issue.

28 Q. And that clarification was given?

29 A. That clarification was given.

30 Q. You are not suggesting, are you, that, if counsel agree
31 evidence, it is not open to the learned judge to raise
32 some matter which both counsel have not thought about or
33 something like that, are you?

34 A. Not at all, absolutely not. I am sure that it would have
35 been open to the judge to ask both of us if we considered
36 a visit to the scene may be helpful or would go to any of
37 the issues. It was the way that the whole incident came
38 about beginning with the visit to the scene and then the

1 discussion; that is what my concern was. I certainly did
2 not have an issue with the judge raising something that
3 has been overlooked by counsel. I think that it would be
4 quite wrong if the judge did not do that.

5 Q. She plainly went in her lunch hour on 15th August, because
6 she was concerned, to the scene - was she not?

7 A. I imagine that that is why she did it.

8 Q. You are not suggesting that the learned judge took her
9 lunch hour out to go to the scene for some wilful reason,
10 are you? It was because she was desperately concerned
11 about this case.

12 A. I have never heard of a judge going to a scene on their
13 own without informing anyone, so I cannot offer any
14 explanation.

15 Q. Whether it is regular or irregular, she did it and she
16 told you about it.

17 A. That is right.

18 Q. She did not keep it secret.

19 A. No.

20 Q. And then the following day she invited there to be a view
21 by the jury and the parties at the scene.

22 A. Yes.

23 Q. That was all open, was it not? There was no secret about
24 that?

25 A. No.

26 Q. And then, if you would just go to paragraph 17, you said
27 that prior to Justice Levers summing up the case in the
28 absence of the jury, I raised a point of law with Justice
29 Levers. During my opening Justice Levers had stated that
30 possession involves custody and control. I was concerned
31 she was not clear about the law on possession. I informed
32 her that the law was agreed between counsel. Are you
33 suggesting that the learned judge is bound by agreement
34 between counsel as to what the law is?

35 A. I am certainly not suggesting that she is bound by it. I
36 was telling her that myself and Mr Dixey had come up with
37 these four points and I would like to go through those
38 with her to see if we could reach a formula on the law

1 with which we were all agreed, so that, again, it would
2 not arise in front of the jury, it would not arise in
3 summing up or in someone's speech and would have to be
4 corrected. This to me in the absence of the jury is the
5 proper procedure. If at all possible, if something can be
6 agreed between counsel and then put to the judge, of
7 course, for the judge's approval not to tell the judge
8 what to do, then that saves everyone time. If there needs
9 to be an argument, then the argument will be put in front
10 of the judge. But what I was trying to do here was to have
11 some formulation of the law that was agreed between the
12 defence, the prosecution and the judge, obviously with the
13 judge having the final say, so that we all knew where we
14 were, because it had been raised during my opening in the
15 presence of the jury and I had then gone back to it in the
16 absence of the jury and asked if we could, please,
17 clarify, what the position was on the law.

18 Q. I think that I am right in saying that the learned judge
19 did not agree with your agreed formulation, did she?

20 A. No, she did not.

21 Q. Is that a matter of complaint?

22 A. I am sorry.

23 Q. Is that a matter of complaint that she did not agree with
24 the formulation of the law agreed between you and Mr
25 Dixey? Are you complaining about that?

26 A. Well, what happened was that, as this was being raised, I
27 had some cases with me that supported the points that I
28 was making and the judge said that she had read these
29 cases and that her position was that there would have to
30 be a longer period of holding the item, in this case the
31 gun, for possession and I had one particular case that I
32 referred to and I said that, if one looks at this case, it
33 is a shorter period than that and the end of it was that
34 we did not reach a position on which everyone was agreed.

35 Q. She did not accept your submissions.

36 A. That is right, she did not accept my submissions.

37 Q. I am afraid that all of us have had that experience, Ms
38 Lees, of our submissions not being accepted however many

1 authorities we produce.

2 A. Yes, it has happened to me several times as well and as
3 long as it is done properly and fairly, I have never had a
4 problem with it.

5 Q. If an appeal had been appropriate, which it was not, you
6 could have raised that kind of thing on appeal, could you
7 not? That is a misdirection point, is it not?

8 A. Yes.

9 Q. It has nothing to do with judicial misbehaviour, has it?

10 A. I do not know the sense in which you are using the term
11 "judicial misbehaviour", I did not feel as if I was
12 treated properly and given an appropriate opportunity to
13 put my submissions before the judge. I was criticised for
14 having agreed them with defence counsel, which, in my
15 view, is the correct way forward, so I do not know if it
16 is for me to define what judicial misbehaviour is, but
17 certainly it was not a case where the judge had disagreed
18 with me and I had taken objection, as you say, that
19 happens all the time.

20 Q. Are you suggesting that the learned judge - apart from
21 your criticisms about her appreciation of the law and her
22 summing up to the jury which, no doubt, you complain
23 about, is there anything in her conduct of this trial
24 which suggests that she is guilty of any kind of
25 misbehaviour of any sort? If so, what is it?

26 A. Again, you are asking me to define what misbehaviour is, I
27 can tell you and I have raised in my witness statement the
28 problems that I had during the trial and the behaviour
29 that I thought was not appropriate.

30 MR BRODIE: We can leave that there, my lord.

31 THE CHAIRMAN: Very well. Mr Otty.

32 MR OTTY: I have no further questions of Ms Lees.

33 THE CHAIRMAN: Thank you very much, madam, you are released by
34 the Tribunal.

35 **(Witness withdrew)**

36 MR OTTY: The next witness is Ms [REDACTED] . English is not
37 her first language and there is an interpreter present.

38 THE CHAIRMAN: How do you want to manage that?

1 MR OTTY: Ms [REDACTED] , subject to the Tribunal view, is going
2 to attempt to give her evidence in English and call upon
3 the interpreter if necessary if matters are unclear, but
4 we will put both Ms [REDACTED] and the interpreter on
5 oath at the outset.

6 THE CHAIRMAN: Yes. If we are not satisfied with her
7 understanding of the questions and so forth, then, of
8 course, we will revert to the interpreter.

9 MR OTTY: Thank you, sir.

10 (Curtis Barnett, the interpreter, was sworn)

11 [REDACTED] : Sworn

12 EXAMINED BY MR OTTY

13 Q. If you would like to sit down. Ms [REDACTED] , if
14 anything I am asking you is not clear, then please say so
15 as the interpreter is here to assist. If you could also
16 try and keep your voice up so that everyone in court can
17 hear what you say. You will find in front of you at tab
18 17 a witness statement in your name which has been
19 prepared by you with the assistance of the solicitors to
20 the Tribunal. Do you have that statement. tab 17.

21 A. Yes.

22 Q. Do you adopt that statement as your evidence before the
23 Tribunal?

24 A. Yes, that is my evidence.

25 Q. I would like to ask you some supplementary questions, Mr
26 [REDACTED] . Your complaint relates particularly to a
27 hearing in August 2007, and in relation to a number of
28 matters at that hearing we have heard evidence from Ms
29 Merren, who was your lawyer at that hearing. That is
30 correct, is it not?

31 A. She, she was my lawyer at that time.

32 Q. She has supported some of the complaints that you make in
33 relation to that hearing. For example, she has said that
34 she does recall Madam Justice Levers commenting at one
35 point on your relationship by saying that is what you get
36 for being married to a black man. That is a matter you
37 deal with at paragraph 26 of your witness statement. She
38 has also confirmed her recollection that Madam Justice

1 Levers said that you could be a risk to yourself and your
2 children, and that is a matter you have dealt with at
3 paragraph 16 of your statement. But there is one matter
4 upon which Mrs Merren has not supported your complaints
5 and that relates to the question of the gesture that you
6 say Madam Justice Levers made at this hearing. I wonder
7 if you could tell the tribunal what you recall Madam
8 Justice Levers doing in terms of a gesture towards you.

9 A. Is that in paragraph 16?

10 Q. No, paragraph 17.

11 A. Yes, sir, I know. In the time that she was saying about I
12 could be a danger to myself and to my children I was in
13 need to have -- to understand the language because this is
14 what she did to make me understand. I do understand what
15 she is saying, she put her hand up and she is saying - I
16 could not recall exactly, if I would do it or I may do it,
17 but she did the hands like that and like that and she say
18 she will bleed herself to death in the front of my
19 children, she was saying I was a risk to myself and to my
20 children. I am not sure she was saying medical record
21 that I was sick, so I do not know why I can do something
22 to harm myself if I have no record of mental illness. So
23 that is, to tell the truth, it is then also important and
24 I know this is true.

25 Q. Mrs Merren has said that so far as she is concerned no
26 such gesture was made?

27 A. There was, sir, I am sorry, there was.

28 Q. Then paragraph 27 of your statement, we have in the second
29 sentence you recalling that at this point Justice Levers
30 yelled I know who you are now, I know who you are now,
31 while pointing her finger at me. Mrs Merren does recall
32 the judge saying that she knew who you were now, but she
33 does not recall Madam Justice Levers shouting. Two
34 questions. Firstly, do you have any idea what Madam
35 Justice Levers was referring to when she said she knew who
36 you were?

37 A. Because I was to tell the truth at the moment, she had
38 taken my children, she had left me without nothing, but I

1 had -- that was when she said to me that is why I get to
2 marry to a black man, so because she is the one to make
3 the suggestion that I was married to a black man, and I
4 was saying I was not destroyed to a black man, I was
5 destroyed to a white woman too, and that time I was
6 thinking of my mother in law, that she is white, and she
7 had much money property, and without my knowledge, that is
8 what I had in my mind at the moment. So that is what I
9 answered to her comment, and then that is when she point
10 the finger and tell me, that is why I know who you are. I
11 know who you are now, I know who you are now. I want to
12 add something. When we come out of the court room Ms
13 Merren said she was so loud, she was so loud, she did need
14 to be that loud.

15 Q. If it was not clear, Ms [REDACTED] , I just wanted to ask
16 you - and if it is not clear then we can use the
17 interpreter, can you think of any reason why the judge
18 would say to you or shout to you that she knew who you
19 were? What could she have been referring to by that?

20 A. I do not know. (Interpreted for witness): I have no idea
21 what she was referring to.

22 Q. I see, thank you very much. There will be some further
23 questions for you, Ms [REDACTED] .

24 THE CHAIRMAN: Yes, Mr Brodie.

25 MR BRODIE: Mr Akiwumi will ask the questions.

26 **CROSS-EXAMINED BY MR AKIWUMI**

27 MR AKIWUMI: I just want to ask a few questions. Is it right
28 that from about 2000 to about 2006 you were seeing Dr
29 Clement von Kitchenheim?

30 A. No, sir, that was not true.

31 Q. When did you see him then?

32 A. I saw Dr Clement I believe in 2007.

33 Q. Were you taking any medication for depression prior to
34 that?

35 A. Yes, sir, but the person that gave that medication was not
36 a psychologist and it was just a general practice doctor.

37 Q. So you were prescribed anti-depressants by your general
38 practitioner?

1 A. Yes, sir.

2 Q. And you had been taking that for about six years from
3 about 2000 to 2006?

4 A. It was off and on. It was not the whole period that I
5 feel, but when I required it, off and on.

6 Q. OK. And over the period of six years?

7 A. Not really, sir. The records, they will not say that.

8 Q. So when you said in paragraph 10 of your statement, "My GP
9 referred me to a psychologist, Dr Clement von Kitchenheim
10 for support. Dr Kitchenheim helped me through speaking
11 and listening to me. I took medication for depression from
12 2000 to around 2006 and I never received any medication
13 from Dr Kitchenheim". Are you mistaken in your statement
14 when you say that you took medication for depression from
15 2000 to around 2006?

16 A. That was a mistake, because it was like off and on. It was
17 not the whole period.

18 Q. So you accept that that is a mistake in your statement?

19 A. Yes, sir. I accept that.

20 Q. When you came to appear before Madam Justice Levers on
21 27th August 2007, by that stage you had been in what can
22 be only fairly described as a very abusive relationship
23 with your husband.

24 A. That is correct.

25 Q. And you had sought assistance from the women's resource
26 centre.

27 A. That is correct.

28 Q. And they had recommended that you see Ms Zena Merren as
29 your attorney?

30 A. The women's resource centre they give to you a list and on
31 the list was Ms Merren.

32 Q. Now you expected that when you went to court on 27th
33 August 2007 you were going to have a case which involved
34 the property?

35 A. What I understand we were going there for maintenance and
36 to stay in the property until we present the evidence for
37 the property.

38 Q. When you got to court on 27th August you felt that the

1 case that you had was not put as strongly as it should
2 have been by Ms Merren.

3 A. I agree with that.

4 Q. And you were very upset about that, were you not?

5 A. No, sir, I am not upset. I just not think that it was
6 correct the way they proceeded.

7 Q. You do not think that she put the case strongly enough for
8 you?

9 A. I do believe there was not enough consideration, there
10 were things wrong, and then the judge took my husband's
11 side without asking questions. There was evidence that
12 could help me to clear my side.

13 Q. I see. Let me direct your attention to paragraph 14. If
14 you look at the sentence before the last sentence, do you
15 see the line which says, "I was given no opportunity to
16 object and Ms Merren did not put forward evidence in
17 relation to the property". Do you see that?

18 A. Yes. But the other line where it says that she had not the
19 opportunity to put my case in front of the judge.

20 Q. I see that too, but you then go on to say that "I was
21 distraught".

22 A. Well, anybody could be in my position, sir.

23 Q. So you are quite obsessed by the fact that your case was
24 not being put forward as strongly as it could have been by
25 Ms Merren?

26 A. And the way that I was treated in the courtroom.

27 Q. As of that date, 27th August 2007, were you still seeing
28 Dr Kitchenheim?

29 A. If I need to see him, I was entitled to make an
30 appointment and see him.

31 Q. So you were seeing him on a need-to basis but not
32 regularly?

33 A. He was not giving me, like, a day to go, I just call and
34 get an appointment.

35 Q. So you would turn up as and when necessary?

36 A. Well, sir, it was like I said, when I need psychology, I
37 just went because I needed it for the situation that I was
38 going through at the moment.

1 Q. In fact, is it not right that Dr von Kitchenheim, you went
2 to him for assistance to write a letter of complaint to
3 the Chief Justice on 11th October 2007?

4 A. When I went to see the psychologist was because I had
5 explained to him the way that my husband has taken the
6 kids, to put me in the court as a crazy person, so he was
7 aware of that, so I had to see him after the court,
8 because what happened there, as indicated, that was the
9 way they were going with it.

10 Q. But he helped you write your letter, did he not?

11 A. He was advised by somebody to do so, because my English
12 and writing was not strong and I came to him, so he did it
13 as professional - as a human being.

14 Q. OK. Let me ask you this. The two points that I wish to
15 raise with you are as follows. You say that Madam Justice
16 Levers lifted up her hands and indicated with her hands a
17 slashing of the wrists. I suggest to you that that did not
18 happen.

19 A. No, sir, I know it happened. I am not lying there, that
20 did happen there. If we had a camera in that room, we
21 would see that that happened there.

22 Q. I see. Now, the other thing, and Mr Otty has already taken
23 you to this, is your lawyer, Ms Merren, has no
24 recollection at all of that happening.

25 A. It did, sir. If there was as camera in the room, they will
26 be able to prove that.

27 Q. Let me ask you about the comment that you say the judge
28 made about black men. Now, that arose in the context of
29 you being extremely upset about the fact that you were not
30 going to be allowed to stay in the house.

31 A. No, sir. That arose for the comment that Justice Levers
32 did to me; no, because the comment that I be put away and
33 left without nothing from 2007, but she is the one that
34 started the comment.

35 Q. She is the one that started the comment. Now, how long
36 have you lived in the Cayman Islands for?

37 A. In November it will be 20 years, sir.

38 Q. And you are Costa Rica originally?

1 A. Yes, sir.

2 Q. And you are aware that in the Caribbean, people like to
3 play dominos, go out for a drink, particularly on Friday
4 nights.

5 A. Yes, sir, I know that.

6 Q. And men like to do that quite a lot on a Friday night,
7 there is nothing quite like a couple of rums and dominos
8 with your friends.

9 A. Some I do believe are responsible men, when a child is
10 sick or want something to eat, I do believe they would put
11 the family first over the games and the bars.

12 Q. Of course, but in ordinary circumstances they might go out
13 for a drink and play dominos until late at night?

14 A. Well, sir, that is what everyone does.

15 Q. Indeed. In your husband's case that was a problem that
16 seemed to be happening.

17 A. That was just a part, part of that.

18 Q. That was part of the problem, quite apart from the abuse
19 that you were getting, but that was part of the overall
20 picture that you had of your picture.

21 A. So many times my children have fever, so many times my
22 children were sick and there was no phone in my house and
23 I was not driving a car at the moment, so that was the
24 problem and I challenged it and you can reach your husband
25 to take the child to the hospital.

26 Q. What I am suggesting to you is that what the judge did say
27 was in the context of the discussion, about your husband
28 being out all the time, was that this is what happens if
29 you are married to a Caribbean man.

30 A. No, sir, she said if you married to a black man.

31 Q. If you are married to a black man what?

32 A. if you are married to a white man that was would not
33 happen to you.

34 Q. What would not have happened to you?

35 A. Being left alone with my children at home when I need a
36 husband to be there with the family.

37 Q. I suggest to you what was said was a Caribbean man and not
38 a black man.

1 A. I am sorry, but that was the word that was used.
2 Q. After that hearing did you dismiss your attorney Ms
3 Merren?
4 A. Yes, sir, I did it.
5 Q. Again was that because you were not happy with the
6 services that she had rendered?
7 A. Because there was enough proof, to have my case as strong
8 in that room.
9 Q. And you did not feel that she put it strongly enough?
10 A. No, sir, it was a strong case.
11 MR AKIWUMI: Thank you.
12 THE CHAIRMAN: Thank you, Mr Akiwumi. Yes, Mr Otty.
13 MR OTTY: Sir, I am very sorry for this, but I gather Ms
14 [REDACTED] is not here yet.
15 THE CHAIRMAN: You have not finished with this witness yet.
16 MR OTTY: I have no further questions for this witness.
17 THE CHAIRMAN: Thank you, madam, you are released by the
18 Tribunal.
19 **(The witness withdrew)**
20 MR OTTY: Sir, I am very sorry about this. She is on her way
21 to the hearing room now and will be here within ten
22 minutes.
23 THE CHAIRMAN: Very good, I am sure she will be in time as far
24 as she is concerned. We will adjourn and you will let us
25 know when you are ready to proceed.
26 **(Short adjournment)**
27 THE CHAIRMAN: Yes, Mr Otty.
28 MR OTTY: Sir, can I say again in the presence of Ms
29 [REDACTED] and Mr McGrath who are now both here that that
30 the fault for the delay in the Tribunal sitting was ours
31 and not theirs, and they of course intended do discourtesy
32 to the Tribunal.
33 THE CHAIRMAN: I am sure they have been reassured.
34 MR OTTY: I have reassured them already, sir. Ms
35 [REDACTED], will you affirm or will you take the oath?
36 THE WITNESS: I will affirm.
37 **[REDACTED]: Affirmed**
38 **EXAMINED BY MR OTTY**

1 Q. Ms [REDACTED], you will find a bundle open in front of
2 you with a witness statement in your name, do you have
3 that?
4 A. I do.
5 Q. And do you adopt that statement as your evidence before
6 the tribunal?
7 A. I do indeed.
8 Q. I would just like to go through what I understand to be a
9 summary of your complaints against Madam Justice Levers in
10 relation to the proceedings that you were concerned with
11 before her, and again I should emphasise to the press that
12 these proceedings are the subject of reporting
13 restrictions.
14 Firstly, at paragraph 8 of your statement, you say
15 that at the outset Madam Justice Levers suggested
16 hostility on your part to her. That is paragraph 8.
17 A. I am sorry, may I say that she did not specifically say
18 that it was me, but she sort of said that and sort of
19 looked at me as though she was directing it to me.
20 Q. I see, thank you. Paragraph 12. It appears that you are
21 suggesting that she displayed an inappropriate lack of
22 sensitivity when discussing the subject of bullying at
23 boarding school?
24 A. Completely, yes.
25 Q. Paragraphs 14 and 15. You criticise her for relying upon
26 your son's description of the distance of relatives to the
27 proposed boarding school.
28 A. Yes.
29 Q. Paragraph 18. You refer to Madam Justice Levers having
30 passed a shawl to you to cover your knees.
31 A. Yes.
32 Q. And you felt that, as I understand it, to be an
33 undermining gesture on her part?
34 A. Yes.
35 Q. Then at paragraph 19 you suggest that she turned her back
36 on you and generally acted aggressively towards you when
37 you were giving your evidence.
38 A. Yes.

1 Q. In relation to that last matter, Mr McGrath, who the
2 Tribunal will hear from next, your ex-husband's attorney,
3 has suggested that the configuration of the hearing room
4 meant that Madam Justice Levers was compelled to turn away
5 from you at certain points during the proceedings, simply
6 to do her job.

7 A. Can I explain further on that one?

8 Q. Yes, by all means.

9 A. I was sitting effectively where Sir David Simmons was
10 sitting and Madam Justice Levers was here. She had her
11 books and her notes here. So instead of doing it like
12 this and speaking to me like this, she was like this, so
13 she had her back away towards me. That is what I meant by
14 that.

15 Q. Ms Merren who was your attorney at this hearing has
16 confirmed that when Madam Justice Levers writes, due to
17 the positioning of the witness, she will often turn her
18 body away in the manner you have described, but she has
19 also said that she did this in your case even when she was
20 not writing. Is that correct?

21 A. I felt that to be the case.

22 MR OTTY: Thank you, Mrs [REDACTED], if you will wait there,
23 please.

24 THE CHAIRMAN: Yes, Mr Brodie.

25 **Cross-examination by MR BRODIE**

26 MR BRODIE: Mrs [REDACTED], the dispute between you and your
27 ex-husband really revolved around the question as to when
28 your son should go to boarding school.

29 A. When if - because if you look - the consent order did not
30 say for definite. "That in the event that the child
31 attend", that does not necessarily mean - I am sorry in my
32 view of it - they will go. When we did the consent order,
33 we put that in because I thought not before 16, so after
34 they had done their GCSEs.

35 Q. Yes, I mean, my understanding, rightly or wrongly, is that
36 the debate was whether he should go at 16 or go at 11 or
37 12.

38 A. No, there was never that.

1 Q. I see. So you were opposed to boarding school throughout
2 his school life, were you?

3 A. No, I said when he was 16 then I would consider it might
4 be a good thing to broaden his horizons.

5 Q. I see, so what you were saying was that you closed the
6 door until he was 16 but then open it again to see whether
7 it would be a good idea then - is that what you are
8 saying?

9 A. Effectively, yes.

10 Q. Have you read the judgment that the learned judge gave in
11 this case?

12 A. Not recently, but I did at the time.

13 Q. I think that it is right, is it not, that you did attempt
14 to appeal that judgment - is that correct?

15 A. I did, yes.

16 Q. And the ground of the appeal was one of bias, was it not?

17 A. There were three grounds. You will have to wait. **(Pause)**

18 Q. If I remember rightly, is it not paragraph 36?

19 A. It is 35. Bias was one of the points.

20 Q. "I initiated an appeal on the following grounds. There
21 was too much reliance on the expert witness, bias on the
22 part of the court in favour of boarding schools and lack
23 of time available to prepare my case".

24 A. Yes.

25 Q. And you had changed lawyers by then, had you not?

26 A. I had.

27 Q. And gone to Mr Freeman.

28 A. Yes.

29 Q. And the appeal was launched, as I understand it, on those
30 grounds?

31 A. Yes.

32 Q. And then it was abandoned.

33 A. It was.

34 Q. And that was because the Appeal Court judges were
35 indicating that they did not favour your appeal,
36 effectively.

37 A. They did not like the fact that - I think the bias was the
38 bit they did not like. They said that I had made very

1 serious allegations and they were very disapproving about
2 that, when they said that.

3 Q. I think that you swore an affidavit, did you not, in
4 support of your appeal?

5 A. I did, yes.

6 Q. So they had evidence from you in front of them?

7 A. They did, yes.

8 Q. I will ask you this question. If you would perhaps look at
9 the judgment ...

10 A. Can you tell me where it is?

11 Q. It is in bundle 3, divider 2. If you would go to page 20
12 internally of the judgment, page 44 of the bundle, you
13 will find the conclusion of the learned judge. At lines
14 15 to 17 she says this, "The court having seen [REDACTED]
15 is convinced that [REDACTED] is not happy with the
16 situation and that he is willing to give boarding school a
17 try. Horris Hill School is apparently one of the best in
18 the United Kingdom having recently got several
19 scholarships" and so on. "The court is also aware that
20 boarding schools provide a structured disciplined
21 environment". Then at page 22, she says this, at line 24,
22 "I so order with the proviso that after a year or so if
23 [REDACTED] is not happy either parent can bring the matter
24 back for review". Do you see that?

25 A. Yes.

26 Q. Is he happy?

27 A. He is settled.

28 Q. Has he given any indication of wanting to leave Forrest
29 Hill School?

30 A. No, because he is settled there now. He has made his life
31 there.

32 Q. So it has been a success then, has it?

33 A. It has been a success in certain aspects, yes.

34 Q. So however uncomfortable you may have found the hearing
35 before Madam Justice Levers, it looks as if her decision
36 was not unwise?

37 A. It might not have been unwise. No, maybe.

38 Q. When you have a hearing in court, a judge has got to

1 listen to the views of both sides, has she not?
2 A. She has, yes, indeed.
3 Q. And very often the side whose views do not prevail feel
4 rather sore about it, do they not?
5 A. That might be the case, yes.
6 Q. And you felt sore at the time because ...
7 A. I felt sore at the time because of her attitude towards me
8 and I felt that she was not listening to what I had said
9 and I felt she had not taken into account what I had said
10 in my affidavit - my case.
11 Q. I wonder if we could just look at the statement if Mr
12 David McGrath, who we are about to hear from. It is in the
13 witness bundle 1 at divider 32. Have you found that?
14 A. I have, yes.
15 Q. Would you go to page 2 where he describes the hearing?
16 Let us see if you agree with him. "The hearing took place
17 over one day on 18th June 2008. The father's written
18 evidence consisted of an affidavit on his own behalf. His
19 affidavit exhibited extensive material published by the
20 school that he had chosen for his son, a letter from his
21 own father; a letter from his own sister, a letter from
22 the child's Sunday school teacher who had experience in
23 special education, and two reports from a paediatric
24 neuro-psychologist who had tested and dealt with the child
25 over a period of approximately two years. The mother's
26 written evidence consisted of an affidavit prepared by
27 her, her affidavit exhibited a letter from the headmaster
28 of the child's then Cayman school and some additional
29 material which was negative about the boarding school
30 system in England in general. Both the father and the
31 mother gave live evidence and were cross-examined. The
32 additional paediatric neuro-psychologist also gave live
33 evidence and was cross-examined. The child [REDACTED]
34 was also brought to the hearing and the learned judge
35 asked the child some questions in the presence of the
36 attorneys and the psychologist but absent the parents. A
37 written ruling was handed down on the 27th June" and then
38 he refers to your appeal. Do you disagree with that

1 description of the hearing?

2 A. No.

3 Q. Your ex-husband had produced and exhibited to his
4 affidavit material relating to Horris Hill School, had he
5 not?

6 A. Yes.

7 Q. So he needed no persuading that Horris Hill School was a
8 good idea?

9 A. No.

10 Q. You agree with that, he needed no persuading?

11 A. Well, it was his idea so obviously he needed no
12 persuading.

13 Q. You were the person who needed persuading?

14 A. Yes.

15 Q. Madam Justice Levers took the trouble to investigate
16 Horris Hill School via its website, did she not?

17 A. Yes.

18 Q. Why do you think she did that?

19 A. To see what the school was like.

20 Q. She did not need to do it for the benefit of your ex-
21 husband did she?

22 A. No.

23 Q. Do you not accept that she was doing that kind of thing to
24 reassure that she the court had looked into the matter to
25 make sure that the school was a good school for your son?

26 A. I had not previously considered that, no.

27 Q. While you are being asked to consider it do you think that
28 is a likely explanation?

29 A. it may well be, yes.

30 Q. Do you think perhaps in retrospect criticising her for
31 doing that was a bit unfair?

32 A. No, it was the way she presented that information that I
33 thought was wrong.

34 Q. What was the method that she used? She did not say it in
35 the manner that you thought was appropriate?

36 A. She was very enthusiastic about it.

37 Q. That is the complaint, she was enthusiastic about it? Is
38 that the complaint, that she was enthusiastic about it?

1 A. No, I just felt that -- I do not know.

2 Q. The enthusiasm which you may well have discerned was to
3 reassure you that it was a good place for your son, that
4 was the purpose, was it not?

5 A. I do not know, you would have to ask Justice Levers that.

6 Q. Is not that a fair analysis?

7 A. it may well be.

8 Q. And she also mentioned the fact that her brother had been
9 at the same school as Mr Tyson's father was the
10 headmaster?

11 A. She did, yes.

12 Q. Because he was headmaster of Rugby I think.

13 A. No, he was a house master at Rugby.

14 Q. And she displayed her familiarity with the boarding school
15 system for that purpose as well, to reassure you that she
16 knew what she was talking about.

17 A. That is not how it came across. The way it came across to
18 me was that she was being chummy with my ex-husband, she
19 was showing a decided partiality to him. I am afraid that
20 is how I read it at the time. And that is still how I
21 would read it now.

22 Q. What do you mean by that exactly, just explain that in a
23 little more detail, would you.

24 A. She was indicating a link between them by saying that her
25 brother was at the same school as my ex-husband's father.

26 Q. This was all in chambers, was it not?

27 A. Yes.

28 Q. And generally speaking the idea in these kind of
29 proceedings is to reduce the temperature as much as
30 possible, is it not?

31 A. is it, I do not know. That was my first experience of any
32 court proceeding, so I really do not know.

33 Q. And if in fact your husband's counsel was making
34 submissions and she agreed with him was there anything
35 wrong in her indicating that she was agreeing with them?

36 A. No.

37 Q. In fact I think if I can take you back to your statement
38 at divider 19 at paragraph 9 you criticise Ms Merren, do

1 you not?

2 A. I do.

3 Q. And you thought she did not pull apart the weaknesses of
4 your ex-husband's argument.

5 A. No.

6 Q. And what were those weaknesses, did you think?

7 A. Well, one particular was the one that had been mentioned
8 earlier, the proximity of relations, because Justice
9 Levers had spoken to my son and he had said that his
10 grandparents lived very close - yes, being close. May I
11 say at this stage that they had not been down once to see
12 my son. They are unable to go anywhere. My ex-father-in-
13 law has no lower legs, so they do not travel anywhere. My
14 brother, as it says here, has a job where weekends he
15 cannot take my son out. So we are very reliant on my ex-
16 husband's sister and her son is going to finish at Horris
17 Hill at the end of this term, so next year really I do not
18 know what we are going to do, because it has been tough
19 enough these last two terms trying to find somebody to
20 take him out for the exeats that he has to go out for and
21 the half terms.

22 Q. So has to rely upon friends?

23 A. Well, my ex-husband and I have both been living out here
24 for 16-17 years. We have a very limited networks of
25 friends.

26 Q. I am thinking of his school friends.

27 A. Well, so far no suggestion has been made by any of the
28 school friends or the headmistress that that would work.

29 Q. I must not give evidence about my experience of that kind
30 of thing.

31 THE CHAIRMAN: No.

32 MR BRODIE: Did you raise these points in your affidavit before
33 the Court of Appeal?

34 A. I did indeed, yes.

35 Q. So those points were canvassed before the Court of Appeal,
36 were they?

37 A. Well, they were given an affidavit.

38 Q. In which the points you are now making were made to the

1 Court of Appeal.

2 A. I believe so, yes. I would have to check, but I am sure
3 that that was a point that was touched on.

4 Q. After a bit of time the appeal was abandoned.

5 A. Yes.

6 Q. So plainly neither the Appeal Court judges nor presumably
7 your own counsel, Mr Freeman, had much confidence in those
8 points you were making.

9 A. No, that is not the case. Mr Freeman was very confident in
10 his case but I think that he just after 45 minutes of
11 negative vibes from the Appeal judges, I think that he
12 just got nervous and said - panicked, basically.

13 Q. So the points that you are making now at least did not
14 fund favour with the Court of Appeal judges.

15 A. It appears not. I cannot say that they did not entirely
16 because we abandoned the case and it did not go through to
17 the final.

18 Q. And obviously they must have thought that Madam Justice
19 Levers' judgment was a good one.

20 A. I have no idea what they thought. They did not tell me.

21 Q. At any rate, your complaint, as I understand it now, is
22 not the result of the fact that your boy is at boarding
23 school, but the route that was taken to get there, which
24 you think was a rather stony road - is that what it comes
25 to?

26 A. Well, I am still not happy that my son is over there. The
27 decision is really irreversible, because, once you have
28 made such a decision and you have put the child into
29 boarding school and introduced him to a new life, it would
30 be very wrong to haul him out of there and bring him back
31 here again, but I just wanted that not to happen in the
32 first place. I feel that he will miss his family life.
33 There are aspects for both cases.

34 Q. But you have told this Tribunal that he has now settled.

35 A. Well, he seems to be settled, but how do I really, really
36 know how settled he is. He seems to be happy, but he does
37 also admit that he does miss me quite a lot. Now, he is
38 quite a stoical little boy, so I do not know whether

1 actually admitting that he misses me quite a lot means he
2 really, really misses me and is unhappy and he does not
3 really want to tell me, but ...

4 Q. Have you any evidence that he is unhappy at school?

5 A. No.

6 Q. You have not got any grounds for applying to the court to
7 vary Madam Justice Levers' order?

8 A. Well, no, because it would be irresponsible of me to
9 change something that has now been put in place. That
10 would be very disruptive to his education.

11 Q. You saw the judgment, I showed it to you, where the
12 learned judge says, "with the proviso that after a year or
13 so, if [REDACTED] is not happy, either parent can bring
14 the matter ..."

15 A. Yes, I have seen that, but also, having made the change,
16 it is very irresponsible just to change. Unless he was
17 very, very unhappy, it would be very detrimental to bring
18 him back. He would have left Cayman, he would have got
19 used to new people and a new school and then to come back
20 and try to fit into his old school, it would be very
21 disruptive to his education, so I have to accept that now.

22 Q. Have you discussed this with your former husband?

23 A. No.

24 Q. Have you not talked to him about what progress [REDACTED]
25 is making at Horris Hill?

26 A. No.

27 Q. You have not thought it appropriate to say to him, "Do we
28 think that [REDACTED] is getting on well there?"

29 A. He is getting good reports and I have spoken to his tutor
30 and the headmaster and people and they are saying that he
31 is doing well and he himself seemed to be settling. My
32 partner and I took him back at Easter, so fine.

33 MR BRODIE: Thank you very much, Ms [REDACTED].

34 THE CHAIRMAN: Mr Otty.

35 MR OTTY: I do not have any questions.

36 **Questions by the TRIBUNAL**

37 SIR PHILIP OTTON: What is the intention as to schooling after
38 Horris Hill?

1 A. He has been provisionally accepted by Winchester.
2 Q. And does your husband agree with that?
3 A. Yes.
4 Q. Do you agree with that?
5 THE CHAIRMAN: Or are you keeping your options open?
6 A. I am very torn. I feel that, if he is going to be
7 educated in the public school sector in England, then he
8 needs to go to somewhere which really is the best
9 academically, because that really is the advantage. I am
10 more concerned that - Horris Hill is a lovely little
11 school, it is very family orientated and they are very
12 caring. My main apprehension was that I was thinking of
13 the senior side where at aged 12 he would go in as one of
14 the youngest and he would find that difficult and that is
15 where, you know, he might be bullied or whatever. I am
16 torn because I do want him to have a good education, but I
17 do not want him to suffer emotionally, so I would monitor
18 ... I am happy that Horris Hill seems to be giving him the
19 emotional support. When he goes up to Winchester, if he
20 does get there, that is going to be another thing to keep
21 an eye on, to see how that goes.
22 SIR PHILIP OTTON: Thank you.
23 MR BRODIE: Can I just ask a supplementary question arising out
24 of Sir Philip's question?
25 THE CHAIRMAN: Yes.
26 **Further Cross-examination by MR BRODIE**
27 MR BRODIE: I would just like to ask you this. If you go to the
28 judgment that the learned judge made at page 20 of the
29 judgment, divider 2 of bundle 3.
30 A. Which page?
31 Q. Internal page 20, bundle page 44. Under the heading
32 conclusion, she says at line 11, "All agreed that he is
33 exceptionally bright".
34 A. Yes.
35 Q. Do I understand from what you have just told the Tribunal
36 that Horris Hill regard him as Winchester material?
37 A. Yes.
38 MR BRODIE: Thank you.

1 THE CHAIRMAN: Thank you very much. You are released by the
2 Tribunal.

3 (Witness withdrew)

4 MR OTTY: Sir, the next witness is Mr McGrath.

5 **DAVID THOMAS MCGRATH, Affirmed**

6 **Examination in chief by MR OTTY**

7 MR OTTY: Mr McGrath, you will find a witness statement in your
8 name at tab 32 of the witness statement bundle. Do you
9 have that in front of you?

10 A. Yes.

11 Q. And do you adopt that statement as your evidence before
12 the Tribunal?

13 A. Yes, I do.

14 Q. Mr McGrath, I would just like to ask you specifically
15 about a number of the allegations made by Ms [REDACTED],
16 which are not expressly addressed in your witness
17 statement. To do that, can I take you to her witness
18 statement which is at tab 19 in the same bundle? In
19 paragraph 8 of that statement, Ms [REDACTED] says that Mr
20 McGrath read out what she calls inaccurate information
21 from her ex-husband's affidavit, she shook her head in
22 disagreement. At which point Madam Justice Levers said,
23 'Oh, I can sense the hostility in the court'. Justice
24 Levers directed this comment at me and misread my
25 disagreement for hostility. From the very beginning I felt
26 she was attacking me."

27 Are you able to recall whether Justice Levers said
28 words to the effect of "Oh, I can sense the hostility in
29 the court"?

30 A. No. I cannot at all.

31 Q. In paragraph 12 it is said that Justice Levers brought up
32 the subject of bullying in boarding schools and said that
33 it was to be expected and that children just had to learn
34 to deal with it. Ms [REDACTED]'s complaint, essentially,
35 is that that showed a lack of sensitivity on the part of
36 Madam Justice Levers. Again, do you recall Madam Justice
37 Levers saying any words to that effect?

38 A. No.

1 Q. In paragraph 18 Ms [REDACTED] says, "I was wearing a
2 skirt at the proceeding that revealed my knees when I sat
3 down. When called to the stand, the chair in which I was
4 sat was pointed at a 90-degree angle from all parties in
5 the court, so there was no potential for an indiscrete
6 view. Justice Levers passed me a shawl to cover myself.
7 The way this was done was to make me feel as though I had
8 offended her and I was flaunting my body in an obscene
9 way. I felt she did this to intimidate me and illustrate
10 her power over me.

11 Do you recall Madam Justice Levers passing a shawl to
12 Ms [REDACTED]?

13 A. Yes.

14 Q. In paragraph 19 Ms [REDACTED] complains that "Justice
15 Levers sat turned with her back towards me and indicated
16 very clearly she was not prepared to listen
17 sympathetically to anything I said, shown by negative
18 grunting and head tossing".

19 Now, I have noted what you said about the
20 configuration of the room in your witness statement, do
21 you recall any negative grunting or head tossing?

22 A. No.

23 Q. Ms Merren, who was your opponent on this occasion, has
24 also given evidence in relation to this hearing and she
25 has said that, while she accepts that Madam Justice Levers
26 writes her notes often in a position so that she will
27 often be turned away from a witness giving evidence, she
28 says that in this case Madam Justice Levers was turned
29 away from Ms [REDACTED] even when she was not writing and
30 that she gave the impression that she was not listening.
31 Are you able to recall in any detail whether that may have
32 occurred?

33 A. As I said in my witness statement, the configuration of
34 the learned judge's chambers was such that there was the
35 witness immediately on her right, counsel immediately in
36 front of her and her notebook was in front of her and the
37 materials and evidence in the case would be on her left,
38 so immediately opposite the witness. The learned judge

1 would look at the witness, look at counsel, turn to the
2 other side, just the normal dynamics of a hearing in
3 chambers.

4 MR OTTY: I see. Thank you, Mr McGrath, I do not have any
5 further questions for you. Mr Brodie may have.

6 THE CHAIRMAN: Mr Brodie.

7 MR BRODIE: If your lordship would forgive me, I am not quite
8 sure whether I have any questions at all. **(Pause)**

9 **Cross-examination by MR BRODIE**

10 MR BRODIE: Madam Justice Levers gave this lady a shawl. Do you
11 remember that?

12 A. Yes.

13 Q. Was that because she was wearing a very revealing garment?

14 A. That is what the judge said.

15 Q. Did you see it yourself?

16 A. Her skirt?

17 Q. Yes.

18 A. Yes.

19 Q. Was it revealing?

20 A. It was above her knees.

21 MR BRODIE: Above her knees. I have no further questions.

22 THE CHAIRMAN: Thank you, Mr McGrath. You are released by the
23 Tribunal.

24 **(Witness Withdrew)**

25 MR OTTY: Sir, that concludes the evidence for today. The
26 proposal is that we start tomorrow morning with Ms Myren
27 and then commence the evidence of Ms Webb.

28 THE CHAIRMAN: Yes. We are concerned that Ms Myren's evidence
29 may take longer than was contemplated for Ms Scott.

30 MR OTTY: That is absolutely right, sir. I am sure that that is
31 correct.

32 THE CHAIRMAN: On that account, we were minded to sit somewhat
33 earlier in order to take account of that fact. The
34 Tribunal is minded to sit at nine o'clock, Mr Otty. Is
35 there anything you want to say about that?

36 MR OTTY: That would be entirely acceptable from our side, sir,
37 and I understand the stenographers are available then as
38 well.

1 MR BRODIE: It is going to get a little difficult for us,
2 because I have to do all the work in this Tribunal and I
3 have to prepare cross-examination day after day. If I
4 lose half an hour, that is quite valuable to me, but I
5 think that I can give your lordships this reassurance, I
6 doubt very much whether Ms Myren will, in fact, be quite
7 as long as I had originally anticipated because we have
8 had the evidence of Ms Rouse and she has covered quite a
9 bit of the ground that I was going to cover with Ms Myren.
10 THE CHAIRMAN: Very well. We will sit at 9.30 and, in the event
11 that we need more time tomorrow, we shall arrange to take
12 it, but your preparation time will not have been
13 interfered with.
14 MR BRODIE: It is quite important and, as Lord Chesterfield
15 said, "I am sorry, I had to write such a long letter, I
16 didn't have the time to write a short one". That also
17 applies to cross-examination as well.
18 THE CHAIRMAN: Yes. Well, no doubt, the extra half an hour will
19 make you even more economical than usual, Mr Brodie.
20 **(Adjourned until the following morning at 9.30)**
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