

A
LEWES CROWN COURT

(200504343C4*2)

The Law Courts

High Street

Lewes

B
13th January 2005

Before:

HIS HONOUR JUDGE NIBLETT

C
R E G I N A

- v -

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CASEY HARDISON

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(Transcribed from the official tape recording by Marten Walsh
Cherer Ltd., Midway House, 27-29 Cursitor Street,
London EC4A 1LT. Telephone 02074055010)

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MR. R. BARTON and MISS PAGET appeared on behalf of the
Prosecution

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MR. HARDISON appeared In Person

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JUDGE'S REASONS FOR RULING ON ABUSE OF
PROCESS/HUMAN RIGHTS ARGUMENTS (@ 10.35 a.m.)

Thursday, 13th January, 2005

R U L I N G

JUDGE NIBLETT: Good morning Mr. Hardison.

MR. HARDISON: Good morning.

JUDGE NIBLETT: Mr. Barton, I see you are without Miss Paget, so I am afraid it is going to be necessary for someone to take a note (obviously it will be on the transcript).

MR. BARTON: Yes. I will take a note and I am sure those instructing me will certainly take a note also.

JUDGE NIBLETT: I am now going to give the full reasons for the decision which I announced in open court yesterday afternoon.

Casey Hardison, who is a citizen of the United States of America, is charged on this indictment with nine counts. On Counts 1 to 8 he is charged with offences contrary to various sections of the Misuse of Drugs Act 1971; on Count 9 with an offence contrary to the Customs & Excise Management Act of 1979. More particularly, on Counts 1 to 6 he is charged with producing a controlled drug of Class A contrary to section 4(2)(a) of the Misuse of Drugs Act 1971. On Count 7 he is charged with possessing a controlled drug of Class A, namely, LSD, with intent to supply it contrary to section 5(3) of the 1971 Act. On Count 8 he is charged with simple possession of a different Class A controlled drug contrary to

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section 5(2). On Count 9 he is charged with the exportation of MDMA, that is, Ecstasy, to the United States, contrary to section 170(2)(b) of the Customs & Excise Management Act of 1979, the prohibition on exportation being imposed by section 3(1) of the 1971 Act.

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To all these counts Mr. Hardison has pleaded not guilty, and it follows that in the ordinary course of events there will be a trial before a jury. At the outset of the trial, and before a jury has been selected and empanelled, Mr. Hardison raises a number of preliminary issues for determination by myself as the trial judge.

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The first of these issues arises from the operation of the Human Rights Act 1998 and its incorporation into English law of the European Convention of Human Rights. As Mr. Hardison made clear to me yesterday morning, that is, the 12th January, in his closing argument in reply to prosecuting counsel, using these words, Mr. Hardison said (and I quote):

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"My argument is simple: I feel drug users are demonised in this society, and I am a drug user." It is his contention that his basic Human Rights have been violated by his arrest, detention and prosecution, and that the continuation of this legal process, within the context of the Criminal Justice system of England and Wales, is, in itself, a continuing violation of his Human Rights.

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His application to me is to stop these proceedings.

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Again to adopt his own words (and I quote): "I believe this" (U.K.) "Government is guilty of an abuse of power and I ask you to stop this insanity and rule in my favour." In other words, Mr. Hardison, as he makes very clear, is asking me to stay these proceedings and to direct his acquittal on all charges.

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As is apparent to all who listen to this case, Mr. Hardison represents himself, although he has the great benefit, and the court has the advantage, of continued representation by a solicitor, Mr. Shone, who has, I think, acted for him throughout.

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Mr. Hardison was previously also represented by counsel, namely, Mr. Rudi Fortson, the author of the leading text book on the Misuse of Drugs, but Mr. Fortson withdrew from the case in the latter part of last year after he had appeared before me, I think on only one occasion, a preliminary application. Mr. Hardison has chosen, thereafter, to represent himself and, in particular, to advance these Human Rights arguments.

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I have listened with care to Mr. Hardison over the past week, in effect three to four days of court time, and it is apparent to me that he is a highly intelligent and articulate man who is well-able to conduct his own defence. Indeed, if I may say so, no professional advocate could have advanced the arguments, which he has put forward, with greater skill.

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I commend Mr. Hardison for his learning and research, and for the clarity of his arguments and submissions both in writing and orally. The sincerity with which he holds his views is obvious to me, and this adds powerful force to his delivery both on paper and in verbal expression.

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I also commend and thank Mr. Hardison for complying with my orders, the court's orders, in relation to the preparation and delivery of written skeleton arguments following the timescale which I directed. And on one occasion, Monday of this week, 10th January, he was good enough to readily adhere to my advice, which I felt it necessary to give only at that one stage, which was to ask him to resist the temptation of using this court as a platform from which to express his personal views and beliefs.

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I now set out the written material which has been presented to me and which I have carefully read and considered. There are a large number of documents, which I divide, I think, into a total of twelve categories.

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1) The Defence Case Statement dated 3rd August, drafted by his solicitors, together with an undated addendum in the form of a one-page document entitled "Defence Summary", which was prepared and filed in early December I think.

MR. HARDISON: November 25th.

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JUDGE NIBLETT: Thank you very much, Mr. Hardison. Dated

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November 25th.

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2) The eighteen-page skeleton Defence arguments pursuant to the European Convention of Human Rights. That skeleton is dated 1st January, New Years Day, 2005.

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3) The amplified version of the above document, which runs to 37 pages and which in fact proceeded it and is dated Christmas Eve, 25th December 2004.

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4) The document headed Entheogenic Reformation setting out details of Mr. Hardison's personal history and background, and the background to his beliefs.

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5) And most importantly, transcripts of all the authorities referred to by Mr. Hardison in his skeleton argument, which were very helpfully copied by the Prosecution for use not only of themselves but, more importantly, by Mr. Hardison and by myself.

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I add, in relation to category 5, that Mr. Hardison has taken me through each and all of these authorities, skillfully incorporating them into his written and oral submissions.

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6) A volume of technical and other literature and information (which I have marked on top of my own copies "Bundle A") which again, I add, have been skillfully incorporated into both written and oral submissions by Mr. Hardison.

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7) Various reports and other documents produced by and

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for the United Nations and its Agencies concerning the world-wide supply and use of controlled drugs. I have marked that bundle "Bundle B".

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8) I have, in addition, listened with care to extracts from publications of various kinds read in open court by Mr. Hardison. I have a copy extract of one example, the book (I hope if my pronunciation is wrong I will be forgiven) "PIHKAL" subtitled "A Chemical Love Story", the authors being Alexander and Ann Shulgin. Mr. Hardison has made a number of references to that volume and also to a companion volume by the same authors.

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9) Here I turn to material introduced initially by the Prosecution, but also referred to by Mr. Hardison. The authority of R. v. Paul Taylor, the citation being (2002) 1 Cr.App.R., and I have also been provided with the transcript of that authority. I mention, also, that I was provided with the first page only of the report of R. v. Litman, decided in the Court of Appeal (Criminal Division) on July 31st 1969, I cannot see the citation on the top, but it is from the All England Law Reports.

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10) I have also been referred to, and referred myself to, The Misuse of Drugs Act itself, which, in its short title, states simply this: "An Act to make new provision with respect to dangerous or otherwise harmful drugs and related matters and for purposes connected therein." There are a

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total, I think, of 40 Sections and six Schedules to the Act. In my view rightly, Mr. Barton described this Act of Parliament as being at least in part consolidating legislation.

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11) Archbold. Mr. Hardison helpfully referred me to the relevant paragraphs, starting at paragraph 16-29, page 1590, in the 2004 and I believe also the current edition of Archbold. Those paragraphs relate to The European Convention of Human Rights and its incorporation into English law. Mr. Hardison also helpfully referred me to paragraph 1-9 and onwards of Archbold, which concerns the interpretation of "subordinate legislation".

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I will in fact refer to a twelfth category of documents in just a moment, but I say at this stage that I have listened with care to Mr. Hardison addressing me in open court, expanding upon, reiterating and emphasising his written submissions, by reference to the above documents and authorities.

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I have also listened with care to Mr. Barton, leading prosecuting counsel, who addressed me briefly on Monday, and in more detail yesterday morning, expanding upon his own written skeleton arguments. It is those documents, together, which I put into category 12 of the written material.

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I move on now from those categories of written material and the oral submissions which I have heard on both sides.

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In my judgment, the submissions advanced on behalf of the Prosecution in this case are correct in law and are determinative of the issues which I have to decide.

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I add to my decision, which I gave in open court yesterday, in these terms: having considered all the written material and all that has been addressed to me, I have come to the sure and clear conclusion that Mr. Hardison's arguments are misconceived and I reject each and every one of the Human Rights arguments.

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My reasons are as follows:

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1. Parliament in the United Kingdom is sovereign. The Misuse of Drugs Act 1971 is a Statute, an Act of Parliament which is binding upon every citizen of, and visitor to, this country. It is binding upon the courts.

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Applying the rules of statutory interpretation, of which I was helpfully reminded by Mr. Barton yesterday, this Act is not capable of other than literal interpretation. The Act, or at least all relevant parts of it, remain on the Statute Book.

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2. The Act itself, and the individual provisions of the Act, do not, in my judgment, infringe Mr. Hardison's Human Rights as properly interpreted within the context of the European Convention.

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3. Even if I were to find -- which I do not -- any provision of the 1971 Act were to contravene any of Mr.

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Hardison's Human Rights, the only remedy for him would be to seek a Declaration of Incompatibility pursuant to the Human Rights Act 1998. I have no power to grant such a declaration. Such a declaration must and can only be sought in the Court of Appeal and the Judicial Committee of the House of Lords. Even those superior courts have only power to grant a declaration to act, as Mr. Barton, in my view rightly, put it, as a prompt to the Legislature to amend or repeal the offending legislation.

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I add this(although it is not, I think, strictly essential for me to do so as part of my reasoning): that this case, in my view, illustrates what is perhaps a wider misconception which Mr. Hardison, as a citizen of the United States, has, understandably, adopted, and that is a misconception -- at least in my judgment a misconception -- that Parliament is, in some instances, no longer sovereign. Parliament is sovereign, and that fact, in my view is illustrated by the need for an Act of Parliament to incorporate the European Convention of Human Rights into the laws of this country. The doctrine of Parliamentary sovereignty is, and remains, the bedrock of our constitution.

My role, as a judge of the Crown Court, is to administer justice in accordance with the laws of England and Wales enacted by Parliament or established at common law.

It is only right, out of respect for Mr. Hardison's

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arguments, and the lucidity with which he presented them,
that I should deal briefly with each Article of the
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Convention which he claims to have been violated. I take
each in turn as he raised them with me. Although I think
Article 6 he dealt with rather later, I shall include it in
the chronology.

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Article 3. In my judgment, Mr. Hardison has not been
"subject to torture" -- and he does not suggest that he has
-- or to any inhuman or degrading treatment or punishment"
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(which is the wording of the Article). He is detained in
custody, and has been since his arrest, pursuant to what I
believe the Americans would call "due process"; that is, as I
understand it, that the lawful procedures enacted by
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Parliament and operated and enforced by the agencies
authorised by Parliament to carry out their representative
functions.

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His present situation, although regrettable, is the
result of his own, and, to an extent, admitted actions, the
consequences of which are made plain in the very publication
to which he has referred me and to which I have referred
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earlier in this judgment, namely, "PIHKAL", which, in one of
the preambles to the book headed "Note to Reader", reads as
follows: "No one who is lacking legal authorisation should
attempt the synthesis of any of the compounds described in
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the second half of this book, with intent to give them to

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man. To do so is to risk legal action which might lead to the tragic ruination of a life. It should also be noted that any person anywhere who experiments on himself, or on another human being, with any one of the drugs described herein, without being familiar with that drug's action and aware of the physical and/or mental disturbance or harm it might cause, is acting irresponsibly and immorally, whether or not he is doing so within the bounds of the law."

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I add this: that Mr. Hardison has made it quite clear to me, and I accept, that he is someone very well-experienced with the use, experimentation with these subjects, and it is his case that he has not sought to experiment or to supply another human being, and that, accordingly, he has not acted irresponsibly and/or immorally. That is very clearly his position.

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I move on to Article 6, which of course gives the right, so well-established in English law before the Convention, that all persons are entitled to a fair trial before an impartial tribunal. In my judgment, there can be no doubt in this case that he will have a fair and impartial tribunal to hear and determine his case; namely, a jury hearing the evidence dispassionately and applying directions of law given by me, those directions of course being subject to review should it become necessary, and/or appropriate, by the Court of Appeal.

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Trial by jury is his right as with any other defendant in this country. Juries in every part of this country, day in and day out, are hearing cases often involving subject matter of an emotive and distressing nature. Experience has shown that juries properly directed are well-able to put out of their minds any preconceptions, personal feelings and/or emotions, and juries try each and every case and reach their verdicts on the evidence and on the evidence alone. So that the Article 6 argument clearly fails in my judgment.

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Articles 8 and 9. I can, here, confine myself to the submissions of the Prosecution, through Mr. Barton, because I am clearly bound by the decision in the Court of Appeal (Criminal Division) in the case of R. v. Taylor (Paul) (2002) 1 Cr.App.R. 519, the decision of the court, presided over by The Vice President (Lord Justice Rose).

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I read this from the headnote: "Held, refusing the application, the prohibitions contained in the Misuse of Drugs Act 1971 in relation to the supply", in that case of cannabis, "did not amount to an interference with Article 8 or 9 rights under the Convention; they were clearly part of the United Kingdom's policy to combat the dangers of narcotic drugs to public health which included international treaty obligations; that questions of proportionality and necessity were not proper questions for consideration by a jury."

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That authority is clearly binding on me.

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Moving on to Article 10. Again I agree with the Prosecution argument that the same principles apply as with Articles 8 and 9.

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I note also that in relation to Article 10 there is an express proviso which, in my judgment, is applicable to the situation of this case, involving the alleged production and supply of Class A controlled drugs, with all the inherent dangers to the public health and safety which has been determined -- and I make no moral or any other sort of judgment about the matter -- that they are dangers which have been determined by Parliament, and Government earlier, on the advice of the Advisory Council on the Misuse of Drugs which was established under the same 1971 Act.

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Article 14. In my judgment, there is no discrimination of Mr. Hardison, or any other group, other than those, from whatever background, who choose to disobey the law.

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I agree with the analogies drawn by Mr. Barton in his submissions. I do not repeat the analogies because that would be, I think, unfair for me to refer to any other area of criminality with which, of course, Mr. Hardison is not, and has never been -- and there is not the slightest suggestion -- involved.

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I move on to Articles 17 and 18. In my judgment, those Articles add nothing to the submissions which are made in relation to other Articles. Those Articles do not create

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rights which are in themselves capable of violation.

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Finally this: Mr. Hardison has, for good reason, which I can see, advanced to me, referred to Protocol 1 Article 2 of the European Convention; but, in my judgment, he has not been denied the right to education, including self-education. In my view, his ready and easy access to PIHKAL and its companion volume, and so much other literature, both in book form and on the Internet, illustrates the fact that he has free and easy access to education in relation to these matters in which he is so passionately interested.

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Those are my reasons.

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For the avoidance of doubt, and for future reference during the course of this trial, if the trial does proceed, and after the other arguments in relation to abuse of process have been advanced to me, I say this: I am the judge of the law. It is no part of my function, or any court's function, to engage in philosophical or political debate, or to make decisions based upon arguments relating to the efficacy, or otherwise, of any particular enactment of the Legislature.

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Nor is it my function to make moral judgments one way or the other. I must apply the law in my decisions and direct the jury, in due course, to apply the law in making their decisions. I will, and must, if necessary, in due course direct the jury to ignore the helpfully summarised as "Human Rights' Arguments", and limit, and, where necessary, exclude,

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C any evidence or submissions relating to those Human Rights
arguments which would, in my judgment, serve only to distract
the jury from the proper exercise of their duties and
responsibilities arising from and related to the facts of
this case.

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G Finally, I wish to add this. I make it clear it is not
part of my reasoning, although it is something that has very
much been in my mind since the passage was referred to me I
think the day before yesterday. I am of course applying, as
best I can, the law of England and Wales. But I add, and I
hope this is not unhelpful, and I certainly add the reference
humbly, out of respect to the fact that Mr. Hardison is an
American citizen, and out of respect for the judgments and
decisions of the American courts, and in particular the
Supreme Court of the United States to which he has referred
me. Being conscious, as I hope I am, of the vital importance
of "liberty" in the United States, and in England and Wales,
and indeed the whole United Kingdom, I am conscious, very
much, of the importance of that word within the American
Constitution and the whole history of the United States.

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A Mr. Hardison directed my attention to a number of the
most learned judgments delivered in the United States Supreme
Court over the past century. It is apparent, indeed I think
a matter of common knowledge to all those informed even to a
limited degree on the subject, that the Supreme Court of the

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United States is loathe to accept any infringement of the liberties of the individual citizen. I stress "citizen", not "subject", as no American citizen is the subject of any human sovereign. It seemed to me that as Mr. Hardison read the first part of the passage which I will shortly go on to quote, that there could be no better expression of the balance which has to be struck between the liberties of the individual and the right of the State, on behalf of the wider society or community, to protect its citizens from harm, than that given by Justice Harlan delivering the opinion of the Court in *Jacobson v. The Commonwealth of Massachusetts*, decided on February 20th 1905, almost exactly one hundred years ago.

The case concerned the compulsory vaccination, I think, of newly arrived citizens into the United States; but, in any event, compulsory vaccinations. The learned Justice, at page (inaudible) of 11 in the transcript that I have, the bottom of that page, said this: "There is, of course, a sphere within which the individual may assert the supremacy of his own will and rightly dispute the authority of any human government, especially of any free government existing under a written constitution, to interfere with the exercise of that will. But it is equally true that in every well-ordered society charged with the duty of conserving the safety of its members, the rights of the individual in respect of his

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liberty may at times, under the pressure of great dangers, be
subjected to such restraint to be enforced by reasonable
B regulations as the safety of the general public may demand."

I need add nothing further. I have given my reasons
and dealt, as fully as I believe necessary, with all those
Human Rights arguments addressed to me by Mr. Hardison.

C I just add, for anyone who is interested in this
subject, as indeed I am, as is perhaps apparent, interested
and have been interested by all that has been addressed to
D me, there is, in today's Daily Telegraph -- I think it was an
earlier edition of the Daily Telegraph that Mr. Hardison
quoted in relation to the Guantanamo Bay situation -- a very
interesting article by Joshua Rosenberg, the Legal Editor, in
E today's Daily Telegraph, arising from the arguments of the
Countryside Alliance in relation to the Hunting Act, but the
article relates to arguments as to the effect of what
constitutes primary and secondary legislation. Mr.
F Hardison, I should think you would like to read that and I am
sure if you can't get it that Mr. Shone will provide you with
a copy.

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I Certify that I have faithfully transcribed this part of
these proceedings to the best of my skill and ability.

MEMBER

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