

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

REGINA

(RESPONDENT)

-v-

RICKY TOMLINSON AND ARTHUR MURRAY

(APPELLANTS)

FOUNDATIONS OF APPEAL AGAINST CONVICTION

1. The Appellants were two of twenty four men convicted, over the course of three trials, of offences arising from the picketing in Shrewsbury and Telford (on the 6th of September 1972) as part of the 1972 Building Strike. A further twelve Appellants are separately represented.¹
2. The Appellant Mr. Tomlinson was tried at the Shrewsbury Crown Court, before Mais J and a jury between the 3rd of October and the 19th of December 1973 (the first trial). He was convicted of Conspiracy to intimidate, Unlawful assembly and Affray and sentenced to two years imprisonment on each count to run concurrently. The Affray count was quashed on appeal on the 4th of March 1974 [2/2/272]².
3. The Appellant Mr. Murray was tried at the Shrewsbury Crown Court, before Chetwynd-Talbot J and a jury between the 14th of January 1974 and the 12th of February 1974 (the

¹ By Bindmans LLP

² References are to the Core Documents (hereafter Volume 1); CCRC Decisions and tabulated and paginated Referral Bundle (hereafter Volume 2); other additional materials that the Appellants refer to (hereafter Volume 3); and the authorities bundle (hereafter Volume 5). These references have been amended on 12 January 2020 in line with the final agreed bundles.

second trial). He was convicted of Affray and Unlawful assembly and sentenced to six months and four months respectively, to run concurrently.

4. On the 22nd of May 2020 the Criminal Cases Review Commission referred the Appellants convictions to the Court of Appeal, providing a 33 page Statement of Reasons for the Appellant Mr. Tomlinson [1/15/277] and a much shorter Statement for the Appellant Mr. Murray (on the basis that Mr. Murray’s appeal is subsumed within that of Mr. Tomlinson) [1/16/310].
5. The history of the proceedings and the background to the case are detailed at paragraphs 1.1 to 1.16 and 3.1 to 3.29 respectively of the Grounds of Appeal of the twelve Co-Appellants (dated 25th of September 2020) (“Co-Appellant Grounds”) [1/1/1]. That analysis is adopted and endorsed by the Appellants Mr. Tomlinson and Mr. Murray.
6. The CCRC referred the case for appeal on two grounds [1/15/306]:
 - i. Ground 1: Non-disclosure of the contents of the 17 September 1973 note and the prior-non-disclosure and destruction of the statements referred to therein, rendered the trial(s) of Mr. Tomlinson and Mr. Murray unfair and [their] convictions unsafe.
 - ii. Ground 2: That the broadcast of the documentary “The Red under the Bed” during the course of the trial, prejudiced the defendants and the trial judge failed to take adequate steps to neutralise that prejudice. The prejudicial features of the documentary were exacerbated by the serious concerns about the veracity of Mr. Regan and the apparent involvement of the Executive in the production of the programme.
7. The early application of the *Bentley* principle in the co-appellants grounds [1/1/5 §§2.1 to 2.3] is adopted and endorsed by the Appellants Mr. Tomlinson and Mr. Murray.
8. The Grounds and submissions of the Co-Appellants are similarly adopted and endorsed, with additions to those grounds added in **bold** and a sole divergence marked in [square parentheses].

GROUND 1:

9. The destruction of evidence by the police and the response to that destruction by the prosecution team:
- (a) Fresh evidence is available pursuant to section 23 of the Criminal Appeals Act 1968 that proves that
 - i. **original witness statements were destroyed by police and**
 - ii. Prosecution Counsel were informed of the destruction of witness statements by the police during the early stages of the investigation, but that the fact and the reasons for destruction were not disclosed to the Defence in any of the three trials despite the dispute as to attributed conduct that arose in each of those proceedings.
 - (b) During the course of Trial 1 both the prosecution and the judge assured the jury that the Defence had access to all statements.
 - (c) Applying contemporary common law standards, all the convictions are unsafe because
 - i. **the destruction of original statements and**
 - ii. material non-disclosure created tangible unfairness in each of the trials.

GROUND 2

10. The approach of the Court to the real risk of adverse impact on the fairness of Trial 1 in the light of broadcasting of the ‘Red under the Bed’ during the course of those proceedings:
- (a) There are very basic features of the programme, and the follow-on televised discussion, which, applying contemporary common law standards, demonstrate that the convictions are unsafe, because of a failure of the trial judge to engage with and/or sufficiently deploy the tools available to him to prevent unfairness arising out of the broadcast during the course of the trial, including an enquiry with the jury, potential discharge and more robust directions on the point in his summing up.
 - (b) Fresh evidence is available pursuant to section 23 of the Criminal Appeals Act 1968 that proves that (i) [although] the Executive [was not necessarily responsible for the timing of the broadcast, it] was responsible for a **“considerable” and significant** part of its content; [and] (ii) a sizeable section of the broadcast contained the allegations of a journalist, Simon Regan, which other police investigations had concluded to be an unreliable informant **and (iii) having provided the details of the journalist Simon**

Regan to the programme makers, the Executive (in particular the Attorney-General's Office and the Director of Public Prosecution's Office) was aware of the unreliability of his allegations both at the time of the provision of the material and the broadcast during the trial. There was material non-disclosure to the Defence and the Court, which, had it been made, should have caused the Court to make further enquiries **and stay proceedings for abuse of process.**

GROUND 1:

11. On the 17th of September 1973, approximately two weeks before the start of the first trial, a conference took place between Lead Counsel for the Crown, Maurice Drake QC and officers from the West Mercia Police. A note of the conference (which was forwarded to Junior Crown counsel Mr. Fennel) contains the following paragraph:

“16. So that Counsel would be aware it was mentioned that not all original hand written statements were still in existence, some having been destroyed after a fresh statement had been obtained. In most cases the first statement was taken before photographs were available for witnesses and before the Officers taking the statements knew what they were trying to prove”. [2/4/291-294].

12. The Co-Appellants' submissions in respect of non-disclosure of the Note [1/1/14-15 §§4.1 to 4.12 and 5.1 to 5.16] are adopted and endorsed.
13. The Appellants Mr. Tomlinson and Mr. Murray additionally submit that the fact of the destruction of the original statements (in addition to the fact that that destruction was not disclosed) was individually and cumulatively (with the fact of the non-disclosure) enough to render the trial unfair and the convictions unsafe.

The timing of the original statements and the subsequent destruction:

14. The note confirms that a number of “original” witness statements had been destroyed and that these had been replaced by “fresh” statements.
15. The original statements had been taken at some stage in the investigation, prior to
- a) photographs being made available for witnesses **and** [emphasis added]

- b) before the Officers taking the statements knew “what they were trying to prove”.
16. There is no reference to the timing of either the taking of the original statements or their destruction within the note.
 17. The CCRC have concluded that the “time period in which the destroyed statements were produced is no longer than a week” [1/15/287 §37]. This conclusion is based on extracts from the statement of a witness Wilmott Barry dated the 13th of September 1972 (i.e. one week after the incident) which refers to having been shown “photographs A-J” on that date. [2/5/302]
 18. However, the CCRC’s conclusion does not take into account, firstly, that the availability of photographs for one or more witnesses, a week after the incident, does not imply that the images were similarly available for all witnesses within the same time frame. This would be particularly true in a case in which statements were taken from more than 700 witnesses [2/1/201: transcript of summing up]. It would simply not be possible for the police to have re-taken 700 sets of statements, including the production of sets of images, within the timeframe imagined by the CCRC.
 19. The observations at Co-Appellant Grounds [1/1/16 §4.7] on this point are also adopted and endorsed.
 20. Further and importantly on the issue of timing, the CCRC have focused solely on the availability of photographs. The “note” however, specifically refers **cumulatively** to statements taken before photographs were available **and** before the police knew what they were trying to prove. In the context of a “note” drafted in September 1973, the police were “trying to prove” conspiracy to intimidate, unlawful assembly and affray.
 21. It is clear from the West Mercia Police Report [2/12/416] that on the 18th of December 1972 at least, the police were still unsure of what it was that they were “trying to prove”; no charges had been decided upon and at that stage “conspiracy” charges were “not strongly recommended” [2/12/455], Affray charges were only being “contemplated” [2/12/450] and charges of unlawful assembly were being considered in the light of the Industrial Relations Act [2/12/451].
 22. The post-trials West Mercia Conclusion Report [2/14/477] makes it clear that after the first appearance of the first six defendants, and summonses being served on the

remaining eighteen, on the 14th of February 1973, conferences with counsel led to changes within the charging decisions, leading to the eighteen further defendants (including the Appellant Mr. Murray) being re-summonsed on the 4th of March 1973 for their joint Court appearance on the 15th of March 1973.

23. It is noteworthy that all twenty-four of the Shrewsbury Defendants were due to appear again in Court on the 25th of April 1973 but that hearing was adjourned, apparently administratively, because “statements were still being **amended** and signed, following counsel’s advice”. [2/14/479 §13].
24. It is submitted that a more realistic timeframe for the production of the original statements would be a period from the 6th of September 1972 up to a date between the 18th of December 1972 and the 15th of March 1973.
25. This time frame considerably widens the extent of the prejudice and restricts the extent to which that prejudice could have been dealt with in the course of the trial process.

The number of statements destroyed:

26. The CCRC has been unable to establish how many statements that the note referred to [1/15/287 §37] but bearing in mind that the process of **amendment** was still ongoing towards the end of April, one would expect it to have been a considerable number.
27. Further, the extended timeframe for the taking of the original statements, makes it likely that the number of “original” statements taken is greater than that envisaged by the CCRC. The destruction of a significant number of statements widens the extent of the prejudice and restricts the extent to which that prejudice could have been dealt with in the course of the trial process.

Content of the statements:

28. The CCRC concluded that “in the absence of further information about the statements that were destroyed, it would be little more than speculation to suggest that these statements could have contained information that was of assistance to the defence”. [1/15/290 §47]
29. It is submitted that the CCRC have fallen into error in their interpretation [1/15/289-290, §§44 and 47] of *R v PR [2019] 2 Cr. App. R. 22 [5/1/6]*. This is not a case involving

speculation as to the categories of evidence that may or may not have been lost. The issue is the destruction of original statements i.e. the first accounts of witnesses, when their memories were fresh and untainted by subsequent events and communication.

30. First account, original statements, lacking the subsequent amendments added once the Prosecution knew what it was “trying to prove”, are capable of constituting “missing evidence which represents a significant and demonstrable chance of amounting to decisive or strongly supportive evidence emerging on a specific issue in the case”.
31. The CCRC are right to point out that “*The CCRC does note, however, that fact that the statements were destroyed and replaced tends to suggest that they were not of as much assistance to the police and prosecution as the “fresh” statements that followed*” [1/15/290 §47], but a thorough analysis of their material suggests that far from being “speculative”, it is possible to make broad inferences as to the content of the destroyed “original” statements.
32. The single example of the various statements of a witness that were not destroyed, that the CCRC have been able to provide in their bundle, is wholly demonstrative of the point.
33. The statements of Wilmott Barry [2/5/295 to 305] consist of
 - a. At 2/5/298 and 301: an undated handwritten statement (transcribed at 2/5/299 and 300), apparently the first account (presumably, see below, from the 6th of September).
 - b. At 2/5/302 and 305: a handwritten statement, dated the 13th of September 1972 [transcribed at 2/5/303 and 304]
 - c. At 2/5/295: a typed statement, dated the 20th of March 1973, which purports to be a “Statement amended from statements taken on the 6th of September 1972 and the 13th of September 1972” [2/5/297].
34. The first in time of those statements gives an account of the pickets arriving at “The Mount”. The witness describes the pickets congregating outside the site office and a few of them going into the offices. At this stage he has noted that none of the men were carrying weapons and describes their behaviour as no more than shouting “Off, off, bloody [illegible]”. He continues “shortly afterwards the main body of men split up and

various groups started walking over the site”. He says a group of 8 came to the plot where he was working. One of them said to him “Are you coming out, in one piece or two fuckers”. He describes the man as having a North Wales accent, but says that other than that he could not describe him. He says that these men said nothing more and didn’t damage anything. He attributes no specific behaviour to any of the pickets other than to say that the general attitude was “a strong threatening manner” and that he heard foul language.

35. The first statement continues [2/5/301] to describe a meeting in which one of the “leaders” said they “had read in the press that there were going to be 200 men on the Mount site waiting for them, the pickets, so they had brought 300 men”. The first draft of this statement included the words “I am 75% percent certain that I would know this man again if I saw him” but these words were later crossed out. It then continued “He spoke with a Liverpool accent” and then (again crossed out) “but I could [sic] describe him further”.
36. In an addition to this (6th of September) statement and undoubtedly made at a later date, (presumably the date at which the words “I am 75% certain” were crossed out) the words “who I identify as the man in photograph J number 11” are added to the description of the “leader” in the site office. The man at J11 was the Appellant Mr. Murray.
37. The first statement concluded with the words “I am unable to describe or identify any of the pickets other than what I have already told you” [2/5/300].
38. The first statement thus included an account broadly consistent with the Appellants’ accounts that “leadership” tried to speak to management and that small groups, unseen by them, may have intimidated workers elsewhere.
39. The second, 13th of September, statement, identified the man at photograph A2 (the Defendant Carpenter) as being present with “Des Warren” (the Co-Appellant) (who had neither been mentioned previously nor identified) and using foul language and trying to provoke them. It further identified the men at photographs B 13 (unidentified) and 14 (the Co-Appellant Kevin Butcher) as “walking towards the cabin”.
40. By the time of the final, amalgamated statement on the 20th of March, the Appellant Mr. Murray (the man at J11) was no longer the man with a Liverpool accent who the

witness had been 75% certain he could describe, but was instead the man with a Welsh accent³, who the witness could not describe at all, threatening him with the “one piece or two” comment. The “leader” (formerly J11, Mr. Murray), remarking on the 200 anti-pickets, had now become the co-Appellant Mr. Warren (finally now identified from a photograph, G7, despite that photograph having been seen by the witness on the 13th of September). The new amalgamated statement, for the first time, made allegations of serious threats (of hospitalisation), that had never even been mentioned before, by the Appellant Mr. Tomlinson, who had never been either described or identified despite the witness having seen photographs of him (D2 and G9) on the 13th of September. It also purported to identify the Co-Appellant, Mr. Pierce (a co-defendant of the Appellant Mr. Murray) for the first time, despite photographs having been seen by the witness on the 13th of September.

41. The first “original hand-written” statements, in the case of **this witness**, were not destroyed and provide insight into the content of the “originals” more generally. The comparison with the “fresh” statement is stark. The example is particularly pertinent to the appeal because evidentially it reaches across **all three** of the Shrewsbury trials, covering defendants/Appellants from each.
42. It is noteworthy that the final of the three statements was made on the 20th of March 1973, at the time that “statements were still being **amended** and signed” [2/14/479 §13] now that police knew “what they were trying to prove”.
43. The timing and content of the three statements conform to the contents of the Note with:
 - i. Statement 1 constituting an original statement.
 - ii. Statement 2 constituting a statement made after “photographs were available for witnesses” and
 - iii. Statement 3 constituting a statement made after “the officers taking the statements knew what they were trying to prove”.
44. It is not known why the Barry statements were not destroyed, nor whether the earlier statements were disclosed to the Defence in the course of the trial. The available transcripts do not include a transcript of Mr. Barry’s evidence. The sole apparent

³ As it happens Mr. Murray has neither a Liverpoolian nor a Welsh accent, his accent is mid-Cheshire.

reference to his evidence in the summing up [2/1/54] makes no mention of cross-examination on identification or previous statements. However, as an illustrative example, the statements show that without sight of the “originals” the Defence could not have known that:

- a) The allegation in respect of the Appellant, Mr. Murray, was initially attributed to a man that the witness could not identify.
- b) Even once the witness had been shown photographs (at a time relatively close to the original incident), he was still unable to identify anyone as the man responsible for the threatening comment.
- c) The inability to identify persisted for more than six months.
- d) The Appellant, Mr. Murray, had in fact been identified as playing a completely different role.
- e) Six months later, the witness identified another Appellant as having played the role that Mr. Murray was initially identified as having played.
- f) The allegation in respect of the Appellant, Mr. Tomlinson, was not referred to at all on either of the previous two occasions (both closer in time to the incident) that the witness was spoken to by police, despite it being an allegation of intimidation significantly more serious than any that the witness had previously made.
- g) Images of Mr. Tomlinson had been shown to the witness at a time that was considerably more proximate to the date of the incident, and yet he had not been identified as having done anything at all.

45. The content of the “original” statements serves to wholly undermine the final account of this individual witness.

46. The content of the “original” statements also serves to wholly discredit the identification procedures that were being used by the police at the time. Witnesses were being shown photographs in circumstances that were not safeguarded and were then invited to re-visit those photographs at an unspecified later date, again in circumstances that were not safeguarded. The Shrewsbury trial was of course pre *Turnbull* [1977]

Q.B. 224, 63 Cr. App. R. 132, pre Forbes [2001] 1 A.C. 473, HL [Archbold 14-1] and pre Smith (Dean Martin) [2008] EWCA Crim 1342; [2009] 1 Cr. App. R. 36, [Archbold 14-65] but it is nevertheless highly questionable as to whether, at the time of the trial, any of these purported identifications would have been admissible had the extent of the lack of safeguarding and re-reviewing of photographs been known. Applying contemporary standards, as per *Bentley*, it is certain that they would not have been.

47. Identification played a significant part in the trial, with allegations of participation in certain events, the attribution of threatening language and presence at particular locations being challenged throughout. A single particular example being **at 3/3/17-19 and 2/11/409-412 §§409E-412A** and as referred to in the Co-Appellant Grounds at **1/1/17 §4.10(b)** when the witness Mr. Castle attributed particularly threatening language to a man in a white shirt and jeans, with a Welsh accent and a beard and yet purportedly identified the Appellant, Mr. Tomlinson, from a [black and white] photograph. Mr. Tomlinson, in a flowery shirt, light cardigan and light trousers and with a broad and distinctive Liverpoolian accent, matched the perpetrator only in so far as they both had beards. Mr Castle's evidence was that in all of the photographs he was shown, the Appellant, Mr. Tomlinson, was the only man shown with a beard. In Mr. Castle's case a single statement was referred to, dated the 26th of September **[2/11/413 §413E]**. We do not know how many times he was shown the photographs, or in what circumstances. We also do not know how many statements he made prior to the 26th of September, or what the contents of any statements may have been. We do know that he was not cross-examined on the basis that the 26th of September statement may not have been his first account; had the fact of destruction of original statements been known, he undoubtedly would have been.

48. Further in respect of the content of the "original" statements, it is of importance that on the 18th of December 1972, The West Mercia Police summarised the state of the evidence **at that stage**. The Report (signed by Chief Superintendent Hodges and Detective Chief Inspector Glover) into the Shrewsbury picketing was concluded and sent to the Director of Public Prosecutions on the 18th of December 1972 **[2/12/414]**.

49. The states that: *The evidence indicated at an early stage that, of the six coachloads of about 250 pickets, only a small number were acting in a violent manner and committing specific criminal acts. Indeed there is also evidence that some pickets had expressed*

disgust to the site workers at what was happening and refused to have any part of it [2/12/444 §106]. It is of some note in the Appellant, Mr. Murray's, case that, in the second trial, the Crown accepted [2/26/694] that he been one of two pickets who helped an injured workman and ensured that he had first aid.

50. Report §§114 -115: 2/13/445: *"... it will be noted, when considering the statements, that there is little real evidence from the persons who travelled on the two Mostyn coaches and none whatsoever from the Chester party. The significance of this is that a large number of the militant element were confined to the Mostyn coach parties and, to a lesser extent, to the Chester party". "Lack of evidence from the latter coach [Chester] is particularly disappointing, inasmuch as, whatever organisation is alleged to have taken place is said to have been discussed on that coach [Chester]"*.
51. Report §§117-118 2/13/446 : *"It was initially felt that the events of "Black Wednesday" were all deliberately planned and organised by the strike leaders at meetings held in Chester". "However, the evidence suggests that the events at Kingswood, followed by the Shelton Roadworks, were probably spontaneous, despite the explosive potential already present in the circumstances of the pickets' visit. There was a common intent to close the sites at Shrewsbury, but there was no clear-cut plan of action in being. When the men saw work continuing at the roadworks they simply "erupted"".*
52. Report §121: 2/13/447: *"The decision to go to Telford appears to have been equally spontaneous and neither a majority of pickets nor the coach operators knew of this beforehand".*
53. Report §126: 2/13/448: *"The evidence against several of the second group -the organisers and leaders- is not so strong. It mainly consists of the very act of organising their party's attendance, in circumstances where disorder on a large scale must have been foreseen, and the fact that they were present on the sites with the pickets without trying to restore order (or paying lip service in that respect)."*
54. Report §148: 2/13/455: *"evidence concerning the meeting at Chester is not strong and there are no admissions about it from those responsible... For these reasons and taking account of the spontaneous element in the disorders, conspiracy is not strongly recommended"*.

55. Report §170: 2/13/463: The report names an individual (who was not one of the 24 defendants) as attending the Shrewsbury sites, and the “*author of the plan... to keep the police busy at Severn Meadows whilst other pickets visited the Weir Site. The decision to go on to Telford also appears to have emanated from him*” and describes the witness “*attesting to those facts*” as “*extremely credible and impressive*”.
56. Crucially, in respect of the identification point, in December 1972 the West Mercia Constabulary raised their own concerns about difficulties in identification after the three months between the incident and the date of the report (“*The officers are in no doubt that there may be some difficulties in identification after this lapse of time*”. 2/12/415), clearly indicating that their evidence of identification was not as strong in December 1972, (despite at that time already expecting 200 live witnesses [2/12/414]), as it ended up being, post amendments to statements, in April 1973.
57. In the light of the content of the Note, the Report and its accompanying correspondence, in so far as it represented the state of the evidence prior to charging decisions, was disclosable and should have been disclosed.
58. There can be no doubt that these “original” statements would have constituted “missing evidence which represents a significant and demonstrable chance of amounting to decisive or strongly supportive evidence emerging on a specific issue in the case” as per *R v PR* [§71 as cited in Reasons 1/15/289 §44,].

Culpability:

59. It is important to note that the statements were destroyed rather than lost; and the firm implication is that they were intentionally rather than accidentally destroyed (by for example, a flood, as in *R v PR*) and destroyed in the knowledge that they had been amended “*having been destroyed after a fresh statement had been obtained*”. A decision was taken to actively dispose of them in such a way that they could not be recovered.
60. The statements were, at the very least, in the words of the CCRC, “not of as much assistance to the police and prosecution as the “fresh” statements that followed”.
61. Applying modern day standards as per *R. v Bentley* [as at Reasons 1/15/288 §40], the destruction of such evidence would be considered “a basic and fundamental error”

[Reasons: **1/15/291 §50**] and, would be considered a serious fault (as per *R v Ebrahim [2001] 1 All ER 831: 5/15/301*) or seriously culpable (as per *DPP v Fell [2013] EWHC 562*: as at Reasons **1/15/289 §45**).

62. The fault and prejudice are all the more serious if the inference as to the content of the “originals” that flows from the Wilmott Barry statements and the West Mercia Police Report, is applied. The fact and circumstances of the destruction caused the Appellants to *suffer serious prejudice to the extent that no fair trial could be held and that, accordingly, the continuance of the prosecution would amount to a misuse of the process of the court*. The apparently wholesale and deliberate destruction of evidence so potentially capable of undermining the Prosecution case and assisting that of the Defendants was such that it could not have been *accommodated with all their imperfections within the trial process* particularly when combined with what was clearly *serious culpability or bad faith on the part of the investigator* (as per *Fell* as at Reasons **1/15/289 §45**).

The Red under the Bed:

63. The Co-Appellants’ submissions in respect of Ground 2 (**1/1/24-31 §§6.1 to 6.6, 7.1 to 7.7, 7.8** (save the initial line, contextualised below) **and 7.9**) are adopted and endorsed. The following additional submissions are made, with limited repetition required for context.
64. On the 13th of November 1973, Granada Television broadcast a documentary (produced also in conjunction with Anglia Television and Yorkshire Television) produced by the journalist and former Labour MP Woodrow Wyatt, entitled “The Red under the Bed”.
65. The broadcast took place in the course of the first trial of the Shrewsbury pickets, on the day that the Prosecution closed its case [**2/25/646**].
66. The programme was broadcast nationally on commercial television (with an additional “Part 3” of the programme shown in the Midlands and the North, including the Shrewsbury area) at 10:30pm on ITV [**2/22/534**].

67. There are a number of factors that point towards the trial jury having seen the programme:
- i. In 1973 there was a choice of only three commercial television channels.
 - ii. Jurors were commencing their court sitting days at 10:30am, as was standard practice at the time (see for example **2/1/128** and **2/1/213**: transcript of summing up) and had been doing so for some six weeks; there was no need for early working day starts and therefore early nights.
 - iii. The programme had been the subject of publicity and some controversy as a result of an altercation with the Independent Broadcasting Authority [**2/22/535**].
 - iv. It had also been the subject of a highlighted “Star Spots” entry in the TV listings page of the local newspaper the Shropshire Star [**2/26/649**], headlined “Reds in Industry” and included the wording “Even now a Communist conspiracy is suspected to be behind industrial unrest” [**3/12/192**].
68. The programme opens at *10:01:02*: with footage of a march through Shrewsbury. The images are clearly of Shrewsbury and would be instantly recognisable to residents or frequenters of the town (such as jurors).
69. The footage of that march focused on banners (red flags) being held by marchers which read “*Stafford Marxists*” and was accompanied by *an image of a hammer and sickle*. The particular part of the footage used by the programme makers had the marchers chanting the words “*organise and smash the state*”.
70. This was followed by the words: (*Frank Chapple*): *The Communists see the Trade Unions as the means of changing society and they understand that he who controls the Trade Union movement has the power to change governments.* [**2/22/552**]
71. The Defendants Ken O’Shea, Ricky Tomlinson, Des Warren, Terence Renshaw and John Carpenter can be seen in the march between 10:01:14 and 10:01:27 (as at **2/25/649**, Statement of Eileen Turnbull). The fact that four of the six Defendants from the first trial are shown together would render them even more recognisable to a jury. The fifth Defendant pictured (Mr. Renshaw) is a Co-Appellant and was a Defendant from the third trial.

72. The march itself would have been even more recognisable having been covered by local newspapers, the Shropshire Star and the Shrewsbury Chronicle (2/25/646), and unquestionably associated with the trial of the pickets. The newspaper articles describe the police presence at Shrewsbury Crown Court as “the biggest security operation ever seen in Shropshire” and described that “800 policemen ringed the Shirehall building and patrolled the town streets” (Articles originally exhibited by Eileen Turnbull as ET/1 pages 787 and 789, now at **3/B/230-231**).
73. At the time that the footage was shown, the jury had been in charge of the Defendants for approximately 6 weeks (since the 3rd of October 1973). As well as being in their presence for that time, they had had their attention particularly focused on the physical appearances of the Defendants by the repeated use of photographs of them and numerous examples of dock identifications⁴ by witnesses. It is inconceivable that the Defendants would not have been recognised, particularly in the context of footage associated with both the town of Shrewsbury and the trial itself.
74. At the same time as the Defendants are pictured, the chant “*Burn, burn, burn the bastards. Burn, burn, burn the bastards. Burn, burn, burn the bastards early in the morning*” is played on the footage.
75. The images of the Defendants are followed by two voiceovers: “*The working class is going to overthrow the capitalist state...* ”
- “Smash Reformism and Social Democracy, bring down the Tory Government, prepare for the General Strike, Labour take the power. Get your copy of the Chartist, special General Strike Edition only fourpence”.*
76. The clear implication is to associate the Defendants firstly with Communism and subsequently with the overthrow of the state by means of violence.
77. The programme continues with footage of Shrewsbury Crown Court, with lines of police officers standing shoulder to shoulder behind barriers, as the words “The Red under the Bed” appear on the screen, word by word, as the camera pans for dramatic

⁴ See for example **2/6/317 §556E**, the witness Henry James making dock identifications of the “lad with the beard” and “the man at the end with the glasses”. **2/6/322 §561C**: Henry James: “The man with the beard there.”.

2/9/395 §145A, the witness Alan Hordley, “‘That was the man with the beard’ You were pointing to Mr. Tomlinson in fact”.

effect towards marchers (and red flags), with ominous and unsettling “mood” music overplaying.

78. Shrewsbury Crown Court would be instantly recognisable to the trial jurors. Further the scene of ranks of police officers outside the court would be instantly recognisable because it was a prior replication of the same scene that met the jurors on the first day of court (see for example the CCRC interview with David Turner-Samuels QC: who spoke of a line of police at court “shoulder to shoulder” [2/18/507]).
79. Further the jury were well aware of there having been a demonstration, in Shrewsbury, related to the case, at an earlier stage in proceedings, because (even if they had not seen the police presence themselves on the earlier date, or seen the coverage in the local press) a demonstration outside of court **was cross-examined into evidence by the Crown** (after the programme had been shown) in the course of the evidence of Mr. Scragg, a witness called on behalf of Mr. Warren. The jury were reminded of the demonstration and the cross-examination in an emphatic manner in the course of the trial judge’s summing up [2/1/192].
80. The implication can only have been that those being tried at Shrewsbury were such a threat to society, as a result of their implied communist tendencies and implied endorsement of violence as a means of achieving political aims, that the level of security that was present at the court, was necessary. The introduction to the programme inevitably framed all that was to follow within it, in the context of:
- a) The defendants themselves
 - b) The trial at Shrewsbury
 - c) High security
 - d) Communists and
 - e) Violence.
81. The programme closed with the presenter, Richard Whiteley, desperately struggling to fit in a pre-planned question right at the very end of the programme and purposefully and frantically (over over-talking) directing that question specifically at Geoffrey Stewart-Smith MP (who as a Conservative MP was a member of Government at the

time, and who Mr. Whitely knew as and introduced to the programme as *an anti-communist and editor of the East-West Digest which is an unashamed anti-communist periodical*). The question lasted for 42 seconds and is transcribed in full (bar the overtalking) here:

11:18:03: Richard Whiteley: "Mr. Stewart-Smith. Mr. Stewart-Smith. Mr. Stew.... Mr. Stewart-Smith. Gentlemen, I would speak to Mr Stewart-Smith. Mr Stewart-Smith, no, I want to ask you this question, which is, Mr. Stewart-Smith... can you give me one example in 1973 of blatant communist influence? We have the 1961 E.T.U....what is happening.... what is happening...what is happening as to... what is happening... What is happening in 197... excuse me, excuse me... what is happening in 1973 which is a direct communist influence? Mr. Stewart-Smith..."

82. The answer, constituted the final word on the programme:

11:18:45: Stewart-Smith MP: "The violence in the building strike was caused by a group, the Building Worker's Charter, operating in defiance of the union leadership, indulging in violence and flying pickets and this is an example of these people operating, opposing free Trades Unions opposing the Labour Party..."

and was legitimised by Richard Whiteley's closing of the show immediately thereafter:

11:19:06: Richard Whiteley: "Mrs Castle and Gentlemen that I'm afraid is the end. That is our opinion of the Red under the Bed."

83. The closing credits played out to some words from the Socialist anthem "Keep the red flag flying here", framing the programme with the same "red flag" imagery that opened it; not only keeping the Defendants themselves firmly in the mind of the viewer as "Communists", but also firmly associating them as part of the Building strike and as "flying pickets", with "violence". Mr. Stewart-Smith's final word was left wholly unchallenged.

84. The viewer cannot help but to have been left with the distinct impression that the programme was, to a significant extent, about the Defendants. The stark implication is that the Defendants were a significant part of the threat that the viewers should be very much afraid of.

85. The central section of the programme consisted of repetitions of themes that each had a direct impact on the Defendants' cases.

Part One: Infiltration of Unions by means of conspiracy and dishonesty and the control of Unions by a small number of "militants"

86. The first eighteen minutes of the programme focused on suggestions of conspiratorial machinations by a small number of militant members to manipulate the Trade Unions to their will. It was repeatedly stated and inferred that dishonesty, subterfuge and conspiracy characterised these individuals [2/22/552-561]. It is pertinent that these "individuals" went largely unnamed in the documentary and that the faces in the images of the demonstration in the opening footage (four of the first six Defendants) would have been the only "individuals" identifiable to a juror.

- i. At 10:02:50: Woodrow Wyatt's recital of a Lenin quote, referring to resorting to *"all sorts of stratagems, manoeuvres and illegal methods, to evasions and subterfuges in order to penetrate the Trade Unions and to remain in them carrying on communist activities inside them at all costs"* [2/22/552-553].
- ii. **2/22/553:** *"A communist... has to be completely cynical about the individual aims and ambitions of ordinary people at any point in time, because his purpose is to transform society and that often means walking on the ordinary people who live in that society."*
- iii. 10:04:30: *Andy McKeown (Manager of IRIS, Industrial Research and Information Services Ltd): "The Communist Party aims at the overthrow of society, aims at in effect a revolution..."*
- iv. *Lord Robens, Chairman of Vickers Ltd: "They've utterly failed to be able to persuade the mass of the people of this country to communism in the ballot, either at local elections or national elections. They, therefore, moved into the trade union movement where it was much easier with a splendid cell organisation and where the bulk of members never go to a members' meeting, to be able by delegated democracy to be able to get fifty people to vote in favour of a resolution that can compel two thousand people to enter into an industrial dispute"*.

- v. **2/22/555:** *Andy McKeown: "The objective of the Communist Party in the unions has always been the same, no matter how much they tried to disguise it. They want control"*
- vi. *Andy McKeown: "They know that they cannot get control without the support and backing of a lot of non-communists and therefore they will fall over backwards to maintain this support and backing but once they do get control, whether in a union, in a branch, in a factory, they'll make certain that there's no opposition to it, the opposition will be eliminated like it was in the E.T.U."*
- vii. **2/22/555 (at 10:07):** *Woodrow Wyatt's appraisal of the E.T.U. judgment: "The Judge found that the Communists had held control of the E.T.U. for many years by deliberate falsification of the votes of ordinary members. He found too that the Communists had manipulated the affairs of the E.T.U. in the interests of the Communist Party."*
- viii. **2/22/556:** *"The Communist Party's influence in the trade union movement is far beyond its size and its political influence in the country."*
- ix. *"... but the trade union organisation is a semi-secret organisation... and the Communist Party's secret organisation of its own members within the union, fits like a hand into a glove."*
- x. **2/22/557:** *"They have these advisory councils or advisor committees and so before there is any annual delegate meeting of a union that matters, the advisory council meets, they produce a kind of resolution, it is whipped around to all the branches. When I was a national officer I used to receive resolutions coming from branches miles and miles apart, all covering the same subject from the same people that I knew were the Communists and the left-wing activists. This is organised."*
- xi. *"That's how the Communist Party's influence is greater or manages to be greater than that of ordinary members because they're organised, it's a State within a State."*

- xii. *“They’re at about the strongest they ever been in the trade union movement, in fact that’s their boast anyway, that they’re stronger now than they’ve ever been.”*
- xiii. *Andy McKeown: 10:12:39: the Transport and General Workers Union... it’s only a limited number of years now, about what, four or five years since the ban on communists holding office in the Union was lifted but already in this short period there’s been considerable communist infiltration into this union.*
- xiv. *Chapple: 2/22/558: “The facts are that their positions of power are gained through subterfuge and they are hell bent on creating circumstances in which what the ordinary people want will not work, all these people that don’t want to stop the system functioning.”*
- xv. *2/22/559: “I think basically they get into a position of power in the union because they organise amongst themselves, because the average trade union member doesn’t participate in the affairs of his union enough, therefore these people who are prepared to stay late at meetings, to attend committee meetings, to get themselves elected and to do the work do get elected.”*
- xvi. *Andy McKeown: “The modern leader is increasingly under pressure from activists and militants in the union, because it’s only the activists and the militants that play an active part in the unions.” (Cut to footage of a demonstration).*
- xvii. *“Every time they see a chance the Communists work up a grievance. They engineered the Liaison Committee for the Defence of Trade Unions to push the T.U.C. and the unions into one day strikes and protests”.*

87. All six of the Defendants in the first trial at Shrewsbury were active members of their union, committee members and regular attendees (and as in the Appellant Mr Tomlinson’s case, speakers) at meetings. All were said to have been leaders of the pickets on the 6th of September 1972. Five of the six were known, by the West Mercia Constabulary and the D.P.P., prior to the trial, to be “Strike Action Committee” Chairs

[2/13/426] and that fact was explicitly referred to in the section of the West Mercia Report dealing with “political implications” of a prosecution [2/13/462].

88. Details of their roles and membership can be found within the transcript of the Summing up of the trial, both at the outset of the Summing up [2/1/26 to 2/1/27] and repeated in the summing up of each of their respective cases:

- a) *All six of the accused were members of that North Wales and Chester Committee, and attended its meetings, you may think, with regularity [2/1/26]...*
- b) *Mr Tomlinson said he was the Chairman of the Building Workers section of the Wrexham TGWU and also on the Chester and North West Region strike action committee. [2/1/124].* [Note: this evidence was given as part of the Prosecution case and so would have been evidence that the jury had heard shortly before the broadcast of the documentary].
- c) *Mr Carpenter was a shop steward and a member of an action committee* [Evidence in chief of Chief Inspector Gradwell: 3/4/20 §667: again given as part of the Prosecution case]
- d) *He [Carpenter] was a member of the Wrexham Strike Action Committee and we know there were several action committees involved in this day...* [question posed to C.I. Gradwell in cross-examination: 3/4/31 §678: again given as part of the Prosecution case].
- e) [Mr. Carpenter] *“I am Chairman of the building section of Wrexham T.G.W.U.”.*
- f) **2/1/128:** *Mr Carpenter... called as a witness a Mr. Abraham... He was a member of U.C.A.T.T. He told the history of the strike from his point of view. He told you of the formation of the Action Committees, the National, the North West area, the Chester and North Wales and the local strike action committees.... You may think that Mr. Abraham was an important member of the trade union, well versed in their rules, their principles and the aims of the union, and like so many of the accused, he said that all was done at their meetings democratically. That is to say by resolution from the floor and voting. “We” he says “appointed certain people to be responsible for the local action*

committee. They reported weekly to Chester.” “They” of course, are Mr Llewarch, Mr O’Shea, Mr Tomlinson and so on.... He recorded any resolutions that were made, but unfortunately all were destroyed.

- g) **2/1/129:** *In reference to the Chester Meeting before the September 6th picketing: Mr Llewarch having raised the question of picketing at Shrewsbury, it was raised from the floor, so it is said, moved from the floor that pickets be sent to assist Oswestry. It was unanimous and all indicated their support.*
- h) **2/1/131:** *Mr Carpenter... a member of the T&G.W.U., a shop steward, Secretary of the Wrexham Strike Action Committee. Mr Tomlinson was his Chairman.*
- i) **2/1/132:** *Somebody else says that Tomlinson addressed the meeting. [Note: again, this appears to be a reference back in the summing up to part of the Prosecution case].*
- j) **2/1/137:** *Mr McKinsie-Jones: A member of U.C.A.T.T....A member of the North Wales and Chester Strike Action Committee. Treasurer of the Flint pickets.*
- k) **2/1/147:** *Mr. O’Shea. A shop steward. He was Chairman of the Denbigh Strike Action Committee. He was a member or representative of the Chester and North Wales Strike Action Committee. He attended meetings at Chester.*
- l) **2/1/159:** *Mr. Llywarch: A shop steward. Chairman of the Oswestry Strike Action Committee. A Branch secretary. Attended meetings of the Strike Action Committee at Chester.*
- m) **2/1/171:** *Mr. Tomlinson: A shop steward. Attended meetings at Chester. Chairman of Wrexham Strike Action Committee.*
- n) *Mr. Warren: **2/1/201:** Branch Secretary at Prestatyn.*

89. Further to the examples above, references were made to “action committees” on numerous additional occasions over the course of the Summing up (examples at **2/1/63, 100, 119, 170, 180, 186, 188, 203 (x3)**).

90. Multiple references were made to “militants” in the course of the Summing up, most in relation to the Appellant, Mr. Tomlinson, (examples at **2/1/53, 167 (x3), 168, 170 (x2)**,

172) and many of them referring back to prosecution evidence that the jury would have heard prior to the broadcast.

91. References to the “Workers’ Charter” (as per Mr. Stewart-Smith MP’s final comment), were also made on several occasions in the course of the Prosecution evidence.⁵
92. Four of the six Defendants had been pictured in the opening footage of the programme, marching in a demonstration over which red flags were flying. The inevitable implication is that the Defendants were communists and that they were active members of the type described in the documentary, and consequently tainted by the suggestions of dishonesty and conspiracy that filled the eighteen minutes of footage after their images had been shown.
93. Implication of involvement in “conspiracy” is plainly prejudicial in the context of a trial where the Defendants are charged with a Conspiracy.
94. Implication of involvement in subterfuge and dishonesty is plainly prejudicial in the context of a trial, all the more so when those implications come shortly before those Defendants are due to give evidence.
95. It is also notable that the heavy concentration of this section of the documentary on the dishonesty within the E.T.U. is brought directly back to the Defendants in Mr. Whiteley’s final question to Mr. Stewart-Smith, as transcribed above. Mr Wyatt’s question [2/22/556] *Is that just something from the past [the E.T.U. issue] or is the menace still there?* is effectively answered, as the programme closes by, Mr. Stewart-Smith. A clear and distinct association is made between the Communist “menace” and the Defendants.

⁵ One particular, stand-out example as at trial transcript §30E -31A when Mais J questioned the witness extensively on the topic: *MAIS J, He was what?*

A. Setting up a workers’ charter or something, something similar to what they had at Liverpool.

Q. Setting up a workers’ charter where, at Oswestry?

A. And I was to get in touch with him....

Q. He was setting up a workers’ charter. A. A worker’s charter.

Q. he mentioned some place.

A. At Oswestry Labour Club, and if the firm was interested in signing this charter they could get in touch with him at Oswestry Labour Club,

Q. Then you told us Mr Llywarch told you about the charter.

Disregard for the law:

96. The final minutes of Part One [2/22/560 to 561] focuses on what the documentary maker regards as the Communist disregard for the law.

“When people talk about a law, they shouldn’t think of it as a divine law. After all it’s a law that comes from political attitudes, from political policy decisions and, therefore, there’s nothing divine about it, there’s nothing sacred about it”. [commentary from Jimmy Reid, communist].

“They are really protesting against the fact that they are being subjected to the law, whereas in the past they’ve had almost complete freedom from legal restraint...”

“But it [the Liaison Committee] also reserves the right to choose which laws it will obey does it not?”

“... if it carried out the laws of this country, we’d never have a trade union movement at all... you’ve always got to have a position where people will fight against the laws if they’re not in the interests of the people.” [commentary from Mr. Halpin, communist].

“I do not believe that any individual or group of individuals coming together as a Trade Union or else can hope to overthrow the law, if you do then you will have an unlawful society almost an anarchaic society.”

97. Whilst the references above are primarily made in the context of the Industrial Relations Act 1971, it is plainly prejudicial in the course of a trial to have it implied that the Defendants are the sort of people who disregard the law. This is particularly so in a case where the Prosecution emphasised that picketing could be conducted lawfully but that all of the Shrewsbury Defendants had chosen to disregard those laws.

98. It is noteworthy that the West Mercia Constabulary Report [2/13/451 and 452] made reference to the Industrial Relations Act, suggesting that as a result of that Act, the pickets all committed an offence of unlawful assembly simply *“on the grounds that 250 pickets is an excessive number and therefore is, prima facie, unlawful picketing”*.

Revolution:

99. The programme as a whole was regularly interspersed with references to a Communist desire for revolution, starting at **2/22/553:10:04:32**: with: *The communist party aims at the overthrow of society, aims at in effect a revolution*

and being repeatedly reinforced throughout, particularly during the section on Colletts Bookshop [**2/22/569 to 571**]. In total, in addition to the repeated use of words such as “overthrow”, the word “revolution” was used at least nine times within the programme.

100. This aspect of the documentary could retrospectively be reduced to simple scaremongering and not pertinent to the trial, were it not for the fact that the Trial judge in the first Shrewsbury trial made repeated reference in Summing up to an allegation that Mr. Warren had said “*This is not a strike, this is a revolution*”. (examples at **2/1/48, 49, 50, 55, 196, 197**).

Part Two: Strikes and the use of violence:

101. Part Two of the documentary commenced with Woodrow Wyatt’s commentary on the escalation of the frequency and effectiveness of strikes and proceeded to lay the blame for such industrial action firmly at the feet of Communist Party infiltration of the trade unions. At **2/22/562**: *In the good old days of ten years ago, we lost less than two million working days through strikes. Five years later the number had more than doubled. But it was in 1970 that we really took off. Then we lost nearly eleven million days. In 1971 the figure had gone up to thirteen and a half million days. In 1972 we lost nearly twenty-four million working days through strikes. Why are we so much quicker to go strike these days?*

People are more bloody minded, people are more militant in their social attitudes in general....

2/22/563: 10:23:23: *The Communist party doesn’t state its political aims and objectives every time its leading members lead the workers out on strike. What they tell the workers we’re striking about is to get more money from these bosses who are making a lot of profit... wherever there’s troubled waters they fish in it, but they fish in it not to help the local situation but in order to strengthen their political position and drive another nail into the coffin of capitalism.*

I think they do an enormous amount of harm because in my experience there are a very large number of disputes and grievances between management and men which could be settled intelligently round a table, but the Communists and left-wingers tend to seize on these grievances and turn them into industrial disputes, strikes, go-slows, overtime bans and things of that kind.

2/22/564: *You see a Communist or a Trotskyist is a first-class opportunist and so whenever they see any legitimate claims being advanced they are the first to hop onto the bandwagon.*

2/22/565: *10:26:20: what [strikes] always do is that they get the workers into battle against society and that's the main purpose of the strike.*

[Footage of Shop Stewards marching wearing red arm bands]

102. Having set the scene the programme moved into dealing with allegations of strike violence. This whole section focused directly on violence and Communist influence within the 1972 Building Strike, concentrating entirely on the subject matter of the Shrewsbury trial.

2/22/565: *10:26:56: [Woodrow Wyatt] With the increase in strikes has come something new and alarming, violent picketing and intimidation.*

103. Footage was then shown of lines of police officers and “violent” pickets; again utilising the same kind of imagery as was used at the opening of the programme, inevitably reminding the viewer of the scenes outside of Shrewsbury Crown Court and the images of the four Defendants within the body of the march.

104. Mr Wyatt continued with further commentary (that is not transcribed at **2/22/565**)

Last year a News of the World writer involved himself as a flying picket in the building strike. What he wrote was an eye-opener.

Mr. Wyatt's comments were made over footage of newspaper articles headlined “My boys like a bit of a punch-up if there's a few scabs around” and including the line “Certainly, being a picket during the recent 11-week building strike wasn't...”, focusing on and inevitably equating the (11 week) Building Strike with violence.

The commentary and associated imagery made it clear that not only would the words of the journalist that followed, remain wholly unchallenged, but that they were wholly endorsed by the programme makers, as an “eye-opener” i.e. an account that proves to be unexpectedly enlightening.

105. At **2/22/565** (10:28:09) the News of the World journalist Simon Regan gave the following account (not all of which is transcribed within the transcript):

SR: I joined the flying picket squad in Yorkshire which grew from a small one of about 200 into one of about 800 where pickets from Liverpool had come in with pickets from Leeds and [Note: transcribed after this point] we'd gone over a motorway site... and about 800 of us stormed this motorway site picking on individuals who were working there, telling them they had to get off the site or there would be trouble and other incidents, especially in Birmingham outside the cement works where things got very, very rough, where drivers were getting stoned, being pulled from the cabs. The Communist Party must have realised that there was physical violence going in because there were reports coming in from all over the place to Lou Lewis personally, every single day.

The footage then cut to an exchange between Woodrow Wyatt and Lou Lewis [described by overlaid text as “Flying Picket Organiser” and “Member of the Communist Party”, but who was also the Regional Secretary for the London South-East Region of U.C.A.T.T., a Union with which the Defendants were associated], who said at **2/22/565**: 10:29:12: *I have no knowledge of any intimidation used by flying pickets.*

Woodrow Wyatt replied: *“We have a dossier here that says you have”* whilst brandishing a bundle of “proof”.

LL: Well, then you may have a dossier that says you have, we've no record of that. If they call intimidation the fact that a busload of men are going to arrive on a building site and hold a meeting of workers and inform them that there's a strike in the industry, that they want them to join and in many cases workers have probably said they don't want to join, in which case we will place a picket on the gate. But if that is intimidation then it is within the law because the law says you're allowed to place pickets on a building site as long as you only try to dissuade a worker from going to work.

SR [2/22/566]: I was witness to people getting roughed up. I was witness to people getting shaken from scaffolding... people being punched and kicked, one man got chased home and had to lock himself in with his wife and kids. Other people got hunted down in various towns.

LL: states he'd like to meet the journalist and remarks "he was never near the building dispute because his facts are completely wrong".

SR: I think the Communist Party and especially the leaders who were involved were all communists, were quite happy to turn a blind eye to these incidents.

[10:31:10: Footage shown of pickets shouting "Scab", and police lines again reminiscent of the opening scenes]

2/22/566-567: SR: In the beginning they were controlled by no one. It was a selective strike by the union which gradually became taken over by the Communist party orientated Action Committee which then more or less told the Unions what to do... and from then onwards led the flying pickets on a day to day basis. The leaders of the flying pickets, I think are too dedicated and professional to have worried about me or the article, but certainly there were a lot of people looking for me from building sites, certainly they came into my local pub and told the landlord I should watch out because I'd very quickly be a cripple if they found me. And even last night in fact, someone came in from a site and said the only reason he hadn't shot me through the legs was the fact that he knew my father.

106. This section of the documentary was particularly pertinent to the ongoing trial at Shrewsbury.

107. It incontrovertibly associated the Building Strike and particularly flying pickets with violence, threats and intimidation, which was precisely what the Shrewsbury Defendants, as flying pickets in the Building Strike, were accused of. The allegations of violence and intimidation were presented as fact. Regan's last comment associated that violence with Action Committees.

108. Of particular pertinence to the Appellant, Mr. Tomlinson, (who gave evidence in his strong Liverpudlian accent), it also associated flying picket militancy with pickets from Liverpool.

109. The violence and intimidation alleged by Simon Regan almost exactly mirrored the specific acts of violence and intimidation alleged in the course of the Shrewsbury trial:

“about 800 of us stormed this motorway site”: “like apaches”, “like locusts”, “like a cavalry charge”; Summing up [2/1/33]

“picking on individuals who were working there, telling them they had to get off the site or there would be trouble”: One of several examples at Summing up CCRC 037.

“drivers were getting stoned, being pulled from the cabs”. Allegation that a driver was pulled from roller, Summing up, [2/1/35]. Allegation of stones being thrown Summing up, [2/1/40].

“I was witness to people getting roughed up.”

“I was witness to people getting shaken from scaffolding...” Summing up, [2/1/40] “Pulling at scaffolding”.

“people being punched and kicked”, [2/1/65] “kicked”.

“one man got chased home and had to lock himself in with his wife and kids”. Example at Summing up, [2/1/38], of workers hiding in a garage].

“Other people got hunted down in various towns”

“I should watch out because I’d very quickly be a cripple if they found me” An example at Summing up [2/1/76] “we will put you in hospital”.

“the only reason he hadn’t shot me through the legs was the fact that he knew my father”: Echoes of the “gun incident” at the Kingswood site [2/1/42].

The mirroring inevitably lent significant credence to the Shrewsbury allegations, establishing in the minds of the viewer what effectively amounted to a *modus operandi* of flying pickets in the Building Strike. There can be no doubt that a juror viewing these allegations would have been instantly reminded of the allegations he had heard in the previous six weeks of prosecution evidence.

110. Most critically however, the programme presented the Regan allegations as fact, supported by documentation, overlaid with supporting footage of “violence” and police

lines, and endorsed by the programme makers. The “Communist Flying Picket Organiser”, Mr Lewis, on the other hand, able only to issue a basic denial, give an account of how he says picketing was conducted and accuse the journalist of giving a “fictitious” account, was effectively presented as a liar who was clutching at straws; someone who *must have known what was going on* and can only have been lying on camera. The previous section of the programme, on the dishonesty and subterfuge of Communists, only served to reinforce this perspective.

111. The programme was broadcast directly before the Defendants were due to give evidence. The Defence cases of Mr. Warren and Mr. Tomlinson were, in essence, that they took no part in and were not aware of most of the allegations of intimidation and violence and that the allegations of such were exaggerated (CCRC Statement of Reasons: **1/15/282 and 283 §§18-30**). In effect, not dissimilar to Lou Lewis’s account: *If they call intimidation the fact that a busload of men are going to arrive on a building site and hold a meeting of workers and inform them that there’s a strike in the industry, that they want them to join and in many cases workers have probably said they don’t want to join, in which case we will place a picket on the gate. But if that is intimidation then it is within the law because the law says you’re allowed to place pickets on a building site as long as you only try to dissuade a worker from going to work.*

112. The trial judge, however, made repeated specific reference to the Warren and Tomlinson accounts “*Warren and Tomlinson say they saw no damage being done, no intimidation, nothing*” [2/1/41], which was firstly, not accurate⁶ but secondly mirrored the Wyatt and Lewis exchange. “*It’s all distorted says Mr. Tomlinson*” [2/1/45], “*you have got to ask yourselves in the last resort how comes it that Mr. Warren... observed no damage, saw no damage done and didn’t see any damage?*” [2/1/48], “*But according to Mr. Tomlinson of course, there were no threats, no damage and no anything*” [2/1/107]

⁶ The Appellant Mr. Tomlinson did give evidence of having seen damage and intimidation, see for example his efforts to stop a picket who had broken a JCB window [2/1/31] and generally calm matters down [2/1/37, 53, 173, 175, and 177]. See also the subject matter of Mr. Tomlinson’s first appeal [2/3/274-290] suggesting that the summing up had not accurately put his case and, particularly pertinently to this summary of the Defence case, had failed to note that a reason for his limited awareness of some of the alleged events “was that the dispersal of pickets over large building sites prevented observation of all that was happening, that police officers were in the same position as Tomlinson in regard to knowledge of events”.

113. The inevitable implication of the programme was that the Defendants, as *Communist Party orientated Action Committee Chairs*⁷ who had *led the flying pickets on a day to day basis*, had encouraged others to do their violent bidding (of which there was documented proof), required high level security at court, had concocted their defences and were lying (leaders “*happy to turn a blind eye*”), as such people were prone to do.
114. The prejudice to the Defendants was extreme and goes significantly beyond the CCRC’s assessment (at **1/15/300 §80**) of the extent of the prejudice.

Law:

115. The CCRC have helpfully outlined the basic principles in *R v Abu Hamza [2006] EWCA Crim 2918, [2007] 1 Cr.App.R 27 at paragraph 78*:

It is customary where there has been publicity prejudicial to a defendant that may have been seen by members of the jury for the court to proceed on the presumption that a jury, if properly directed, will disregard such publicity. Only where the effect of the publicity has been so extreme that it is not possible to expect the jury to disregard it will it be appropriate to stay a trial on the ground of abuse of process. [5/11/244 §78E]

116. It is difficult to see how any judicial direction could have been appropriately given to negate the impact of the documentary and prevent the trial being unfair. The facts and implications outlined above are on a par with those in *R. v McCann (1991) 92 Cr. App. R. 239 [5/12/254]* where:

- i. it was implied that the Defendants were guilty because they had remained silent throughout proceedings. In *McCann* none of the Defendants were specifically named and, in contrast to the Shrewsbury case, images of them were not shown.
- ii. the implication had been made by, amongst others, two distinguished personas, one of whom was associated with Government. In the Shrewsbury case, the implications were made by a number of individuals, cumulatively, but in particular by a Government Member of Parliament, a former opposition Member of Parliament, and an individual associated with IRIS (Andy

⁷ It may be worth noting at this point that the Appellants Mr. Tomlinson and Mr. Murray were not, and never had been, members or associates of the Communist Party.

McKeown, who was in turn associated with IRD and the Foreign Office, please see below).

- iii. the implications were broadcast nationally
- iv. the implication came at a critical stage in the trial.

117. It is noteworthy that in *McCann*, unlike in *Red under the Bed*, opposing views had been broadcast challenging those who had implied guilt (**5/12/266 §251**: *Others were shown arguing the contrary but it is not part of this Court's function to consider how far they succeeded in making their point.*).

118. In the Appellant's case the implication that nameless individuals, some of whom had been shown marching to Shrewsbury Crown Court, were dishonest, violent, communist, conspirators went wholly unchallenged.

119. There is a strong argument that the jury should have been discharged, either immediately after the broadcast or later, when the nature of the Defence cases became clearer and the prejudice intensified.

120. It is unclear as to why there appears to have been no application to discharge the jury, other than the recorded note of the trial judge's "displeasure" at the Defence's Contempt application (as at CCRC Reasons **1/15/301 §84**).

121. Instead it appears that the issue was raised by way of a Contempt of Court application.

122. It may be that there is some assistance in *Malik (1968) 52 Cr. App. R. 140, CA [5/16/322]*, and *Savundra (1968) 52 Cr. App. R. 637 [3/17/330]*, CA Both cases raised the possibility of a conviction being quashed because of adverse pre-trial publicity (Archbold 7-85) but further both being, broadly speaking, contemporaneous to the Shrewsbury trial, also apparently give an indication of the approach taken at the time. In *Malik* the application was that a serious Contempt of Court was likely to prejudice a fair trial. In *Savundra* the substantial ground of appeal was that the appellant did not have a fair trial because the minds of the jury may have been prejudiced against him by reason of attacks made on him in the press. In neither case was there a suggestion that an application to discharge the jury should have followed the raising of Contempt proceedings.

123. The Contempt application [2/16/497] made it clear that the Defence were suggesting that the jury had been “wrongly influenced”, and it was that influence that led them to make the application. When that application was responded to with judicial “displeasure” that it had been made in the first place, it does strongly suggest that repeating the same exercise in an application to discharge the jury would have been a fruitless waste of the court’s time. The trial judge had made his position clear.
124. It also appears that neither the trial judge nor counsel were aware of the concluding question by Richard Whitely and the answer from Mr. Stewart-Smith MP (as at CCRC Reasons, 1/15/303 §93). The significance of that question cannot be overstated; as indicated above it was highly prejudicial in itself, it framed the programme in terms of making the beginning, middle and end about violence in the Building Strike, and it was made by a member of Government. It may well be that the lack of knowledge about this crucial aspect of the programme influenced all parties in the approaches taken and answers the question as to why the point was not raised on appeal.
125. Applying contemporary standards as per *R v Bentley [2001] 1 Cr App R 21 [5/1/1]*, in full knowledge of the programme’s conclusion, it is difficult to see that an application would not have been made and indeed acceded to.
126. Alternatively, in line with the CCRC’s Reasons for referral, at the very least, enquiries should have been made with the jury and strong and specific judicial direction should have been made. No enquiries were made and the standard direction (as at Reasons paragraph 85) was insufficient in the circumstances.
127. In either case, in accordance with the principles in *Abu Hamzu* or *McCann* **the trial was unfair and the convictions are unsafe.**

New evidence:

128. It is safe to suggest with certainty that neither the trial judge nor counsel were aware of the evidence that has now come to light in respect of the probity of the journalist, Simon Regan and the Executive’s involvement in the production of the programme. Had they been aware the force of the Contempt application, and/or any application to discharge the jury, would have been irresistible.

129. It is now known that the crux of the implied propositions, put forward by the documentary about Communist inspired Building Strike violence, was demonstrably false. The Northampton and County Constabulary Report [2/20/522-526] and the Birmingham City Police Report [2/21/527 to 534] into Regan's allegations, concluded respectively that Simon Regan *was never present* at the Corby site he referred to or, *if present completely fabricated the incidents referred to* [2/20/526] and was *either mistaken in the location of the* [Birmingham] incident or *suffered at the time a figment of imagination* [2/21/532].

130. Lou Lewis's remark, that Regan "*was never near the building dispute because his facts are completely wrong*", appears in hindsight, and despite the scorn poured on it, to have been wholly correct.

The involvement of the Executive in the Production of the programme:

131. Declassified documents from the National Archives [2/22/534-577] have established that the IRD (Information Research Department), a department of the Foreign and Commonwealth Office [2/22/538], played a significant part in the production of the programme and that that involvement was reported extensively within the Executive⁸, including to the then Prime Minister, Edward Heath (who commented that he "wanted as much as possible of this sort of thing" and hoped "that the new unit is now in being and actively producing" [2/22/537]).

132. The IRD was a covert anti-communist propaganda unit, with the F.C.O. Part of its remit was to provide anti-communist material to journalists for broadcast and dissemination [Co-Appellant submissions to CCRC: 3/10/143].

133. The declassified letter [3/9/137-138], from T.C. Barker of the IRD to Mr.Reddaway (an executive government official reporting directly to the Foreign Minister: 3/10/144), indicates that:

- a) The IRD had a "discrete but considerable part in the programme"
- b) Mr. Wyatt approached the IRD for help in making the programme in February 1973

⁸ Please see Co-Appellant Submissions to CCRC: 3/10/144-145 "Dramatis Personae".

- c) The IRD consulted the Department of Employment and the Security Service in relation to the programme
- d) Mr. Wyatt was given a large dossier of IRD background material with the agreement of the Department of Employment and the Security Service
- e) It is clear from the programme that Mr Wyatt drew extensively on that material, with a paper “Violent Picketing” drawn on “to good effect”
- f) Mr Wyatt also drew heavily on resources from the Industrial Research and Information Services Limited (IRIS) who were also closely associated with the IRD (IRIS were “an anti-communist propaganda platform focussing on union activism financed primarily by corporate donation but later apparently funded out of the intelligence services budget” [3/10/144]).
- g) The programme received additional publicity as a result of a difference of opinion with the Independent Broadcasting Authority
- h) The programme was networked nationally
- i) The after programme discussion programme was networked in the Midlands and the North (including the Shrewsbury area)
- j) The IRD and IRIS brought the journalist Simon Regan to Woodrow Wyatt’s attention
- k) Simon Regan’s original newspaper series had been completed with the active help of IRIS
- l) The IRD were very happy with the impact of the programme, including the discussion programme afterwards

134. The IRD were fully aware of the Shrewsbury trial, as would be expected for a case that received vast amounts of media publicity during and in the run up to trial, but as can also be seen from the specific reference to it in the January 1974 addition of their “Subversive Influences in Industry” Report (2/22/541-reference to the “Shrewsbury

3”). There can be no doubt that the Department of Employment and the Security Service were also well aware of the Shrewsbury pickets and the subsequent trials.

135. The particular “dossier” referred to and the paper on “Violent Picketing” may not have come to light. However, bearing in mind that the programme’s section on “Violent Picketing” dealt solely with the Building Strike of 1972, combined with the IRD’s boast that their paper had been drawn on to “good effect” by the programme maker, it must be right that the emphasis of the IRD’s assistance was on allegations of violence and intimidation by flying pickets within the Building Strike.
136. It is important to note that the National Federation of Building Trades Employers (NFBTE) compiled a “dossier” [3/8/100-136] detailing “examples of personal violence, arson and damage [and] intimidation and threats to the physical safety and well-being of workers and in some cases, to their families” in the course of the Building Strike. That “dossier” was sent to the then Home Secretary, Robert Carr and forms part of the background to the instigation of the eventual prosecution [Co-Appellant Grounds 1/1/9 §3.9]. Robert Carr had previously been Employment Secretary and had overseen the introduction of the Industrial Relations act.
137. The “dossier” brandished by Woodrow Wyatt at Lou Lewis, was produced as “proof” solely in connection with the Building Strike. There was no reference to the source of Mr. Wyatt’s “dossier” within the programme and it is not fanciful to assume that that “dossier” and the one passed to him by the IRD (with the endorsement of the Department of Employment and Security Service) were one and the same; or indeed that the “dossier” was that provided to the Home Secretary by the NFBTE (in the context of pressure for a prosecution being placed upon the police as implied at Co-Appellant Grounds 1/1/9-10 §§3.9 and 3.10).
138. Additionally, it was the IRD (and IRIS) who brought the journalist Simon Regan to Mr. Wyatt’s attention; his “evidence” related solely to the Building Strike.
139. Consequently it follows that at least three branches of Government (the IRD, as part of the Foreign and Commonwealth Office, the Department of Employment and the Security Service) provided material to Woodrow Wyatt that directly impacted on the subject matter of high profile, and politically important, criminal proceedings, that were

ongoing at the time that the material was provided (the Defendants having first appeared in court on the 15th of February 1973: **2/14/478**).

140. **Most critically however**, the Northampton and County Constabulary Report into Simon Regan's allegations, was dated the 16th of November **1972 [2/20/523]**. The report was an "*enquiry requested by the Director of Public Prosecutions on behalf of the Attorney General*" as a result of Simon Regan's News of the World articles on the 22nd of October 1972 **[2/20/523]**.
141. The Birmingham City Police Report is apparently undated (or the date is obscured, having been typed over the address at the top of page- **2/21/527**), but is addressed to the Director of Public Prosecutions and is noted as being in response to a letter from the D.P.P. that was itself dated the 2nd of November 1972. It is clear from the contents of the report that it was drafted in **1972** (see for example **2/21/527** "*During the summer months **of this year** [i.e. 1972] it will be recalled that the building workers over a vast area of the country came out on strike*" [emphasis added]).
142. By November 1972, the Director of Public Prosecutions and the Attorney General's Office (another branch of Government) were aware that the allegations of the journalist Simon Regan were "*completely fabricated*", "*a figment of imagination*".
143. And yet, at some stage after February 1973 (the month in which Woodrow Wyatt approached the IRD for help in producing the programme- **2/22/534**) the IRD, with the authority of the Department of Employment and the Security Service were putting Simon Regan forward as a reliable enough source to build the programme around. Equally, their own paper on "Violent Picketing", bearing in mind their "good effect" comment and the content of the programme, must have included Regan's allegations.
144. It is inconceivable, in any circumstances, that these Departments of Government were unaware of the results of an enquiry generated by the Attorney General's Office into Regan's probity, in the context of a national building strike.
145. It is even more inconceivable bearing in mind
 - i. The inevitable close-links and sharing of information between the Department of Employment and the Attorney General's Office when considering whether

criminal offences have occurred as a result of employment related issues of such a high-profile nature and

- ii. The close links between the IRD and IRIS (2/22/534 “another old and trusted contact of ours, Mr. McKeown of Industrial Research and Information Services Ltd”) and the role that IRIS played in producing Mr. Regan’s discredited newspaper articles in the first place (2/22/535 “It is for instance worth noting that the News of the World reporter **who figured prominently in the programme as a witness of violent picketing had been originally brought to Mr. Wyatt’s attention by IRIS and ourselves, and that the newspaper series to which he had contributed in 1972 had been completed with the active help of IRIS in the first place**”. [emphasis added]).
146. IRIS must have been aware that the credibility of their own newspaper series had been wholly undermined by two separate police forces and yet they played an additional active role in the production of the programme. Mr McKeown, as well as allowing the programme to draw “*heavily on his resources*” was “*one of the principle witnesses in the programme itself*” [2/22/534].
147. The CCRC’s concern about and referral, at least in part, as a result of Simon Regan’s fabricated journalism must go further and also apply to the input on the programme of Mr. McKeown, who despite implied knowledge of Regan’s lack of probity, appeared on the programme and made a number of remarks that contributed to the overall prejudice (see comments at paragraph 86 (iii), (v), (vi), (xiii), (xvi) above).
148. The rational conclusion is that a branch of Government, with the endorsement of at least two other branches of Government, provided information to Mr. Wyatt
- i. in the full knowledge that it was false and
 - ii. in the full knowledge that that material (on “violent picketing”) would be used to broadcast false information about the criminality of Building Strike flying pickets in the course of criminal proceedings (be they preliminary or trial proceedings) relating to Building Strike flying pickets.

149. If they were not aware at the time that the material was initially provided, it is all the more inconceivable that they were not aware at the time of the programme's (apparently re-scheduled) broadcast on the 13th of November 1973, a full year after the D.P.P. was informed by the Northampton and County Constabulary.
150. If there were to be an argument against the full knowledge of those three departments, it cannot be argued that the D.P.P. and the Attorney-General's Office were not aware.
151. The A-G's Office and D.P.P. was well versed in the Shrewsbury proceedings having received the West Mercia Police report [2/12/414], dated the 18th of December 1972 and having consented to the prosecution of the Shrewsbury pickets.
152. Once the programme was shown in the course of the Shrewsbury trial, and particularly after objection was taken to it (in the form of the Contempt of Court application made on behalf of the defendant, Carpenter (2/16/495)), **the findings of the Northamptonshire and Birmingham police should have been disclosed to the Defence.** Those findings would clearly have been pertinent and would, one would expect, have impacted on the trial judge's "displeasure" expressed towards the Defence (2/15/481) for having raised the "Red under the Bed" issue at all.
153. It is not suggested that Prosecution trial counsel would have been personally aware of the issues surrounding Regan's probity, but they should have been made aware. This is particularly so considering that it was the Attorney-General's responsibility to receive complaints of alleged contempt of court, as per *AG v Times Newspapers [1974] A.C. 273* (judgment delivered by Diplock LJ on the 18th of July 1973) (at 5/18/379 §311D):

I commend the practice which has been adopted since 1954 as a result of the observations of Lord Goddard C.J. in Reg. v. Hargreaves, Ex parte Dill, The Times, November 4, 1953, whereby the Attorney-General accepts the responsibility of receiving complaints of alleged contempt of court from parties to litigation and of making an application in his official capacity for committal of the offender if he thinks this course to be justified in the public interest. He is the appropriate public officer to represent the public interest in the administration of justice. In doing so he acts in constitutional theory on behalf of the Crown, as do Her Majesty's judges themselves;

but he acts on behalf of the Crown as "the fountain of justice" and not in the exercise of its executive functions.

154. The Attorney-General knew of:

A: the Shrewsbury (and Mold) trials and

B: the fact of Simon Regan's fabrications

and as a result of the contempt of court application should have known of the fact of broadcast in the course of (A) and the inclusion of (B) within that broadcast. Failure to disclose (B) in those circumstances can be nothing short of "serious culpability" in the context of an abuse of process.

The scheduling of the programme:

155. Within the CCRCs Statement of Reasons for referring the convictions [1/15/303 §91] the CCRC has stated "*Whilst the CCRC accepts that there is no evidence to suggest that this programme was created to influence (or otherwise interfere with) Mr. Tomlinson's trial, not least because the documentary was, according to the IRD material, originally intended for broadcast on 1st of May 1973, several months before the start of the trial, the fact remains that the Executive had had a clear involvement in its production, and, in particular in the part of the documentary which referred to picketing and the building workers' strike*".

156. For the detailed reasons outlined above the Appellants do not accept the CCRC's conclusions or rationale in respect of influence or interference. The scope of the programme was far more prejudicial than the CCRC have concluded and, by design, constituted an attack on active Trade Unionists, particularly Action Committee members, Building Strikers and flying pickets (with all of the original Defendants falling into each and every one of those categories) suggesting widespread dishonesty and violence. The Executive's clear involvement included the, apparently knowing, dissemination of Simon Regan's falsehoods intending that they would be included in the programme.

157. The CCRC's conclusion, that the fact that the programme was originally intended for broadcast on the 1st of May, is in some way positive proof that the programme was not intended to influence the Shrewsbury trial, does not stand up to scrutiny.
158. The intended date of first broadcast (which happened to be International Labour day) fell squarely in the middle of the criminal proceedings involving the Building Strike flying pickets. Had it been shown on the 1st of May, that broadcast would have followed the Shrewsbury pickets' committal hearing (and the inevitable publicity around it) by only six days (the 25th of April: **2/14/478**). It would also have preceded all five of the Mold trials (in which other pickets, including the Appellant Mr. Murray, were tried for offences arising out of the Building Strike) by only a few weeks; they were heard between the 26th of June and 20th of July 1973 [**2/14/479-480**]. The Mold trials were seen as "a dry run" for the main Shrewsbury trial [**2/18/508**] and were characterised by the same police lines and heavy-handed security (Interview of David Turner-Samuels QC: **2/18/507**). It is of some note that at the Mold trials, the Appellant Arthur Murray was acquitted of Conspiracy to intimidate and the outcome of the Mold trials was described as "disappointing" in a note of the 31st of July 1973 [**3/C/232**] by the author, who was believed to have been the Deputy Director of Public Prosecutions, Michael Jardine.
159. Additionally, whilst it is accepted that the 1st of May 1973 was the intended first date of broadcast for the programme in some format, it is clear that the final programme, certainly as shown in the Midlands and North, was not in the same format as that 1st of May original.
160. The extent to which the original version was edited prior to its eventual broadcast on the 13th of November is not clear.
161. There is a query as to when the Shrewsbury Demonstration footage (that opened the programme and contained the images of four Defendants, including the Appellant Mr. Tomlinson) was included into the final cut. The march was on the occasion of one of the preliminary hearings of the proceedings but there is some lack of clarity as to the exact date of that march. There are two possible options referred to on the face of the CCRC bundle, the 15th of March 1973 [**2/14/478 and 2/25/646**] or the 25th of April 1973 [**2/17/499**]. Articles from the Shropshire Star and Shrewsbury Chronicle (referred

to above) indicate that the 15th of March was the most likely date [3/B/230 and 231]. In either case, questions are raised as to the proximity in time of the date on which that footage was taken and its inclusion in a programme that was purportedly due to be aired on the 1st of May.

162. Bearing in mind that prior to the proposed original broadcast the programme had to go through the process of passing by the Independent Broadcasting Authority [2/22/534] it is questionable that the original version of the programme included footage taken only 6 weeks before its intended broadcast (particularly bearing in mind the apparent time taken to produce the programme as apparent from the IRD documents). It is highly questionable that the original version included footage taken only 5 days before its intended broadcast.

163. Taking into account the wealth of footage of industrial action undoubtedly available at the time, the particular choice of the Shrewsbury footage, particularly to open a programme that concentrates on, and concludes referencing, the Building Strike, is suspect.

164. What is known, beyond doubt, is that the original programme was edited to include the after-show discussion. The date of that addition can be seen from the “chalk board” on the video just before Part 3 commences [3/D/238]. It was filmed on the 7th of November 1973, in the course of the Prosecution case at the first Shrewsbury trial, when much of the Prosecution evidence had been heard and at a time when it was possible to ascertain when the Crown’s case would end. It included, as referred to above, the closing exchange between Mr. Whitely and Mr. Stewart-Smith MP; an exchange which effectively associated all the “Action Committee” style infiltration, conspiracy, subterfuge, desire for revolution, disregard for the law and dishonesty with the Simon Regan led allegations of “violence” by the Building Strike flying pickets. That ultimately prejudicial aspect of the programme was created in the course of the Shrewsbury trial, for intended broadcast also in the course of the Shrewsbury trial.

165. As it was, when the programme was not shown on the 1st of May it had to be rescheduled for a future date. Of all of the dates that could have been chosen, the date for broadcast was the 13th of November 1973, not only in the course of the trial that the programme depicted and referenced but perfectly timed with the close of the Crown's case. Considering that there had already been a delay of some six months, there could

have been no discernible reason to prevent waiting a further five weeks until the trial had concluded.

166. On the 21st of August 2020, the Appellants' solicitor wrote to the CCRC asking *with these points in mind... if the CCRC has made any enquiries as to (a) the timing of the production of the video element of the documentary, (b) the rationale behind the inclusion of the Shrewsbury footage and most importantly (c) the rationale behind the decision to show it in the course of the trial (that the programme makers would undoubtedly have been aware of bearing in mind their use of footage related to it and its extensive coverage in the press at the time).*

167. In an email sent on the 10th of September 2020, the CCRC responded:

The CCRC made no enquiries into the timing of the production of the film, the rationale behind the inclusion of the Shrewsbury footage or the decision to broadcast it during the trial as part of its review into your clients' cases or the Warren et al review which concluded in March 2020. Having looked at our records from the earlier review into these cases (which concluded in October 2017) and spoken to colleagues who worked on that review, it appears that the CCRC made no further enquiries nor obtained further information (beyond that contained in the "government file" – a copy of which has already been provided) about these issues during that review either.

168. In simple terms, it is impossible to state with certainty the rationale behind the re-scheduling for the 13th of November 1973. However, it is certain that:

- i. The final edit of the programme was made in the course of the trial for broadcast in the course of the trial.
- ii. The final version contained edits that exponentially worsened the prejudicial impact on the Shrewsbury Defendants.
- iii. Those edits included particularly prejudicial commentary by a member of Government.
- iv. The Executive was aware of the contents of the programme and was aware that particularly prejudicial commentary by a journalist was false.

- v. The Executive was aware that due to IBA involvement the programme would have to be re-scheduled.
- vi. The Executive was aware of the timing of the trial of the Shrewsbury Defendants.
- vii. If the Executive were not directly involved in the decision to broadcast in the course of the first Shrewsbury trial, it did not, despite its state of knowledge, do anything to prevent that broadcast.
- viii. Post broadcast the Executive did not disclose information that would have assisted in any application for contempt of court or to discharge the jury.

169. Applications for contempt of court or to discharge the jury, in the light of the above information would inevitably have been successful.

170. The falsehoods advanced by the journalist in the programme and the clear involvement of the Executive in its production, when viewed alongside the general prejudicial content, were such as to have made it impossible for the Defendants to have had a fair trial and would have offended the Court's sense of justice and propriety, calling into question the integrity of the criminal justice system, if the trial had continued. The continuation of the trial would have satisfied both categories of abuse of process.

171. As at *R v Maxwell* [2011] 2 Cr. App. R. 31 paragraph 13:

“It is well established that the court has the power to stay proceedings in two categories of case, namely: (i) where it will be impossible to give the accused a fair trial; and (ii) where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In the first category of case, if the court concludes that an accused cannot receive a fair trial, it will stay the proceedings without more. No question of the balancing of competing interests arises. In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will offend “the court's sense of justice and propriety” (per Lord Lowry in *R. v Horseferry Road Magistrates' Court Ex p. Bennett* (1994) 98 Cr. App. R. 114 at 135; [1994] 1

A.C. 42 at 74) or will “undermine public confidence in the criminal justice system and bring it into disrepute” (per Lord Steyn in *R. v Latif* [1996] 2 Cr. App. R. 92 at 100; [1996] 1 W.L.R. 104 at 112).” [as cited in *R v Warren* [2011] 3WLR, found at: **5/5/112 §471A-C**]

172. Had the proceedings been stayed, the second and third Shrewsbury trials would not have been tenable prosecutions.

173. The risk of prejudice caused by the programme, as a result of its content and timing, was so grave that whatever measures were adopted, the trial process could not have been reasonably expected to have removed it.

174. The measures that were adopted by the trial judge, i.e. a standard non-specific direction (in the absence of any enquiries), could not have overcome that prejudice. The trial was unfair and the convictions are unsafe.

175. Had the trial court been aware of the fabrications contained within the programme (by the journalist Simon Regan but with additional concern raised as to the input of Andy McKeown) any contempt application or subsequent application to discharge the jury would have been successful. The trial was unfair and the convictions are unsafe.

176. Had the trial court been aware of the involvement of the Executive in the making of the programme, bearing in mind its content and timing, any contempt application or subsequent application to discharge the jury would have been successful. The trial was unfair and the convictions are unsafe.

177. The conviction was unlawful by means of an abuse of process. Each of the following, individually and cumulatively, rendered it impossible to have a fair trial and would offend the Court’s sense of justice and propriety, and called into question the integrity of the criminal justice system, to have tried the accused:

- i. The failure of the Prosecution, knowing that the programme had been shown at the time that it had, and having been informed of a contempt of court application, to disclose the findings of police reports into Simon Regan’s probity.

- ii. The involvement of the Executive in the production of the programme coupled (at least) with their lack of any objection to the proposed re-scheduling of the broadcast in the course of the first Shrewsbury trial.
- iii. The involvement of the Executive in the production of the programme, including knowingly propagating false material that was prejudicial to the Shrewsbury Defendants.

178. Over the course of the last few days various items of disclosure have been received from the CCRC and the solicitors for the Co-Appellants. We have not, as yet, been able to undertake a full review of all of this material. These Grounds are submitted at this stage in order to comply with the timetable set by the Court of Appeal. Should there be anything of significance within the new material we would appreciate the opportunity of submitting an addendum.

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2nd October 2020