ROUGH JUSTICE

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ARIEL BOOKS
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Martin Young and Peter Hill

Martin Young was educated at Dulwich College in London and at Gonville and Caius College, Cambridge. His national television career began as a reporter and presenter on *Nationwide* in 1973 on which he is currently appearing.

Since then Martin has worked as a film reporter for *Tonight, Newsnight* and *Panorama*. In 1981 he made a series of documentaries on the Middle East, called 'Hanging Fire: the State of Israel'.

Martin and his wife, Susan, live in Oxfordshire with their two children, Jonathan and Annabel.

Peter Hill has worked for BBC Television for twenty years, for half that time as an investigative journalist in the Current Affairs Department. Among his many programmes, the most notable are his investigation of 'Kiddyporn' in 1977, which produced the Protection of Children Act, the first use of hypnosis in investigation on the Genette Tate case in 1978, and the most comprehensive investigation of the affairs of the National Liberal Club when it was run by George De Chabris. Two years ago, he and Martin Young made the first film exposing 'Videopirates', research from which helped recent changes in the law on copyright.

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INTRODUCTION

Rough Justice was first broadcast as a series of television investigations in April 1982.

The programmes invited the viewer to consider whether four men convicted of serious crimes and still detained were, in fact, innocent. Each of their stories centres on an impossible contradiction.

A man was sentenced to life imprisonment for the murder of a young girl. She was clutching a handful of hair. The experts agreed that it came from the head of her murderer. Yet the convicted man's hair did not match the sample.

A father and a son were convicted of murder during a fight in a Manchester house, despite the fact that no weapon was ever found. Yet independent witnesses say that another man confessed to the crime, a man who habitually carried a knife.

A young man was sentenced to four years for sexual assault. Three independent witnesses and the girl herself testified that the assailant was around five feet seven to nine inches tall, slimly built and wearing blue denims. The man sent to jail is six feet tall, weighed fourteen and a half stones at the time of the crime and did not own any blue denim clothes. Today he has served almost nine years and is in Broadmoor Mental Hospital, detained partly because he will not confess that he *was* guilty of the original crime!

Rough Justice was born out of a sense that in these cases at least something must have gone badly wrong with our system of justice. Every man in jail of course will tell you that he is innocent. It is romantic to accept them all; cynical to dismiss them out of hand. There is no way of knowing how often justice miscarries, but that it *does* at least occasionally, even in the best organised legal system, ought not to be in doubt.

The research into the cases which finally appeared on BBC-1 television and several others which appear in this book began in the offices of an organisation called simply 'Justice'.

'Justice' is a Law Reform society which acts as a pressure group to improve and often liberalise our legal system. But under the kind control of Tom Sargant, its Secretary for twenty-five years, it has become a sanctuary, a place of final appeal for the man vainly protesting his innocence. The stories within these covers came from the files of Justice. Tom Sargant himself and many others had worked, often for years, in attempts to have the cases reopened. But Justice has other considerations apart from the righting of alleged wrongs. And it has insufficient funds.

The combination of the expertise of the Justice organisation and the time and money provided by the BBC for research helped to take some cases nearer to successful conclusions. At least at the time of writing, it seems so. In June 1982 the Home Office undertook to re-open investigations into all three of the transmitted stories.

In the first of our cases, which follows now, that of Jock Russell, the man whose hair did not match the handful clutched in the dead girl's hand, a whole stream of contradictory and unconvincing evidence has still not led to an early release or a free pardon, although at the time of writing the Home Office have agreed to refer the case back to the Court of Appeal.

In the second of our cases, that of Michael and Patrick McDonagh, the two men have served their full term in prison and are currently on parole. For a year now the Home Office have known that new testimony claims that another man confessed to the murder for which the McDonaghs served ten years in prison. Yet the Home Office has neither released them early, nor pardoned them.

In the third of our cases, John Walters remains in Broadmoor. For some months the Home Office have known that the main forensic evidence against him has been thoroughly discredited. The evidence of description, as outlined above, should never have been credited in the first place. Yet John Walters is not pardoned.

And that, surely, is rough justice.

Martin Young
Peter Hill
January 1983

JOCK RUSSELL: 'THE CASE OF THE HANDFUL OF HAIR'

Jane Bigwood was on edge. She was an art student at Goldsmith's College in London. She was a pretty girl, just twenty years old. Since she had started to live on her own in a dilapidated block of flats in Deptford she had become increasingly nervous and frightened. Her fears had become so serious that she was convinced that someone was going to murder her.

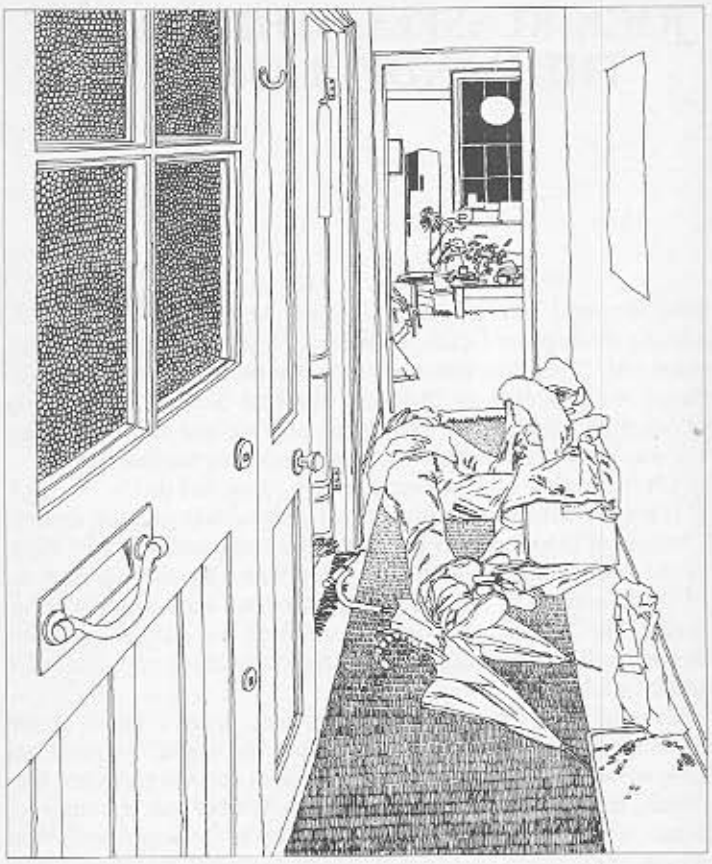
On the night of the 21 October 1976, someone did.

It was a Thursday evening. Jane Bigwood was cooking dinner. The rest of Deptford was going about its unglamorous life. Most of the population seem to have been watching the big film on ITV that night, *The Vikings*. Others were in a succession of pubs. Some, like Jock Russell and his friends were combining the viewing and the drinking in one of the pubs which now boasted a colour television.

Around twenty to nine that night, Jane heard a knock at the door. Such was her state of nerves that she might very well not have answered. But on this particular night she was expecting two people for dinner. She had seen Pam Walker just a couple of hours beforehand and invited her to drop in for some food. Pam was an unemployed hairdresser who lived in the same flats as Jane in Speedwell House. Jane was expecting a student friend called David Plews as well who was coming to help her with some plumbing in the run-down old flat. He too had been promised a bite to eat. So Jane was in the kitchen when she heard the knock.

Jane walked out of the kitchen into the narrow hallway. She stood by the left-hand side of the front door and opened it just enough to allow her to check who was there.

The murderer pushed the door wide open, knocking Jane back against some umbrellas and a cat-litter tray that were standing by the left-hand side of the front door. As she stumbled back, he seized her by the polo neck jumper she was wearing, twisting the fabric with his left hand, bruising her neck. With his right hand he stabbed her with a five and a half inch sheath knife. She



screamed and fell back along the floor of the hall. The knife fell by her right-hand side, the umbrellas were under her legs. In her right hand were twenty-two strands of human hair.

The murderer closed the door and went down the hall into the living room.

It is at this point that the first major question arises over the murder of Jane Bigwood. Was there a motive? It was a cold-blooded, fast and brutal crime. But the motive could have been theft or sexual assault. It is impossible to tell.

The neighbours heard Jane's scream around twenty to nine. Almost immediately after that David Plews came up the stairwell of Speedwell House to Jane's third floor flat and knocked on the door that the murderer had just closed.

David Plews is now a physical education teacher at a local comprehensive school. Five years on, he still remembers that night vividly:

'I was supposed to be coming here fairly early after work. About seven o'clock, half-past six, but I was held up at work. So I gave Jane a call from work, told her I was going to be late. She was expecting me, everything seemed all right and I parked the van downstairs, came up the stairs . . . and knocked on the door.

'The light went off. I saw someone moving inside. I knocked again, looked through the letterbox at that point and saw someone coming from the kitchen, through to the living room where there was a light on.

'The way he was walking it seemed as though he wasn't just walking straight, but taking long strides as though to step over something. I knocked a few more times, because I was, you know, a little bit perturbed at what was going on at this time. I remember the phone was ringing, and then stopped, as obviously no one answered it.

So I decided to go to Di Meanwell's flat . . . I knew Di was a good friend of hers, I thought she'd maybe have a key, because, to be quite honest, I wanted to get in and find out what was going on. She didn't have a key, but she came over with me to the flat again, and we knocked, banged, shouted that we were going to fetch the police if someone didn't come, because we were both a bit worried.

'She went down to fetch the police. I stayed here all the time, and I kept the door in my sight all the time that I was actually here, and no one left or entered the flat.'

Plews had the impression that the man inside the flat was moving deliberately, even calmly. But the next thing the murderer did was certainly the action of a frightened man. With Plews and Di Meanwell hammering on the front door and shouting through the letterbox, and with Jane dead in the hallway, he walked through to the back of the flats, threw up a sash window, clambered out onto the sill and jumped thirty-one feet, three storeys, to the ground. Somehow he survived the jump and escaped across the grass at the back of Speedwell House.

Jane Bigwood had been frightened that someone was going to kill her. Her friends had humoured her. She was clearly becoming paranoid. Now, she was dead.

David Plews and Di Meanwell were now getting seriously worried about what had happened in the flat.

The police arrived at seven minutes past nine and broke the door down to discover Jane, dead in the hall.

Within a few hours of the start of the inquiry the police must have felt that they had a considerable amount of evidence. They knew the time of death. They actually had the murder weapon. The murderer had been disturbed immediately after the crime and everything pointed to the fact that he had been forced to make an almost suicidal leap from the window.

The poster that the police were eventually to produce clearly indicated that they had already made these assumptions from the circumstances surrounding the crime.

'Appeal for Assistance: MURDER', it read. 'Thursday, 21 October 8.40 p.m.' So the time of death was exact.

They went on to ask whether anyone knew Jane or her friends. Then they wrote: 'Do you know a grey-haired man who might be injured or has not been seen recently?'

At the time these were the logical assumptions. Four of the hairs in the girl's hand were dark brown, the rest were grey or colourless, so the murderer had greying hair. The jump from the window was extraordinary, so the murderer was injured.

There was further evidence in the flat.

The police found fingerprints on the window ledge which indicated that the murderer had hung there by his fingertips before dropping to the ground. But these turned out to be smudged.

And that was just the start of their problems. There was, apparently, no motive. And the flat, they discovered, was full of fingerprints. Jane had held a party on the previous Sunday, 17 October, and there were hundreds of prints throughout the rooms. It was to prove impossible to identify them all.

And when the police began to investigate Jane Bigwood's boyfriends, they found that none of them had the necessary characteristics. The apparently logical conclusions they had drawn from the significant clues were proving more of an embarrassment than a help. In the end, the man they were to charge had only one of the vital characteristics.

David Plews himself was a suspect. He recalls even now how the police went over his relationship with Jane and his story of how he came to be outside her flat that night. At one point when we were interviewing him we suggested that he must have been really frightened when he was clearly being considered as a murder suspect by the police.

'Not at all,' he replied confidently, 'I wasn't worried a bit, after all, I knew I was innocent.' In the light of what was to follow, indeed in the light of all the stories of *Rough Justice*, it was to prove an illuminating and ironic remark.

As the police began their inquiry they faced another, perhaps more familiar problem. The scruffy flats and squats of Deptford are not the easiest territory if you are a policeman seeking information. It was a journalist from the *Daily Express* who found Kenneth Nichols. It seemed that he had seen the murderer escaping. He had bits and pieces of a description. He told the journalist, but he had not been planning to tell the police. In fact, when the journalist passed on what he had heard and the police went around to Mr Nichols' flat, he was most put out.

The story he had to tell was simple enough in outline, but it was to prove significant. Around twenty to nine that night, Kenneth Nichols and his wife were sitting, like so many others, watching television when Mr Nichols glanced out of the window. His flat was two floors below Jane Bigwood's and on a separate wing of the building. He saw a man climbing out of her window. He looked for a couple of seconds only and then glanced back. It did not seem all that odd to him since the students in the flats were often seen larking about. Despite that, Mr Nichols remembered what he had glimpsed very well:

'We was watching TV, and it was quite dark, and I happened to glance out of the window for no apparent reason, and I see this chap sitting astride a windowsill, as you would on a horse. And I thought no more of it. And I looked away at the TV again, and a few seconds later I looked back and this chap had gone.

'And I only saw the back of him, but I can distinctly remember a waistcoat, because you can see the silk lining of it and the buckle. The hair I couldn't describe, but as I say, this was only for a few seconds I saw this man on the windowsill.'

The description of the man in the waistcoat was the last of the immediate clues the police found. They reasoned that the most important clue must be the handful of hair clutched in the dead girl's hand. The forensic scientists confirmed that it was human hair – some of it still had the roots attached. And they also confirmed that it had come from a dark head of hair that was now going predominantly grey. It had surely, they all agreed, come from the head of the murderer.

The police began to look for a man with greying hair. He would be right-handed. He would probably have a limp or a leg injury after the extraordinary jump. He would own a waistcoat. He would presumably have some motive for attacking the girl.

But, after ten days of the murder inquiry the police had found

no one who could remotely fit those requirements. They had no real suspect.

It is fairly common, in a murder hunt, for the police to hold back on certain information. There can be many reasons for this – but the most common is that they need to have some 'private' information that only the real murderer would know. This is because, for some strange reason, a few people feel the need to confess to murders they have not committed. In this case the police had kept quiet about the sheath knife. Now, in an effort to revive the case, they decided to advertise the murder weapon. 'Whose knife is this?' the posters demanded, alongside a full-scale photograph of it.

A man called Jock Russell answered 'mine' to that question. He went along to volunteer the information to the police in Deptford. It was, undoubtedly, the most unfortunate decision in Russell's already pretty unfortunate life.

Mervyn 'Jock' Russell was born in Bristol in 1944 but brought up in Edinburgh by parents who split up when he was fifteen. It was an unpromising start and he continued to make little of it. He suffered from epilepsy and was never very well. By the time he'd reached his late twenties the pattern was well-established. He had no job and no real prospects of one. He lived in sad little squats wherever he could find them. He drank cider when he could afford it and did a bit of petty thieving when he needed money. Deptford in South London is tailormade for a drifter like Jock. In 1977 he found a squat in Speedwell House, the same block of flats that Jane Bigwood had come to live in. It was a big, ordinary four-storey block built just before the war, in one of many such housing developments in Deptford and the council had decided that it was no longer in good enough condition to rent out as council flats. But, before it was pulled down, Goldsmith's College asked if they could use it to house students. That was how Jane Bigwood had left the pleasant middle-class ambience of Blackheath and a supportive landlady to come and live among the squatters in Speedwell House.

Jane had been living with the Renouf family. Julia Renouf remembers her as a pleasant, happy girl at the beginning of her years in college. But as the months went by Jane became worried, confused and even paranoid. She was, as we have mentioned, very attractive. She was five feet, four inches tall, with dark brown hair and blonde streaks. She had been brought up in Devon by parents who were now going through a divorce. Jane had several boyfriends and was no doubt in need of some

emotional support from them at this troubled time of her life. The move to the dreary flats at Speedwell House can have done nothing to improve her state of mind. In among the students were a number of squatters and layabouts.

Jock Russell was living two floors below her in a different wing of the flats with two other squatters, Mick Mayhew and Peter Ward. Also living there were Jock's two Alsatian dogs, Sheba and Major.

The dogs gave him some identity and a certain 'macho' image, as did the sheath knife. It seems to have been more of a general purpose tool than a weapon. It lay among the junk in the flat. The flat seems to have resembled a set for a Pinter play, full of old television sets and other electrical odds and ends. The knife was used to strip wires, fix plugs or unscrew the backs of the television sets. Occasionally Jock used to strap it to his belt when he went out to the shops or to collect his dole money. The tough image it suggested was to do great damage to Russell subsequently.

Just ten days after the murder of Jane Bigwood the Deptford Police had parked a police caravan outside the flats. Russell asked if they could show him the knife. A policeman showed him a photograph of it. He told Russell that this was the knife that had killed Jane Bigwood, and asked whether Russell knew anyone who owned a knife like it? 'Yes,' said Russell promptly, 'it's mine.' The constable, a little taken aback no doubt, asked if he was sure. Russell pointed out that he was fairly certain because it had a piece missing out of the blade like his own knife.

Russell even went to fetch his friend Mick Mayhew who also confirmed that it was Russell's knife. Later the police showed Russell the real knife. He pointed out to them that the hilt was loose and that in one place there was blue paint on it. This, he told the police, had come from a door in his flat when he was redecorating.

From that moment, Russell became the main suspect. It did not seem to matter that he had volunteered the information. The police now had a likely candidate with a little bit of 'form' for petty theft who might prove to have been in the right place at the right time. The fact that he had previous convictions doubtless weighed against him. The fact that none was for violence, that one was even for 'begging in a public place', was not allowed to contradict the belief that he could be the murderer.

The history of the knife now became very important to the

police. At first, Russell maintained that he'd lost it several days before the murder. He may simply have become confused or, more likely, he was lying to the police in the time-honoured manner that most petty villains understand. But the police discovered that not only had Russell been in possession of the knife the day *before* the murder, but that he had actually *used* it. He was charged with the murder of Jane Bigwood at eleven o'clock on the morning of 9 November 1976. Russell came to trial at the Old Bailey on 5 October 1977 charged with two offences. The major offence was the murder of Jane Bigwood, but the minor, related crime was an assault with intent to cause grievous bodily harm on Peter Ward, one of his flatmates. The story the police had now pieced together from the garbled recollections of Ward and Mayhew, the other flatmate, went like this.

On the night before the murder the dull routine of the Russell squat in Speedwell House had been enlivened by an air pistol which someone had procured. Rather like a bunch of schoolboys, all three squatters, Russell, Mayhew and Ward, had been firing the gun at various targets in the house. Russell was getting fed up with the game by the time they were all getting ready for bed. At that point, Ward, lying back in his sleeping bag, fired the gun at Russell as a joke. The air pellet hit the side of Russell's neck. His sheath knife was lying nearby on a crate. He seized it and lunged at Ward in his sleeping bag. Ward scrambled back out of the bag as the knife came down. He escaped uninjured. There had not apparently been much force in the blow. The blade only cut through the top layer of the sleeping bag. Mayhew later described it as more of a pushing motion than a downwards stab.

It does not seem to have been a major incident in the turbulent, often drunken life of the squat. But Russell's defence counsel was immediately aware of the damage this story could do to his client. Russell's past record hardly suggested a murderer. But here was 'proof' that Russell would be willing to wield his knife in anger. Accordingly counsel made an appeal for the two charges to be tried separately.

In a well-researched legal submission Mr Wright QC, Russell's defence counsel argued that there was not sufficient similarity between the attempted wounding charge and the murder charge. One, he maintained, was a minor offence, a scuffle almost, the other a violent and vicious crime.

The judge, Mr Justice Jones, ruled that the evidence about the fight with Peter Ward, who appeared in court under his proper

name of Francis Peters, *was* admissible on the charge of murder. In other words, he did not think it was unfairly prejudicial to Russell's case. He cited two grounds:

'Firstly,' he said, 'the facts of each of the two attacks are sufficiently similar to render the evidence of the first attack admissible on the charge of the second attack, the second murderous attack. To put it another way, the evidence as to the first attack tends to support the evidence given as to the murder. In my judgement it supports it sufficiently strongly to outweigh any prejudice which might arise to the defendant in it being given.

'There is another ground upon which the evidence must be admissible. This is a case undoubtedly where the history of the knife and what the defendant said about the knife when he was asked about it subsequently are a most important part of the case for the prosecution in establishing his identity as the attacker of Miss Bigwood.'

Mr Justice Jones went on: 'It would be quite impossible properly to explore those matters without calling evidence with regard to the attack upon Peters (Ward). I do not propose to elaborate at this stage the reasons why that is so. Suffice it in my judgement I consider that to be so.'

He went on to rule that the two offences should be tried together.

Evidence was now produced from Mayhew and Ward which clearly indicated that the airgun incident and the subsequent stabbing *had* taken place. Russell was obviously guilty of an attempted wounding. So far the trial was going very badly for him.

When it came to the murder charge the jury may have been predisposed to believe Russell guilty. Certainly they were prepared to accept some apparently illogical pieces of evidence.

This is what Russell was alleged to have done on the night of the murder:

He went with Ward and Mayhew and his two Alsatian dogs to the Dover Castle pub just around the corner from Deptford High Street. They were all keen to see *The Vikings* film on the pub's colour television. They arrived at the pub soon after opening time, about six-thirty to seven o'clock, according to Mayhew. Some time just after eight o'clock one of Russell's Alsatians made a mess on the floor of the saloon bar. Russell apologised to the landlord, John Alliston, and cleared up the mess. He left the offending animal with his mates and took the other dog out for a

walk in case it too should foul the bar. He was away from the pub for about forty-five minutes. He walked back in the direction of Speedwell House, where he was seen by two girls. They remembered the time almost exactly. Just after they had seen Russell they went into their house where everyone was watching the same film, *The Vikings*. The big gory scene had just begun, in which Tony Curtis had his hand chopped off. A witness was called from Independent Television who testified that this unpleasant scene had been transmitted at eight-fifteen p.m. So the two girls had seen Russell near the flats at about that time. He looked 'just normal', smoking a cigarette and watching his dog on the grass.

Within the next forty minutes, Russell is supposed to have committed the murder. The sequence of events that follows apparently commended itself to the jury.

At the pub and at the time when the girls saw him, Russell was dressed in a long-sleeved denim jacket and jeans. He is supposed to have changed into a waistcoat he did not own; gone to Jane Bigwood's flat; murdered her for no apparent reason; jumped thirty-one feet to the ground below; changed back into his denim jacket and jeans and walked casually back to the pub to resume his drinking around nine o'clock.

There are one or two other factors that for some reason failed to impress the jury. The girl's blood was found on the door frame near where she died. The police thought it would have spattered the murderer's clothes. No blood was found on Russell's clothing. On the night of the murder it had been raining, yet no mud was found on Russell's clothes, despite the fact that he was supposed to have leapt onto the grass from a height of three storeys. When he returned to the pub he was still wearing the same clothes as before and he was acting quite normally. There was no sign of a waistcoat. There was no convincing forensic evidence against Russell.

The handful of hair, which was the most significant forensic clue surely should have convinced anyone that he was *not* the murderer. It was tested against the victim's own hair and against Russell's hair. It did not match either of them.

Russell's defence counsel, Mr Wright QC, made a further bid to impress the judge with his client's innocence. He submitted that there was no case to answer. He moved that there were six major reasons why Russell could not have been the murderer. Russell's problems certainly did not stem from a negligent or incompetent defence. Mr Wright fought strongly on his behalf.

These were the reasons he postulated for an immediate dismissal of the case:

It had been stated by Diane Meanwell, the friend of Jane Bigwood's, that she would only have opened the door to someone that she knew 'fairly well'. It had already been established that Russell hardly knew her at all. He had seen her once in the flat of their mutual friend, Pam Walker. At that time, moreover, Jane seemed to be overwrought and ill and may hardly have noticed Russell.

2 Russell's hair did not match the sample in the dead girl's hand. Wright insisted that it could only have come from the head of the murderer. Whoever did the deed must have the same sort of hair.

3 It was agreed by a parachute expert at the trial that seventy-five to eighty per cent of his trained men would have been injured on the jump from the window. Wright pointed out that Russell obviously had not been injured and certainly was not trained.

4 The man escaping from the window had been wearing a waistcoat. No evidence had ever been brought from the prosecution to show that Russell was wearing a waistcoat that night, or even, for that matter that Russell had ever owned a waistcoat. Indeed the only evidence that *had* been brought proved that Russell was wearing a denim jacket and jeans both at the time he left the Dover Castle pub and at the time of his return.

5 The murderer was almost certainly right-handed, according to the forensic evidence. Wright pointed out that Russell had been seen to sign his name with his left hand. He was, he said, left-handed. This landed Mr Wright in great trouble with the judge. He was, he said, astonished that Mr Wright had not asked all of Russell's friends whether he was right-handed, left-handed or ambidexterous. The judge would not accept that this was a substantive point.

6 Mr Wright then suggested that the murderer would surely have had some blood on him. It had been found on the door frame near the girl's body. It had clearly spurted some distance. Yet none was found on Russell's clothing.

To the untutored layman many of these would seem to be fairly convincing. But not apparently to Mr Justice Jones.

Mr Wright said during his submission: 'I see, my Lord, my submissions on this are indeed falling on stony ground.'

Mr Justice Jones replied: 'Do not say that. They are falling on fertile ground, but they are not growing very well.'

So badly, indeed, that they withered and died. The judge ruled that there was a *prima facie* case to be answered on the charge of murder.

Jock Russell was found guilty on both charges. He was duly sentenced to two years imprisonment on the wounding charge and the mandatory sentence was laid down in the murder charge: life imprisonment.

When we decided to investigate the Russell case there were three main reasons. The first was Tom Sargant of 'Justice', who so firmly believed in Russell's innocence. The second was the implausibility of the case against Russell. And the third, central to the entire story, was the handful of hair. It was not, of course, an entirely conclusive piece of evidence. But all logic dictated that the only place the hair could have come from was the head of the attacker. Indeed no other hair like it was found on the floor or the carpet of the hallway. If there had been any other substantive evidence against Russell then it might have been possible to believe that there had been two assailants in Jane's flat, the one with the greying hair and Russell himself. But there was nothing to connect him with Jane's flat on the night of the murder, nor at any other time.

So where were we to begin a reinvestigation? We decided, strangely it might seem, not to try to trace the flatmates, Mayhew and Ward. Although they might have seemed central to the story the judge directed that most of their evidence be disregarded or doubted. This was not necessarily because they were being dishonest, but probably because they actually did not remember the events surrounding the murder very clearly at all.

John Alliston, the landlord of the Dover Castle had left the licensed trade but we managed to find him working in a warehouse elsewhere in the Deptford area. He was able to give Jock Russell a good character reference. He also confirmed the details of Jock's critical absence from the pub that night. He now thought that Russell had not been away from the pub for much more than half an hour. This, we decided, might well have been auto-suggestion. He wanted to see Jock released and his memory was perhaps being influenced by his emotion. However, there was one area in which he was unshakable. The man he had seen arriving back at the Dover Castle around nine o'clock that night had been acting perfectly normally. He had been dressed in exactly the same clothes as when he left; there was no sign of mud on him; there was no sign of blood. He had come back, apologised again for his dog and carried on drinking.

Pam Walker was another one who spoke up for Russell. She was the woman that Jane had been expecting to dinner and she also knew Russell well as a neighbour.

She told us that she had never thought of Jock Russell as a frightening or violent person:

'He's actually taken my children out for the day. I think it was Southampton they went to, my two children. That's Keeley, she'd be about nine at the time; Kimberley would be about four or five. He's taken them out . . . for the day, and I fully trusted him. He was marvellous, and they came back spoiled rotten. They really loved him. They loved their Uncle Jock as they used to call him.

'Well, he never once gave me the impression that he fancied me or was trying to chat me up in any way . . . I've never known him to be like that. He was just – he loved – he wanted to be wanted. And he sort of, like he used to call up a lot by me . . . He'd come in, have a cup of tea and we could have a chat. He was just . . . a lonely guy, you know.'

Pam Walker was also able to provide a small piece of new evidence. Small certainly, but important as all new evidence is when considering an appeal against sentence or a petition to the Home Secretary.

When the police had arrived at Jane Bigwood's flat that night they had cordoned off the area in which the murderer had landed after his giant leap. There were a pair of car seats lying abandoned just at the point where the murderer might have landed. At Russell's trial the jury might have thought that one element of doubt – that is, how Russell could have survived the jump – was explained by the car seats. They might have broken his fall. Pam Walker knew that the seats were not there before the murder. She knew that someone thought the car seats were stolen, so that when they heard the police arrive they threw the seats out of the window in case the police were going to search the flats. Not only were the police there on more serious business, but it turned out later that the seats were not stolen after all. The important point, of course, was that the seats had *not* been under the window at the time of the murderer's escape.

Another factor that must have turned the jury against Russell was that he was reported to be telling gory stories about the murder on the morning after the crime. The police and prosecution maintained that he could only have known about the details of the girl's murder if he had been there on the night. There were two things wrong with this theory. First, what

Russell was saying about the stabbing was inaccurate. He was describing a massive wound going from 'belly button to throat'. In fact the wound was about five inches long.

But secondly we discovered in the course of our investigation that there was a stranger in the flats that night who happened to be a policeman. He was able to go up and look at the scene of the crime. He reported what he had seen to his daughter who knew Russell very well. She may well have passed on the story, suitably embellished, in the morning or even late that night.

We tried also to examine the possibility of there being some basis for Jane Bigwood's fears. We had heard various rumours about drugs being distributed in the flats. Had she found out something about the people who were pushing drugs to the students? Did she have to be silenced? Could it have been, as Tom Sargant thought, a 'contract' killing to keep her quiet? These were all dramatic theories, but there did not seem to be any hard evidence to support them. It remained a motiveless murder.

If the murderer was not Jock Russell, who was it? And how had he got hold of Russell's knife? For that was the second question that had to be asked of any suspect. The first was of course the matter of the hair – the second was whether or not he had access to the knife which the police knew was the murder weapon.

It transpired that there was only one man who could be said to meet both characteristics. To discover him you had to begin with the history of the knife itself.

Russell got the knife originally from a man called Richard Tribe who was living at the time in another squat a short distance from Speedwell House. He had been sharing the squat with a girl called Norma Fitzgerald and a Hungarian called Miklos or Michael Molnar. Norma Fitzgerald we discovered was now working in the kitchen of a pub near Greenwich and Richard Tribe and she were sharing a council flat in Deptford. The story they had to tell about Michael Molnar was intriguing.

The first fact about Molnar was both the most interesting and the least substantive in terms of evidence. He had dark hair, going grey. It could have matched the hair in the dead girl's hand. The other facts were equally circumstantial. Molnar had known Jock Russell and he had visited the Russell squat on several occasions according to Richard Tribe. Molnar claimed to know about electronics and Russell dabbled in second-hand televisions. Molnar had been to the flat to help him out. It might

be significant that he had used the sheath knife and knew where to get hold of it. He claimed to have been in the Hungarian Air Force. Certainly because of his age he would have been conscripted into some branch of the Hungarian Armed Forces. He claimed that he had escaped from the Eastern Bloc in a Soviet aircraft in 1956. As Richard Tribe pointed out, he did not know how accurate or truthful all this was. But Tribe had been in the RAF himself and he certainly thought that Molnar *did* know about planes. If Molnar had been closely involved with planes, maybe as a flight engineer, if not actually the fighter pilot he claimed to be, he would have had parachute training and he might just have had a chance of avoiding serious injury on the jump from Jane's flat.

On the night of the murder Norma and Richard had left Molnar in the flat while they went out for a drink to another Deptford pub, the Centurion. Molnar's only alibi for the night was that he had stayed alone in the flat – something that obviously couldn't be corroborated.

Norma Fitzgerald remembered his hair. She described it as greasy and grey. She clearly had a low opinion of Molnar. Both she and Richard Tribe had known Molnar for some time and they had both been present when he was trying to mend an electrical fault in the flat. Somehow or other he must have interfered with the mains. There had been a tremendous explosion and Molnar was taken to a London hospital with extensive burns. The only photographs we have of him were taken by the hospital. Norma and Richard remembered that after that incident his hair rapidly became much more grey which, in the circumstances, was hardly surprising.

As the dogsbody of the flat Norma remembered something else of importance. Molnar had a waistcoat. She knew because she washed all his clothes. She said that he wore it most of the time.

Norma describes Molnar as 'creepy' – 'He give me the creeps, you know. He used to creep up on me like.' Tribe describes him as 'just an ordinary sort of bloke'. But Tribe also remembers that Molnar stayed around the flat for several days after the murder. He did not seem to want to go out. Again, this was purely circumstantial evidence that Molnar might have damaged his ankles after the murder. Richard Tribe had one other piece of evidence concerning ankles, not Molnar's this time, but Russell's. Tribe remembered Jock saying that he had broken both his ankles. Jock said he had been on the roof of a ware-

house, planning to break in and steal something, when the roof had given way and he had fallen through. When the police arrived they discovered that Russell had broken both ankles in the fall. This was supposed to have happened about eighteen months before the murder. Certainly it had been related to Tribe long before the murder, so it was not made up after the event. Tribe recalled how Jock's ankles used to ache in cold weather. We tried to trace the incident through the local hospitals, but failed.

Tribe had something even more important to tell us, though, about his flatmate Molnar. In the midst of all the circumstantial evidence against him there was one concrete fact. Immediately after the police came to interview Tribe to ask him about the knife he had given to Russell, Molnar disappeared. He left the house within hours leaving behind all his clothes and other possessions, except for his waistcoat. As usual he was wearing that when he fled. Molnar was a diabetic, and perhaps most significantly of all he left all his insulin and his needles behind him. Tribe never saw him again.

We set out to trace the history of Miklos Molnar. His movements were strange and almost deliberately self-destructive in the six months after Jane Bigwood's death.

He had told Tribe that he was going for a job interview with IBM. That was a lie, like a great deal of other things that Molnar said.

He claimed to have been the son of a major in the Hungarian Air Ministry. But we traced his priest who told us that he was the son of a peasant. Molnar said he had been in constant work since he came to Britain in 1956. But he had, in fact, been unemployed and he had a long police record for theft in Bristol. The next trace of Molnar after he fled from the Deptford flat was at King's College Hospital. He needed treatment for his diabetes. The major question about his behaviour must be: 'Why did he not simply go back to the flat for his own insulin, or ask his GP in Deptford to prescribe more?'

A doctor who examined him while he was being treated at King's put on his report: 'His main problem is social, and possibly psychiatric. He may well have a psychopathic personality.'

After attending King's College Hospital Molnar began to turn up at the Camberwell Reception Centre. Again, he needed treatment for his diabetic condition. In one three-week period Molnar was treated at Camberwell on six occasions. On three of those occasions he was picked up, literally, from the pavement,

where he had collapsed in a diabetic coma. All this was at the time when Russell had been charged and was awaiting trial.

Four months to the day before Russell was convicted, Molnar died – on 14 June 1977. He had gone into his final diabetic coma. He died in the cellar of an abandoned house in Crystal Palace and was buried in a pauper's grave in Bromley Cemetery. The cemetery authorities told us that they had burned all his clothes, no doubt including the waistcoat.

Molnar's behaviour was certainly bizarre. He was acting like a man running away from something very unpleasant indeed, a man apparently wanting to destroy himself. None of that, though, proved that he was the murderer of Jane Bigwood. Yet there could be no denying that he 'fitted the frame' better than Jock Russell.

1 He had a waistcoat.
2 His hair may very well have matched the hair in the dead girl's hand.
3 He knew where the knife was. He had used it in the past. He had access to it.
4 He had been connected with the forces, probably the airforce. He may have had parachute training.
5 He had no alibi.
6 He had been described by a doctor as possibly psychopathic.
7 Unlike Russell who volunteered to help the police over the knife ownership, Molnar ran away as soon as the police approached his flatmate, Tribe.

But, Molnar apart, it did seem clear from the reinvestigation of the Russell case that there was so much 'reasonable doubt' involved that Russell should never have been convicted.

And there is one way of indicating Molnar's guilt more convincingly – an exhumation to discover whether his hair matched the sample. Tom Sargant of Justice applied for an exhumation order in November 1981. By the time the films in the *Rough Justice* series were screened at the end of April 1982, he had had two acknowledgements from the Home Office and no action. At the time of writing there is still no official decision on the request for an exhumation. Meanwhile we have consulted a leading pathologist who says that, considering the ground in which Molnar is buried, his hair should still be in existence. But the chance of getting this evidence gets weaker and weaker the longer the Home Office delays.

There is a further opportunity to establish Molnar's part in

these strange events. The police, you will recall, found hundreds of fingerprints in Jane's flat, as a result of the party she had held a few days before the murder. They took prints from many of the students at Goldsmith's College and many of Jane's other friends. But there were still some prints they could not identify. They weren't Jock Russell's prints, but could they have been Michael Molnar's? Since Molnar had a police record in Bristol, his prints would have been on file. Since there is no reason for Bristol police to know that Molnar is dead his prints may be there to this day.

With the evidence of the hair and the fingerprints as corroboration it might be possible to prove that Molnar killed Jane Bigwood.

It is already possible to prove that Russell probably did not. He was the left-handed man who committed the right-handed murder. The man with the clean clothes who had just been spattered by blood and by mud. The man with the weak ankles who jumped from a third-storey window and walked away. The man so worried at the prospect of being caught that he volunteered to the police that he had owned the murder weapon.

The man, ultimately, whose hair did not match the strands clutched in the dead girl's hand.

MICHAEL McDONAGH: 'THE CASE OF THE THIN-BLADED KNIFE'

Michael McDonagh is a big, rough, tough Irishman who has been known to take a drink and swing a fist. On the night of 28 February 1973 Michael got into one fight too many. He ended up in jail convicted for life for a murder he almost certainly did not commit. With him, also serving a life sentence was his son, Patrick. He was also guilty of getting himself into a nasty brawl, but again, almost certainly, he was innocent of murder.

The case of the McDonaghs was the most tangled story we attempted to reinvestigate. It was also, paradoxically, the one that yielded the most dramatic new evidence and the nearest thing to 'proof' of a miscarriage of justice we could possibly hope to obtain. We found new evidence from two witnesses that another man had confessed to the killing.

The McDonagh family are 'travelling people'. It is a concept tied up with the romantic notion of the gypsies. The reality is a little more rugged. Housing is often rudimentary, income mostly a result of deals made over scrap metal. In the case of the two McDonaghs, income was supplemented by a small amount of petty theft, and reduced by the need to pay fines to Magistrates' Courts after various drunken brawls.

There are dozens of McDonaghs. Even today, when you visit the family on the outskirts of Moss Side, Manchester, there always seem to be more children in residence. But, fortunately, there are only a few McDonaghs who need concern us for the purposes of this sordid drama in Moss Side.

Michael McDonagh was widely regarded as the head of the family. He is married to Rose McDonagh and their son is called Patrick. They were the three people involved in the murder charge. Michael's brother, Francis McDonagh, was the man who died and his common-law wife was called Maureen.

Michael and Patrick were convicted of stabbing Francis to death during a fight at the rooming house where Francis and Maureen had just got lodgings.

Despite the stabbing and the fact that Michael was picked up almost immediately after the incident, no knife was ever found. It was one aspect of the conviction that was to cause unrest and dissatisfaction right from the start. Later, we were to discover evidence about the ownership of a knife which fitted the description of the kind of weapon which had caused Francis' death.

That knife had been used in a second fight on the night of the murder. Some of this had been mentioned in court, but only in passing. No weight seems to have been attached to it.

In order to understand the events on the night of the murder fully you first have to examine the rooming house in Moss Lane East and then the events of the previous night.

Number 442, Moss Lane East was providing shelter for about eight people at the time, and a workroom for the landlord, a Nigerian called Mr Agbai. It is a dowdy place, either not decorated at all or done in garish splashes of colour. Francis had been there for just two weeks, living with his common-law wife, Maureen, in a first floor room at the top of the narrow stairway. On the night before the murder there had been a fight too. They were not uncommon, either in this odd household or in the McDonagh family.

Michael, Rose and Patrick McDonagh and numerous children were living a short distance away at Chelford Street in Longsight. It was a slum clearance area and they were taking their chance, squatting in a house that was already condemned and due for demolition. One of the other twilight characters in the Chelford Street house was a man called Tommy Mullins.

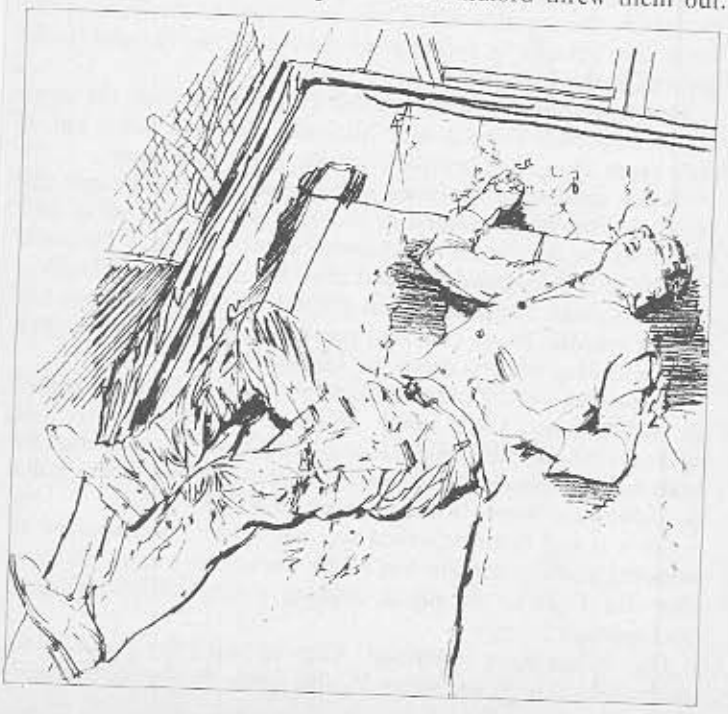
One night, a few days before the murder, Tommy Mullins had climbed in the window of a room where Michael and Rose were asleep. This invasion of privacy had incensed Michael and the night before the murder he tackled Mullins about the incident and there was a fight. . . .

It was such a violent affair that Mullins ended up in hospital. Francis had taken Mullins' side in the row and this had angered Michael McDonagh. But it seems that Michael was also angry with his brother Francis for another, more personal reason. He had recently spent a short time in prison for a minor offence. While 'inside' Michael had apparently been told that Rose McDonagh, his wife, had been 'messing around' with brother Francis. This does not have the same connotations among the travelling people as it might outside that fraternity. What it appears to have meant is that Rose had been seen going for a drink with Francis in the pubs around Moss Side. Apparently it

was all right for Michael, Patrick or Francis to drink themselves into a stupor, and even for Rose to join them and do the same. But it broke the unwritten gypsy code for Rose to go out for a drink with a man who was not her husband.

Both these arguments – Francis' 'disloyalty' over the fight and the business with Rose – were still dominating Michael's thoughts the following day. Patrick also seems to have been deeply upset over Francis' actions with his mother. Michael went round to the lodging house early on the evening of 28 February 1973 to try to persuade his brother Francis to come for a drink. He wanted to 'have it out' with him. Francis refused. According to Maureen he did not have enough money to go to the pub – and was, in any case, planning to visit Mullins in hospital.

Michael, Patrick and Rose left him alone in the rooming house and drove their old van a few hundred yards up the street to the nearest pub, the Whitworth Hotel. They went in about opening time, and drank steadily while discussing the whole affair. At one point the landlord says Patrick was so upset that he was weeping. Near closing time the landlord threw them out.



How drunk they were is debatable, but as Rose herself said, 'Oh yes, we got a right good drink'. She still professes that when they left their mood was 'not really drunk, just nice and happy'.

However that may be, they set off back up Moss Lane East to see Francis. A few minutes after the McDonaghs reached the rooming house Francis had received a fatal stab-wound in the heart and was crawling across an outhouse roof to his death.

The story of what happened in the chaos of those few minutes depends on which of three versions of events you choose to believe. The first version was that presented by the prosecution.

The first part of their story was not seriously disputed by anybody. To begin with, Michael, Patrick and Rose all went around to the back door of the house. They tried to push their way in, but the landlord, Mr Agbai, kept them out. He had already learnt in the short time that the McDonaghs had frequented his premises that they seemed to inspire trouble. No doubt he was also keen to protect the interests of his other tenants, two of whom were prostitutes.

Rose and Michael stayed to argue with him, while Patrick, apparently the angriest of the trio, ran round to the front of the house. On his way he found a screwdriver in the van and broke in through the front door.

The prosecution now alleged that Patrick rushed up the stairs to confront both Francis and Maureen who had come out of their room when they heard the scuffle at the back door.

Patrick stabbed at Maureen with the screwdriver he was still carrying. She was wounded in the arm and rushed off to lock herself in the landlord's workroom. Patrick slashed at his uncle Francis with the screwdriver and drew blood on his forehead.

By this stage, the prosecution alleged, Michael and Rose had broken into the house and had run up the stairs. They helped Patrick to drag Francis down the staircase.

It was there on the narrow stairs that the prosecution claimed the stabbing had taken place. Michael was supposed to have stabbed Francis with a small, thin-bladed knife. It penetrated his heart wall, causing profuse internal bleeding into the pericardial sac around the heart. It was the blow that killed him.

But if it had been delivered so early in the fight it raised an awkward problem for the rest of the prosecution story. Because after this Francis, already a 'walking corpse', displayed quite extraordinary energy.

The frantic fight continued. They all, said the prosecution, reached the foot of the stairs. By this time, Mr Agbai, the land-

lord had entered the fray once more. He succeeded in pushing the McDonaghs outside the front door. He said he heard Michael calling, 'Where's my knife?' No one else heard this comment. Francis was left, bleeding from the forehead, standing in the hallway. He knew he had to escape. He knew he could not risk going out the front door. He had also heard some sort of ruction at the back door. So he dashed into the nearest refuge – the front room on the ground floor.

Inside the room two people were getting ready to go to bed. Jasper Allen was an unemployed coloured man living with a Scottish girl called Mary Mullen. She was already lying in bed in her bra and slip when Francis burst in. Allen was stripped to the waist. Francis, with the blood still pouring from his head wound, rushed straight for the front window. There was an old television set in his way. It was propped up on a chair by the front window. In his headlong dash to escape, Francis picked it up and threw it onto the bed.

By this stage Jasper Allen had recovered from the initial shock and was now angry at the intrusion and this cavalier treatment of his property. As Francis turned back to the window, Allen tried to restrain him, grabbing both his arms from behind. He shouted to Mary Mullen to fetch help. She in turn shouted for the other coloured tenant in the back room, Isaac Panton. He too fought with Francis, who was still struggling to get out of the window.

The prosecution, in other words, was maintaining that, within a few seconds of being stabbed fatally in the heart, Francis had picked up a heavy television set and fought with two men. But they had not finished with their theory of the 'energetic corpse'. They now said that Francis was able to crawl back up the stairs. It was, after all, the only safe escape route left. At the top of the staircase he struggled into the bathroom, crawled out through the bathroom window, and down a drain pipe onto the thin plastic roof of an outhouse. Francis tried to crawl further. But he only got as far as the roof next door. There he rolled over onto his back and died.

The landlord, in the meantime, had been forced to phone for the police. The actions of Mr Agbai, the landlord, were those of a confused man. When the trouble started he was in his 'study' on the first floor of the house. He used the telephone there to make the first 999 call to the police. Then he became involved in the struggle with the McDonaghs, first at the back of the house and then at the foot of the stairs.

In court he was later to report two very damaging quotes. He

claimed as we have already said, that Michael had shouted 'Where's my knife?' at the foot of the stairs. But he also claimed that, as he was being dragged down the staircase, Francis said, 'I'm a killed man!' None of the other four substantive witnesses heard either of these remarks. The effect of both remarks was greatly to damage Michael's contention that he did not have a knife and had not been on the staircase with Francis at any time. Yet, after that moment, and with the McDonaghs still rampaging about outside his property, Mr Agbai, despite the private phone in his study, said he went down the road to a telephone kiosk to make the second call to the police. That call was never in fact made. He ran into the police somewhere on the way to the phone box. But he claims he was not in the house when the second part of the fight, between Francis, Allen and Panton took place. More oddly still, when Mr Agbai did talk to the police he does not appear to have told them that his tenant Francis said he was 'a killed man'. That omission must have been one of the reasons why the police treated the affair as no more than a punch-up. The police and Mr Agbai together looked around for Francis in the rooming house, but no one thought to look out of the bathroom window. The dead body was not found for twelve hours.

Michael McDonagh was quickly picked up by the police as he was wandering around, still obviously a bit drunk. They arrested him beside the bus stop just opposite the rooming house. They sent Rose away. She and her son, Patrick, went off in the van. Mr Agbai, Allen and Mullen all said that Michael had been involved in the fight. Francis was nowhere to be found. Isaac Panton and Sheila Eccleston, the prostitute he was living with in the ground floor back room had disappeared too. So the police charged Michael McDonagh with an assault and causing criminal damage. And that, they thought, was the end of the affair.

The following morning Michael McDonagh appeared in court to answer for the two minor offences. At the same time the police found the dead body and realised they were now dealing with the major offence of murder.

But they had no trouble finding Michael. He had left the Magistrates' Court and was on his way back to Francis' house when he was arrested. He seemed to have no idea that his brother was dead.

If Michael McDonagh knew that he had stabbed his brother and might have killed him, he would surely be unlikely to return to the rooming house in Moss Lane East. But return he did to face the police.

This time they charged him with murder.

Michael McDonagh's version of events did, at least, have the virtue of simplicity. 'No, sir,' he insisted, 'it wasn't me, sir.' Not only did he claim not to have assaulted Francis, he claimed that he had never crossed the threshold of the house that night. Patrick admitted that he had forced his way in with the screwdriver and more or less confessed to the subsequent assault on Francis and Maureen – but he strenuously denied the murder charge.

It was not possible in any of our three cases, or indeed the others we investigated, to visit the convicted men in prison. The Home Office will only allow prisoners to have visits from relatives or those whom they have known well outside the prison. Journalists are carefully excluded. However, a friend of the McDonaghs did manage to see them, partly on our behalf. We tactfully suggested that it was rather hard to believe Michael's continued protestations of innocence in regard to the house. Surely, he must have entered it at some time? Now, we suggested, almost nine years after the event, if he wanted to admit that he *had* been across that threshold, he should do so. But Michael was adamant. Patrick was the man who had gone in and he had hung back when Patrick went to the front door. After all the beer he wanted to relieve himself in the back garden of the house. When he finally reached the front door, he says, he did not want to go in because he did not like the coloured men on the ground floor. So, whether we believe it or not, Michael's story of total denial has remained absolutely constant for nearly nine years.

The McDonaghs' story differs significantly from the prosecution case in one other aspect. All three of the accused, Michael and Rose and Patrick said that they had seen a coloured man with a knife or a weapon of some sort on the ground floor of the house that night. Rose even alleged that she had seen him bundle Francis into the front room. 'A coloured man struck Francis and knocked him straight down,' she alleged.

On the face of it, this might seem like an obvious story, something concocted by the McDonaghs. What makes it more credible is that they had no time together to make it up. And each of the stories had minor differences. If the McDonaghs are innocent then they too, like the police, thought that all that had happened that night was yet another brawl. They did not know Francis had been stabbed. After the brawl, Rose and Patrick went off in their van and Michael was rapidly put into a cell. Yet,

quite independently, they mentioned the coloured man with the knife.

The police, not unnaturally, did not take them very seriously. As far as the police were concerned the McDonaghs had a built-in credibility problem. In fact the police went to quite elaborate lengths to prove that the story of the coloured man with the knife was not true. Every policeman who had attended the scene of the crime made a statement specifically denying that Rose McDonagh had told him she had seen a coloured man with a knife; they denied that they themselves had seen a coloured man with a knife, or with any instrument that could conceivably have been used for stabbing someone; they denied that anyone had said anything to them about any coloured man.

This is not to suggest that the police were protesting too much. They were, as we shall see, the victims of a conspiracy. But all that the statements of thirteen officers proved was that Rose may have been confused or misleading when she said she had told a police officer that night about the coloured man with the knife. Those police statements did not prove that no such person existed. As we were to find out, a coloured man *was* there that night, a man who we subsequently learnt usually carried and used a knife with a white handle.

But the McDonaghs' credibility problem would not go away. Their actions, as well as their words, counted against them.

On the night of the murder, Rose and Patrick had driven the van to Birmingham. Much was made of their 'escape'. But less was made of the fact that the following day they were coming back up the motorway to Manchester. They were spotted by the police and stopped as they travelled north on the M6. For people like the McDonaghs it would be natural enough to disappear for a few hours after a punch-up where the police had been called. It would be crazy to return if they had known that a man had been killed, and that they had been involved in his murder.

They returned to charges of murder against them all.

The McDonaghs came to trial at Manchester Crown Court in October 1973. At the trial there appears one small moment of compassion. *If* the McDonaghs had done the murder; *if* Michael had struck the fatal blow; *if* all three of them had been fighting on the stairs with Francis at the time, then they were all technically guilty of murder, or of being accomplices to murder with intent. At the start of the trial, legal submissions were made to exclude Rose from the indictment and to acquit her.

Mr Hytner, for the prisoner, Rose McDonagh, submitted that

there was no case to go to the jury and, alternatively, 'if there was a scintilla of a case' . . . in the circumstances it would be dangerous to leave the case of Rose McDonagh to the jury. The Judge ruled, after submissions by all the counsel involved, that Michael McDonagh must go before the jury charged with murder. Patrick must do so as well, though the jury should be instructed that alternative charges such as manslaughter were possible in Patrick's case. He further ruled that the evidence was insufficient for the prisoner Rose McDonagh to be left in charge of the jury.

So, when the jury returned to court, they were instructed by Mr Justice Kilner Brown to find Rose McDonagh not guilty of murder.

The main reason though for acquitting her seems simply to have been that somebody had to care for the McDonagh brood of kids, as and when Michael the father, and Patrick the eldest son, went inside for life. It is reassuring to be able to report that Rose, without a single one of the advantages of life, has at least managed to keep the family together.

'I felt terrible, I had nobody to go to,' she told us, 'I had nobody but meself. With all my children it's been very hard. They've no father to look after them, they went wild. In fact I have two of them in prison now again. I had a lot of trouble with them. So they've gone wild. They're not the same kids they used to be. It's been a very hard time for me.' But at least the charges against Rose McDonagh were dropped.

Michael and Patrick did not do so well out of the judicial process. Like Jock Russell, Michael and Patrick must have cut rather pathetic figures as they stood there in the dock, denying everything. Even the reports of their original interviews with the police sound most unconvincing. Michael was confronted by Detective Superintendent Hartley at Longsight Police Station on 2 March 1973. Hartley told him that he was making inquiries into a disturbance at the house in Moss Lane and told Michael McDonagh that his brother Francis James McDonagh had died there as a result of a stab wound to the chest.

Michael asserted that he would not hurt his brother and that he had gone to take him out for a drink.

Hartley asked whether the coloured landlord, Mr Agbai, had come out to see Michael in the back garden. Had he not said that Michael had no right to be kicking at the back door. Michael swore he had never touched the door. He said that he had never been in the house, he had never run through the house with

Rose, and he certainly had not pulled his brother Francis down the stairs. And all these denials were suffixed by a respectful 'sir'!

Michael was warming to his theme. Not only had he never been in the house. He had never in his life fought with his brother. On his honour, he had never fought with anybody in his life!

This last assertion certainly owes more to an excess of enthusiasm than a strict regard for the truth. Indeed it was just one of several points in the interview where Detective Superintendent Hartley found little difficulty in tying Michael McDonagh in knots.

Hartley remarked on the fact that Michael's hand was very bruised and swollen. That, said Michael, would be from the argument with Mullins a couple of nights beforehand. (This was the fight where brother Francis had taken the side of Tommy Mullins against his own flesh and blood, the fight that caused a lot of bad feeling.)

Hartley inquired whether McDonagh had hit Mullins. Yes, he had. Had Mullins been bleeding? Yes, he did bleed when McDonagh hit him. What then, had McDonagh hit him with? Just his hand, said Michael. Hartley observed, rather drily, that Mullins was currently in the Manchester Royal Infirmary with quite serious injuries. McDonagh suggested, more in hope than expectation, that perhaps Mullins could have sustained these quite serious injuries when he fell on the floor. McDonagh after all had only hit him with his hands.

Hartley reminded McDonagh that he had just said that he had never fought with anyone in his life. McDonagh admitted that on that occasion there had been a bit of an argument, sir.

The medical reports on all three McDonaghs, Michael, Rose and Patrick describe them as 'illiterate dullards'. In each case their mental age is assessed as eleven years. This is fertile territory for any prosecution lawyer. And that is not to impute any suggestion that either the lawyers involved or the police officers like Detective Superintendent Hartley did anything wrong or malicious. They had every reason to believe that the McDonaghs *were* the guilty parties. They behaved correctly in their pursuit of a guilty verdict. They could not be aware at the time that part of the truth was being deliberately concealed from them by a conspiracy.

The jury had no doubt about their verdict. The one odd area of evidence – how the dying man had been able to be so energetic had apparently been explained. Medical opinion

brought up at the trial held that Francis' heart wall would have tended to close around the wound, minimising the internal bleeding for a few minutes. Dr Alan Bernstein, a consultant physician suggested that it was possible for the wounded man to carry out 'the activities described for the length of time described'. This was particularly true, if the wound to the heart was small. And knowing that the wound was caused by a small, thin-bladed knife the jury was convinced. Michael and Patrick, they had decided, were a thoroughly bad lot. It was clear that on this occasion Patrick was at least guilty of using the screwdriver to inflict grievous bodily harm. The evidence of Mr Agbai, the landlord, was damning to Michael. It placed him right at the centre of the fight, apparently with a knife. And Michael, clearly, was a fighting man.

The judge's attitude towards Mr Agbai was also significant. He described him as one of the key witnesses: 'There has not been a breath of suggestion made against Mr Agbai,' he asserted, 'that he was an undesirable coloured gentleman . . . You may think you can rely on him.'

The jury found Michael and Patrick guilty of murder. They were both sentenced to life imprisonment. No recommendation was made about minimum terms of imprisonment.

The reinvestigation in this case began almost immediately. The courts were now satisfied – so much so that when Michael and Patrick applied for leave to appeal out of time, they were both refused. But other people, including the solicitors acting for the McDonaghs were unsure of the verdict. Their doubts ranged from the emotional to the legal and evidential. Father Eltyn Daly runs a Catholic mission for the travelling people and knows the McDonaghs well. He's the first to admit that when they have been drinking they can become a little rumbustious but he says: 'Very rarely do they pull a knife. They were fairly good at using the fist, if they have to, maybe the boot sometimes, but not a knife, that is extremely rare. And that night, with his own brother involved, it appeared all the time to be absolutely out of the question that he could have used a knife on the brother with whom we have evidence from Michael himself, his family and from outsiders, that he was on friendly terms with all the time.'

It does indeed appear that Michael, one of thirteen children from a gypsy family, did have particular affection for his brother Francis. It was also true that in all his numerous convictions for fighting and drunkenness, Michael had never been known to use a knife. But there was a stricter point of evidence here, too.

If Michael had a knife that night what had he done with it? He had, as we have seen, been picked up just opposite the scene of the crime shortly after the event. The police searched the house for a knife and the area around the house, to a distance of about half a mile. They found nothing. It is, of course, possible that he had done something very clever with the weapon. But the fact that he had been drinking all night in the Whitworth Hotel and probably consumed eight or nine pints of beer, and the fact that he was not self-collected enough to get away from the scene of the fight before the police arrived, rather militates against that theory.

But those who were unsure of the McDonaghs' guilt had something far more substantial to concentrate on. One of the people in the house that night had changed her story just before the trial. Mary Mullen was the girl living in the front room with Jasper Allen. She, you will remember, was the one who shouted for Isaac Panton to come and help in the struggle with Francis. In her original statement to the police on 1 March 1973 she had told much the same story as Panton, Allen, Eccleston and Mr Agbai. But by 5 April 1973 she had left Manchester and returned to her home town of Glasgow. Once removed from the influence of Allen and Panton, whom it subsequently transpires, may well have had something to hide, she did a most extraordinary thing. She went to the police and voluntarily made a further statement. It was an extraordinary act because she did not come from the sort of people who naturally view the police as allies, requiring truthful treatment. Rather the reverse – Mary had things to hide from them. Be that as it may, she decided that there was something so pressing on her conscience that she must tell the police. She said that she had heard from Sheila Eccleston that Isaac Panton had confessed to killing Francis. He had, it was now alleged, come back into Sheila's room after the fight with Francis and said something to the effect that he had just killed a man, or just stabbed a man. This tied in with her earlier statement that when all of them left the room, Francis had been lying on the floor. 'When I left the room, Francis was lying on the floor next to the sideboard. He was alive then as far as I know. But he seemed to me in a really bad state.'

The allegation about Panton was, of course, hearsay. It had not been said in the presence of the accused. If, though, Sheila Eccleston were to substantiate it in court it would be admissible evidence, since she had heard it directly in the presence of Panton. Sheila Eccleston denied the story in court.

Robert Lizar, a hard-working neighbourhood lawyer, helped to prepare a petition to the Home Secretary for the release of the McDonaghs. It rested heavily on the Mullen statement and some other small pieces of new evidence. Notably, another remark that just escaped being 'hearsay' – but nonetheless had no corroboration. A few months after the murder, Maureen, Francis' widow went into a club in Moss Side. She saw Isaac Panton standing at the stereo with a few of his coloured friends. She says that she heard him say: 'It was me that done her man.' Maureen was in a bad way at the time and now she is confined to a hostel for homeless women. Francis was probably her last chance for some sort of home life. But she was not regarded as a very credible witness to the event. The police were called, but seem to have taken little notice of the complaint.

Mr Peter Thomson of the Hulme Civil Rights Group worked to prepare the Home Office petition as well. He discovered that Mrs Agbai had found a long, thin knife in Panton's room. She said she had reported this to the police. No record of that incident could be found.

Thomson also made a recording with Jasper Allen, hoping to show that Panton had been involved in the fight that night. But it proved nothing.

George Morton, the Member of Parliament for Moss Side, Manchester, presented the petition to the Home Secretary. In July 1979, six years after the McDonaghs had first been jailed, he received this reply from Leon Brittan, MP, then a junior Minister at the Home Office:

'As you will appreciate, the Home Secretary can properly seek to interfere in the decisions of the court only where some significant new fact or consideration which casts doubt on the rightness of the conviction has come to light after the courts have dealt with the case. This would not appear to be the position here. Most of the matters raised by the solicitor acting for the McDonaghs were before the courts. The Greater Manchester Police have no record of any incident involving Mrs Agbai and Mr Panton to support the statement she made in the interview with Mr Peter Thomson recorded on 8 December 1978. As regards the statement made by Mr Jasper Allen during his interview with Mr Thomson, it seems clear he did not see Mr Panton in the house on the night in question. His reluctant admission that Mr Panton might have been in a position to commit the offence was drawn from him only after he had been told that Panton was under suspicion and is hardly of great significance.

'I have carefully considered this case in the light of your representations and the accompanying documents, but I am afraid that I can find no grounds which would justify the Home Secretary in taking any action.'

Those who believed in the McDonaghs' innocence were now charged with finding 'some significant new fact or consideration'. It was not to prove an impossible task.

It was not too difficult to discover where to start the reinvestigation of the McDonagh case. The area of most interest must be Mary Mullen, Sheila Eccleston and Isaac Panton.

We found Mary Mullen. She confirmed the story about Panton.

After months of effort we found Sheila Eccleston. She told us one new piece of information which was to prove vital to the case. She told us about a coloured friend of hers called Clara Esty. We had already been looking for Clara, although she seemed of minor importance. She had been mentioned in two of the original statements. It appeared that, after the disturbance in Moss Lane East, Sheila and Isaac Panton had gone to spend part of the night at Clara's house. But no statement from Clara herself had been given to the defence lawyers working for the McDonaghs. You can imagine our surprise when Sheila revealed that Clara had actually been *in* the house on the night of the murder. Here was a genuine new witness to events. She may have been interviewed by the police, indeed we discovered a few days later that she *had* been; but they obviously had not known that she was there that night.

Since then Sheila had lost touch with her completely. She had only the vaguest idea where Clara was now living. Once we confirmed the town, though, Clara was relatively easy to find.

We went to see her after lunch on a Monday. We did not know what to expect. What we had come to expect after several weeks exploring the detritus of Moss Side society was not edifying. Here was a contrast. We found a very attractive West Indian girl, pencil thin, well dressed, sincere. She was living with a pleasant, welcoming Jamaican called Winston in a well set up council flat. Clara and Winston had clearly moved a long way from the depressing surroundings of Moss Side.

We stated, as carefully as we could, why we had come. These are always fraught moments. On the one hand, you want to appear sincere and open. On the other hand you must say the absolute minimum so that you do not put any suggestions into the witness's head. We said it was about the events in the room-

ing house in Manchester all those years ago. What, we asked, could she remember? We were making some programmes for the BBC that were examining some old court cases.

At first Clara was naturally unsure of us. Many black people have a fear of authority, often with cause. We, as the BBC, can seem to represent a threat too. She made us a cup of tea and talked carefully around the subject.

After an hour or so we decided it was time to go. It seemed that Clara had gained a little more faith in us and Winston was urging her to 'tell them the truth, like you told it to me'. We gave them some breathing space. Back at the hotel we had a drink and waited. Barely an hour and a half later they 'phoned us. Would we like to come back and talk a bit more? Certainly.

It all came tumbling out. She had seen and heard Panton after he came back into Sheila's room that night after the fight with Francis:

'I saw Isaac,' she told us, 'come into Sheila's room, and he had blood over his coat and hands. I'm not quite sure of his words, but he was telling his lady that he's just killed someone outside. Then he just went to pieces, and so did she, you know, and she said, what can we do? And what are you going to do? And I sort of, well, just said – well go wash your hands, and take your bloody coat off, like, and you know, you can't go on the streets with a coat like that. He looks very frightened and he was shaking. He had blood on his coat, and his hands, and just a little on the face. Because I remember Sheila wiping that off with a wet something – handkerchief or whatever. I heard him telling Sheila that he just hurt someone, and he started to panic, Sheila started to panic, I was frightened . . .

'And he took his coat off, 'cos it's got blood on it, and he put something else on, and we went through the kitchen, Sheila's kitchen, out of the house round to my place.'

It was a new and devastating story, all the more so because the woman herself seemed to be telling the truth. At last we had corroboration of the Mary Mullen allegation.

We were all the more certain of Clara's story because we had heard it before, almost word for word from another witness. There are times, naturally, when seeking this kind of sensitive information, when you must make undertakings. The second witness, who backed up Clara's story in considerable detail, was still concerned about reprisals if a name was published or broadcast. So no name can be given. But this witness had told us the same tale, including one other detail. The knife the witness de-

scribed had a white handle. This tied in with a statement by Rose McDonagh which had been disbelieved. Again, there could be no suggestion of collaboration between Rose and our other witness. They were antagonists on the night of the murder. They had never met since.

After the crime all the people who knew, or suspected that Panton had confessed to the murder, conspired to say nothing about it. To begin with, they did not even admit that Panton had been in the house that night. When the police found out and challenged those statements, everybody said that they were protecting Panton, because he was afraid of being convicted for living off immoral earnings. It now seemed his worries were far greater than that.

Allen and Mullen, Eccleston, Esty and of course Panton himself, all distracted attention from Panton's part in the second fight that night. Mr Agbai, the landlord, for some reason or another, seems to have missed the second fight totally. At the height of the struggle with the McDonaghs, Mr Agbai decided to telephone the police again. He went off to the telephone box around the corner. This was why he said he had not seen anything of a second fight. Yet his evidence was crucial at the trial.

It is possible that Michael McDonagh, despite his continual denials, *was* actually fighting inside the house. It is possible that, when Agbai reports Michael saying, 'Where's my knife?', he was actually saying: 'Where's my wife', referring to Rose. It was, after all a Nigerian listening to a drunken Irishman!

When we started filming we tried on ten occasions to see Mr Agbai. On each occasion we were solidly rebuffed by the redoubtable Mrs Agbai. Mr Agbai, we were eventually told, was in Nigeria. He was an Ibo tribesman and returned to Nigeria from time to time. He seemed to have some sort of business in shoes and cloth. We hired an Ibo speaker to go and talk business with Mrs Agbai. He discovered that Mr Agbai was indeed in Nigeria for a period of months. We found out the address. But there was no time to go to Nigeria to talk to him and to this day Mr Agbai remains an unknown quantity in the McDonagh story.

Clara Esty's statement seemed to change everything. Not only did it seem to be the truth – why, after all, should she lie to us? She did not know what we were after. It would have been easier for her simply to repeat the non-committal story about Sheila and Isaac coming round to her house than to concoct an elaborate lie. But Clara's story matched the tale told by the other, unnamed witness. It also tied in with the allegation that Mary Mullen had

made in Glasgow, that Panton had confessed to the crime. It matched the story that Francis' wife Maureen had told. She had heard Panton say, 'It was me that done her man'.

And, it matched a theory that had been put to us very early in our investigation. We had approached a senior policeman who had helped to lead the murder inquiry and is now retired. We talked for about three hours about the events of that night in Moss Side and the subsequent conviction of the McDonaghs.

He was very keen to stress that the police had acted correctly throughout. We did not disagree. We stressed that the object of our programmes was to obtain a release or a pardon for the McDonaghs if they were innocent. It was no part of our intention to attack the police, particularly when they had been the victims of a conspiracy.

Thus reassured, the detective told us the most extraordinary tale. It took him the best part of three hours. But we will give you his last words first. 'Yes,' he concluded, 'I think that Isaac Panton got away with murder.'

During the inquiry he, too, had been worried by the absence of a murder weapon. How had Michael got rid of a knife, if he ever had one? The McDonaghs were clearly guilty of assault in one form or another and they had the motive and the opportunity. But probably no weapon. And then there was the attempt to cover up Panton's presence there that night. The detective knew that both Jasper Allen and Isaac Panton had been living off immoral earnings, but was that all they had to hide?

The senior detective's outline of what happened that night exactly coincides with what Clara Esty and the other witness were able to tell us quite independently.

In this new version of events it ceases to be relevant whether Michael went into the house or not. Because the fatal blow is struck during the second fight with Allen and Panton.

Francis rushes into the room where Allen and Mary Mullen are getting into bed. He throws the television on the bed, Allen fights with him, Mullen goes to get Isaac Panton from next door. What, asks the detective, is Panton confronted with, in all this chaos? He does not know Francis, the new tenant. He sees his friend Allen struggling with a frantic man, whose head is covered in blood. Both Allen and Panton were living off immoral earnings. Panton would naturally have assumed that Allen was fighting with the dissatisfied 'client' of a prostitute. He went to separate them. Perhaps trying to frighten Francis, or to wound him, he stabbed him with the thin-bladed knife with the white

handle, which we now know he habitually carried. By the time they all leave the front room, Francis, according to Mary Mullen, you will remember, is lying on the floor. She was not sure, but she thought he was still alive.

Allen and Mullen agree to say nothing about Panton being there that night. Panton, Eccleston and Esty escape to Esty's house. The McDonaghs remain the obvious suspects.

This theory also helps to explain the phenomenon of the energetic corpse. It is still hard to imagine Francis moving at all after the knife penetrated his heart. But it is more probable that he could have simply crawled up the stairs and out of the window, rather than the alternative theory that he could have lifted a big television set, thrown it onto a bed and then fought with two men in addition. The medical experts had said that activity was possible after this particular wound. The level of activity now being suggested is much more feasible if the wound had been delivered during the second fight.

The detective had his doubts that the case against the McDonaghs was perfect, but they only became really serious when he learned that Panton usually carried a knife – and that he had since used it on someone else.

Eighteen months after the murder, Panton was arrested for unlawful wounding. He was fined twenty-five pounds at Manchester Crown Court on 24 September 1974. Almost exactly a year later, he was given a two-year suspended sentence for living off immoral earnings. Three other charges were ordered to lay on the file; wounding with intent, theft and actual bodily harm. Panton now seemed to be operating in a consistently violent manner.

The McDonaghs, Michael and Patrick, have spent nearly nine years of their lives in prison for a crime they almost certainly did not commit. Panton is still a free man. At the time of writing, Michael and Patrick are both out on parole. But the fight on their behalf is being taken up again by Tom Sargant of Justice.

This time, Robert Lizar the solicitor, and George Morton the MP, with the help of Justice are petitioning the Home Secretary for a free pardon for both of them. It would be a romantic notion to believe that there will not be further fights and arrests in the future lives of Michael and Patrick. With a murder conviction hanging over them, they could be back inside for years after the first occasion when the drink starts talking in some pub or other. Even a minor offence would be a breach of parole and they would have to serve out the rest of their life sentences.

After the programme was transmitted, the Manchester police undertook to investigate the case once more.

For now, the final word on the McDonaghs might rest with Tom Sargant as he prepared the petition for a pardon:

'I think the new evidence is quite sensational, because you have a new witness (Clara Esty) who apparently made off at the time of the trial . . . saying quite clearly that Panton had confessed to her that he stabbed Francis. I've always been worried about the case, but there was nothing to be done about it, until this new evidence which you have brought to light.

'I'm now wholly convinced about the McDonaghs' innocence, without any doubt at all.'

'BUT THE PRISONS ARE FULL OF INNOCENT MEN'

By the end of the first few months of the *Rough Justice* inquiries we felt sure of two things.

Michael and Patrick McDonagh were innocent of murder.

Mervyn Jock Russell would have needed to be an acrobat and accomplished logistician if he had contrived to murder Jane Bigwood. He too, we felt sure, was unjustly convicted. What had we learned about this new area of research? Who were the men whose stories of injustice seemed convincing enough to silence the cynic and convince the realist. The romantic, we had assumed, was on our side already.

The men involved were not middle class, salaried employees living with wives and sets of two children in Surrey or Cheshire. They were mostly petty villains, they were unemployed, probably unemployable. And they were often in trouble with the police over punch-ups, drunkenness or petty theft. You may recall that before the indictment for murder Jock Russell's most colourful crime had been 'begging in a public place'. Many of the men and women we met took it for granted that they would regularly be in trouble with the police and talked quite freely to us about their previous 'form'. Some did so with a distinct feeling of pride.

We got information from one man who was out on parole. He had been serving a sentence for attempted murder. He had joined the list of people who had started to treat us as a citizen's advice bureau. He told us that the local police wanted him to 'grass' on someone else he knew locally. He was frightened that if he did not co-operate with the police they would 'fit him up' for a crime, probably a theft. What horrified him about this prospect was not the idea of being framed by the police, but the thought that he would be inside for theft. As he told us: 'I don't want to go inside for theft . . . my entire record is violence.' After all, he seemed to be saying, a man's got his pride. Of course, as anyone familiar with the prison hierarchy would know, there is also a practical consideration in his response. A thief might not

be left alone inside; but somebody with a string of convictions for grievous bodily harm is unlikely to be interfered with.

This was the world in which we now found ourselves. If you had 'form' for almost any criminal activity, you could be in serious trouble with the police when you were unlucky or unwise enough to be nearby when a crime took place.

The police can check back on your previous convictions in seconds. It is all stored on a central computer at Hendon, called the Police National Computer, the PNC. There is nothing inherently sinister about this. It is an essential aid to good intelligence and police work. But because the system works in the vast majority of cases and criminals do commit the same crimes again and again, it does not mean that a place on the PNC, the 'roll of dishonour', automatically qualifies you to be the villain in any given set of circumstances.

Once the Hendon computer has told its incriminating tale and the police have arrested someone for questioning the tendency to lie is often the first natural response. The men whose cases we were investigating were often heavy drinkers. One day followed on another, unemployed day. An alcoholic haze settled over the weeks as long as there was enough money to buy some cheap drink. The police were at best an irritant to them, at worst a threat of imprisonment. So they lied. They had little education or wit, so they lied badly and unconvincingly and therefore they looked more guilty.

The more the case against them progressed the worse things became. Because of the seedy, distrustful background from which they had come, their friends would often lie openly to keep themselves out of trouble. Medical reports sometimes described them as 'anti-social', 'aggressive', or 'psychopathic'. As far as the police were concerned the pieces fitted together in a way they could easily recognise.

By this stage the court system is quite likely to compound the error. If you start out as an innocent, but scruffy-looking type a jury may take against you. You are very probably suffering the withdrawal symptoms of 'drying out' after weeks on remand without alcohol. Your frustration at being unable to articulate your defence may be interpreted as further evidence of 'anti-social' behaviour. You have been living rough, you do not have a job – you may very soon not have your liberty either.

At the end of the trial, after the guilty verdict and before the sentence, the judge will ask about your other convictions. The list of petty theft, drunken brawls and motoring offences is read

out. Any lingering doubts in the minds of the jury, or even the judge, will surely be extinguished.

We had not set out to make *Rough Justice* imagining that we would be defending the fallen angels, but rather those caught, for one reason or another at the seamy end of life. They might have been stealing, fighting, cheating or boozing, but perhaps they were innocent of the far more serious crime with which they had been charged.

And, significantly, if you looked at the previous 'form' of the celebrated cases of injustice – Hanratty, the Post Office murder in Luton and so on, you were hardly describing innocents abroad. We went ahead in the belief that the British public would perceive that justice must be indivisible. If you are innocent, then you deserve to be freed, whether you are an upstanding citizen or a one-time crook. And if the system once allows itself to say, 'but he was a bad lot anyway, he deserved to go to jail, whether innocent or guilty,' then the system itself and those who administer it are diminished by the event.

In the end it seemed that the public understood this only too well.

On a more practical level we now knew what the main barrier to reinvestigation actually was. First find your witness. The events in the Russell case had happened in 1976; the murder of Francis McDonagh in 1973. We were trying to trace people in 1981 and 1982.

With a witness like David Plews, the man who arrived at Jane Bigwood's flat while the murderer was still inside, it was not so difficult a task. He had been a student at Goldsmith's College from where he had probably graduated. He probably had a job and he was traceable through the college.

Again, in the Russell case, a parachute instructor from the RAF had given evidence about the dangers of that jump from Jane Bigwood's third storey window. We had his name, rank and number. It was quite simple to contact him. The fact that in the end we were not able to interview him is a separate matter explored, with some bemusement, later on. But more often than not we were trying to trace people who were living a lonely, unemployed, undisciplined life. People whose only contact with authority was on a Thursday afternoon when they drew their dole money, their Giro cheque.

The police, we both knew from various periods of filming with them, worked among a very low level of society. Their job was to police the pimps and the prostitutes, the bent landlords and the

petty villains. This was the area that *Rough Justice* now took us into. But, unlike the police, we did not have any legal right of entry into this world, nor did we have the elaborate network of information that the police alone can use.

To begin with, we had expected to find that the solicitors who had handled the defendants' cases would be the natural source of new evidence. But, able as many of them were, they were not investigators. That really is not their job. They rarely employed private detectives. The rates were too high particularly for clients who were being defended on legal aid. Solicitors were used to accepting the lines of attack laid down by the police investigation and articulated by the prosecution counsel, and then defending it or diminishing it as best they could in court. We, on the other hand, with a much freer brief, could start with the facts of the case once more and work upwards to a conclusion rather as the police had done in the first place. More importantly we had the resources and the time to devote to one particular case. We did not have a deskful of legal papers bound in red ribbon waiting for us back at the office.

Furthermore, the kind of people we were looking for might quite reasonably see us as just another unwelcome manifestation of authority. They were mostly people who wanted no contact with any form of authority.

In fact, that did not prove to be the case. We found that we could often persuade the most suspicious people that we did not represent authority with a capital 'A'. It was not our job to interest ourselves in their problems with the local police, the Inland Revenue or the VAT man. We were able to insist, in all honesty, that we were interested in their story because we thought it might be a small part of a jigsaw, which, when complete might help to get an innocent man out of prison. And it worked.

We have already described how Clara Esty was naturally suspicious of us to begin with. We made no deals with her. We offered no inducements. We merely asked if she would tell us the truth, after all these years. When she had time to weigh us up, she decided to trust us. We believe she told us the truth.

Getting to that position, obtaining that interview was something else again.

It took many months to trace Sheila Eccleston, who gave us some idea where Clara Esty might be. She provided nothing more than the name of a large town in the North of England and a particular area where most of the West Indians like Clara would normally live.

We went there to look for a West Indian girl in her twenties or early thirties who had once been called Clara Esty. We did the rounds of the off-licences that sold Red Stripe Jamaican beer. Did anyone know the name? We asked in the Indian grocery shops – the places that have replaced the old corner shop as centres of information. We plugged into the local paper to find out what their information gathering ability was like. They could not help us, try as they might.

At lunch time on the first day we went to the 'black pub' – the local that was almost exclusively patronised by the West Indian community.

Anxious not to appear like curious policemen, we strode in, conscious of our white faces. We went straight to the bar, said 'hello' to the landlord and showed him our BBC identity cards. He seemed more concerned that we might be the men from the brewery and warned us off his best bitter. We had a whisky instead. We turned back to the regulars and realised our mistake: all they had seen was two strange white men walk in, stride up to the landlord and show him their cards. The automatic assumption was that we had shown him our warrant cards and were indeed policemen. It took a degree of explanation and not a little embarrassment on our part before we could convince them that we were just journalists.

When we had explained our mission, they all tried to help. We went back that evening and tried the bitter. The landlord was right, it *was* terrible. Eventually a woman took us aside. How much was the information about Clara's whereabouts actually worth? We haggled with her over a matter of a few pounds and left the pub on a partial promise of more information the following day. By that stage a long, boring night had been worth it. Someone *had* heard of Clara Esty. She was presumably still living in the general vicinity.

Which brought us to the electoral office early the following day. We knew that our witness might not even be called Esty any longer, but the promise at the pub had been a little shady. It was better to keep trying ourselves. We spent some time reading through the reams of electoral rolls in local post offices and town halls. It was a strange name, if only she had not changed it over the years . . . And, indeed, she had not. Within a matter of hours we had the address and we were knocking on the door, wondering what we would find.

Clara Esty turned out to be a prime example of people's willingness to tell the truth. Many years ago a film director was

moving on after five years on the *Nationwide* programme. He was asked what his abiding impression had been travelling the country meeting every kind of human being the place had to offer, from prince to pauper. An elaborate answer, full of cynical insight was awaited. 'I suppose the main feeling I have,' he said, 'is how very nice most people are.'

It is not a great philosophical theory, but it is regularly seen to be true. Clara Esty was essentially nice. She had not been mixing at the highest level of society in Moss Side, Manchester. But she had pulled herself out of that. Her friend, Winston, seemed to have a real regard for her and a real regard for the truth. It was not good, in the end, to have something on your conscience.

There was one advantage too, we now knew, about sifting through these cases so many years after the event. In the McDonagh case in particular, where almost a decade had passed, people had been removed from the constraints that dominated them at the time of the original crime. This was certainly true of Clara Esty and of Sheila Eccleston. If Sheila Eccleston had still been in touch with some of the characters in that rooming house in Moss Side, she would surely not have talked to us.

The intervening years had one further advantage. Sometimes they threw up strange coincidences that tended to strengthen our belief in the convicted man's innocence.

For instance, one of our witnesses in the McDonagh case casually mentioned that the knife Isaac Panton had carried in his hand on the night of the murder had a white handle. We held it at the back of our minds as one more tiny piece of apparently inconsequential evidence. Months afterwards, we found a deposition which Rose McDonagh had made to her husband's solicitor after the trial. She said that the knife she had seen in the black man's hand had a white handle. There was no way that she could have seen or talked to the other witness. The two statements made eight years apart were quite independent and both said that Panton carried a knife with a white handle on the night of the murder. We believed them. It was too much of a coincidence for it to be lies.

It seemed to us too after our first attempts at reinvestigation that the lies that may have been perpetrated at the time faded away. The truth stayed on. And if there was a feeling that injustice had happened, then that truth rankled.

The senior policeman who talked so freely to us had not been a party to the lies. Rather he had been a victim of them. He had

proceeded with his inquiry in all good faith. He had expressed his doubts. He had seen much of the contrary evidence, the evidence that tended to point away from the McDonaghs, presented in court and discussed, quite properly, in the judge's summing up. Yet the jury had found the McDonaghs guilty. But it still rankled with him. And when approached out of the blue nine years later, he told us the truth as he saw it. We found the evidence that supported his theory. He was astonished when he read a transcript of the interview with Clara Esty.

We now knew too that the combination of the expertise of Justice and the resources of the BBC was potentially effective. We were not of course spending any more money than is normal in the making of three half-hour television documentaries. But the research that we were doing for those programmes was turning up witnesses who would otherwise almost certainly not have been found. And when we found them we were face to face, not at the end of an official letter or telephone call. We were able to 'go on the road' on behalf of people like Jock Russell and Michael McDonagh, in a way that solicitors, social workers, friends, relatives and even Justice itself could not contemplate. That strengthened our belief that television journalism had a legitimate role to play in the investigation of alleged injustice.

And now we were beginning to see the essential ingredients of a convincing case of possible injustice. Those ingredients were a mixture of original doubts which surfaced at the trial; details that were unlikely, implausible or just plain impossible; and new evidence, however slim.

'THE BOY WHO PROTESTED TOO MUCH'

It was remarkably, indeed disturbingly, easy to find three cases that were to appear in April 1982 on *Rough Justice:* Russell, McDonagh and John Walters.

We had discovered that it was important for us to believe in the person's innocence. Ultimately our job was to be as objective about the evidence as we could be. It was also incumbent upon us to present the main planks of the prosecution case. But in the end, with Russell and with the McDonaghs, we genuinely believed them to be innocent of the murders with which they were charged. We were not arguing about fine points of law. There was little doubt, for instance, in the case of George Naylor whom we will discuss at length later, that he should not have been convicted on the evidence presented at his trial. But it was not possible to be entirely sure of his innocence. *Rough Justice* was meant to convince as many people as possible that the men it highlighted were innocent. If we, ourselves, were not convinced, then we would never convince anyone else. And so we come to Andrew George, the boy who protested too much . . .

Today, Andrew George is still locked up in Long Lartin Prison in the Vale of Evesham. He is serving a life sentence for murder. George was convicted in 1977 of robbing an old woman, tying her up and causing her to suffocate. He claims that he was never there that night, that he took no part in the robbery, nor the murder.

There was no forensic evidence against him. He produced a lengthy alibi that covered fully five days. Yet he was convicted alongside the man tried as his accomplice, Leroy Gilpin.

About a year ago we were shown a copy of a confession made to another convict in jail. It was allegedly a record of a conversation with Gilpin in which he confessed that he had framed Andrew George to make things easier for himself. He admitted that George had not even been in the house on the night of the murder.

It seemed like promising territory. And it was made more interesting by the fact that the man who had brought the confession out of Wormwood Scrubs, where he had shared a period of imprisonment with Gilpin, was an extraordinary West Indian called Tracey Hercules. He himself was a Justice case. He had been released early as a result of the efforts of Tom Sargant.

Hercules was convicted of malicious wounding with a cutlass in October 1978. He claimed that he had been attacked by a group of National Front supporters. He said that another coloured man called Bill had come to help him and it was he who wielded the cutlass. Six eyewitnesses gave evidence which suggested that Bill may well have been the culprit. There were no identification parades held, but Hercules was spontaneously identified as the assailant as he stood in the dock. Hercules got life.

At his appeal the Court would not release him, but they did reduce the life sentence to seven years on the grounds that the conditions laid down by the Lord Chief Justice for the passing of a life sentence in cases other than murder had not been met. We will let Tom Sargant of Justice tell the remainder of Hercules' bizarre tale:

'I subsequently arranged,' writes Tom, 'for a private enquiry to be made into the identity of Bill, his description and where he could be found. I then handed over all the information obtained to the officer who was investigating a complaint which Hercules had lodged. To my astonishment I later learned that Hercules was being released on parole in August 1981 after having served less than half his reduced sentence.

'We have not been informed of the reasons and Hercules will never know if he was cleared by the investigation.'

We shall leave aside for the moment the extraordinary fact expressed in that last sentence by Tom Sargant. It was the information that Hercules was to bring out of prison which was to prove important.

Hercules called round to see Tom Sargant in his office in Chancery Lane to thank Tom for his ultimately successful efforts on his behalf. He brought with him a copy of the confession that he said he had heard from Gilpin. The Andrew George case was also on the Justice files, and Tom was concerned about it because of the elaborate confession that George had made to the police. Andrew George was educationally subnormal, with an IQ variously assessed at 52 or 81. The crime of which he stood convicted was a monstrous one.

Mrs Jessica Morelli was a frail old woman of eighty-three. She lived in a terraced house in a run-down part of Dalston, beside Hackney Hospital. Today her house in Durrington Road still stands, but the top half of the street has been demolished to make way for a new housing estate.

Like many old people she had lived through the changing face of London. A group of young blacks had moved in next door to her for a while. She got on fairly well with them. The only complaint seems to have been that they played their stereo at full volume from time to time. One of the black boys, Leroy Gilpin, used to give her food, the odd bag of potatoes. Mrs Morelli was not a forgotten soul – her daughter and her grand-daughter used to visit her every week. In the last fortnight in May 1977 her daughter was away on holiday. Her grand-daughter had arranged to visit her on the 25 May to see if she was all right.

She was not all right. She was dead. In the early hours of 20 May 1977 Mrs Morelli was woken up by the sound of something falling over in another room.

She got up and went to investigate the noise. When she walked into the gloomy hall, she must have just had time to realise that there were burglars in the house before she was caught by them, gagged and trussed up. It was a cruel way to treat anyone, let alone a feeble woman of eighty-three. They pushed an old sock into her mouth and tied a rope around her head to keep the gag in place. Then they trussed her, like a chicken, with her hands tied behind her back and secured to her legs, which they had bent back behind her.

They left, taking some rings and jewellery and the old lady's savings, some one hundred and fifty pounds.

She was left in that painful, hopeless predicament. She choked on the gag. At some point she died from a combination of a heart attack and asphyxiation.

Throughout we have talked about 'they' on the assumption that there was more than one burglar. In fact all that can be proved, as opposed to surmised, is that there was just one attacker. And that attacker was Leroy Gilpin. When the police finally picked him up they checked his palm print against a trace they had found in the old lady's house. It matched. Gilpin, as we shall learn later, was subsequently prepared to plead guilty to manslaughter. There was no real argument. He had been there. He was at least partly responsible for the old woman's death.

The police investigation, in this case, was a fast and apparently efficient exercise.

Within six days of the discovery of the body of Mrs Morelli they had arrested Leroy Gilpin. For a time, as we have heard, he had lived next door to the old lady. The local rumour was that she had a lot of money stashed away. Within a few days of the murder Gilpin was said to be spending freely. He had bought a new suit, new shirt and new shoes. The police finally approached his girlfriend, whom we shall call, Gillian and found one of Mrs Morelli's rings on her. The rest they found on Gilpin himself. The case seemed cut and dried.

When the police interviewed Gilpin on 1 June 1977 at Dalston Police Station, he began in the time-honoured manner to deny everything.

He admitted that he had lived next door to Mrs Morelli but he said he had never been inside. He agreed that he knew the old woman and that he used to give her things, like spuds. He told the police that he used to get along very well with the old woman.

Detective Chief Superintendent Williams pointed out to Gilpin that since the body had been found on the previous Wednesday he had had thirty men working on the case every day. The police, he maintained, had not just come to see Gilpin for nothing. Gilpin blurted out three times that he had not done anything, then he began to cry.

Williams gently reminded him that the police knew a great deal about what had gone on that night. He alleged that Gilpin had bound and gagged the old woman. Gilpin denied it. Williams told one of his junior officers to show Gilpin some cord binding. He alleged that Gilpin had used it to tie up Mrs Morelli. Gilpin denied it.

He was shown some dressing gown cord. He denied that he had tied her hands with it.

He was shown some bloodstained strapping. Williams said that he had tied it round the old lady's mouth. Gilpin said he did not.

Williams showed him a bloodstained sock and told him that it had been stuffed down her throat. Four times he replied that he had not done it.

Williams asked if he had an accomplice. Gilpin, clearly confused now, said he did not know. Williams told his officer to show Gilpin a gold buckle ring. He asked Gilpin where he had got it. Gilpin immediately said Andrew, Andrew George. He claimed he had bought it from him during the previous week.

He went on to tell the police that he had bought the rings from Andrew George at a party. This was supposed to be on the

Saturday night when Gilpin had gone to a party in Cecilia Road, Dalston with his then girlfriend, Gillian.

The police began to press Gilpin for a written statement. He said he did not want to make one. He said he had murdered nobody. Why should it be him, he wanted to know. The police could cut out his heart and look at it. God in Heaven would say that he did not do it.

Then he began to sob. Williams asked him who *did* do it. Gilpin suggested that Williams should be asking 'Mr Andy' that question.

Well, the police did ask Mr Andy several questions and they got some startling results.

To begin with they were simply interested in the story about the rings and the party. Andrew George confirmed that he had handled the rings at the party, but said that Gilpin had been trying to sell them to him, not the other way around. He said that a friend of his, Raymond Cabey, would be able to confirm that the rings had been Gilpin's property and that he was trying to 'offload' them at the party.

At that stage Andrew George was simply being treated as a straightforward witness. But Gilpin had also made some other damaging statements about George. He had alleged that he had been involved in housebreaking throughout the area, and carried a gun. The police interviewed George twice more.

George, you will recall, was educationally sub-normal and his West Indian English was apparently rather difficult to understand.

In the course of those two interviews Andrew George, a nineteen-year-old ESN boy was to confess to something like a hundred and forty crimes. He confessed to numerous muggings. Yes, he told the police, there must have been at least twenty. He confessed to 'dips', pickpocketing offences. About forty? asked the police. Yes, about forty. And he confessed to housebreaking and a host of minor offences. He even admitted that he used to threaten his schoolfriends with violence unless they gave him their pocket-money.

George had given his original witness statement about the rings on 1 June 1977. On the afternoon of the 2 June, George was taken in a police car to point out one of the various houses he had broken into.

At 8.21 p.m. that evening Detective Sergeant Treharne saw George in the charge room of Hackney Police Station. He reminded George of his caution, and told him that he was going

to be charged with a burglary at 112, Rectory Road, E.8. This was the house that he had pointed out to the police. Treharne then asked him if he could remember what property he had stolen from the premises.

There was a pause and George began to shake violently. He put his head into his hands and began to rock backwards and forwards while still crying. Police Constable Taylor comforted him and asked him what was the matter. George asked him to cuddle him. P.C. Taylor put an arm around his shoulder and told him to calm down and just tell him what was the matter. 'Oh, Jesus, Jesus,' said George, 'I didn't mean for her to die.' He said he had only gone along with Prince (Gilpin) to get some money. Nothing would have happened if she had not woken up after they had broken into the house.

Treharne asked George if he could tell them exactly what he had done.

George said they had broken in and the old lady had woken up and seen them. She was making a lot of noise. Prince hit her and took things from her. They tied her up. He said he was scared and that he did not want to hurt anybody. He ran down to open the front door. He was really frightened. He just wanted to run away.

Treharne asked whether George would make a written statement. George was still shocked. 'Oh, Jesus, Jesus, he went on, what will me Dad and Gran say? (Mr Eustachius George and Mrs Alcindor.) Me Gran say that Gilpin bad man.' It was Gilpin he insisted that had made him do these bad things. He promised to tell the truth now. 'It had', he said, 'Made him sick to hide such a bad thing.'

A few minutes later George was escorted to the CID interview room, where he dictated a written statement, commencing at 8.53 p.m. and ending at 11.10 p.m. It was a very full confession, packed with details of the crime that night, although George's Defence Counsel was to note that there were no new details in the confession. Everything George said, the police already knew. George's lawyers also thought they could spot some 'classic verbals' in George's confession. At one point in the statement George was meant to have said that both he and Gilpin left the old lady trussed up in the house, knowing that she would probably die.

The effect of this was quite clearly to make any plea of manslaughter less easy to sustain. It was a simple confession that both George and Gilpin were aware that their actions could lead

to the old lady's death. In Gilpin's case it would have been surprising, since he was of normal intelligence, if he had not realised that trussing up an eighty-three-year-old woman, binding her and gagging her, would almost inevitably lead to her death. So limited was Andrew George's intelligence though that he might very well not have realised the full importance of what was going on. *If* he was there.

Meanwhile Detective Chief Inspector Terence Grant had taken over the interrogation of Gilpin.

Grant began by reminding Gilpin that he had said he never went into Mrs Morelli's house. He said the police had evidence that Gilpin had been inside the house. He reminded him that he had told the police that he had bought the rings and the clock, another of the items stolen from Mrs Morelli, from Andrew George. Now, Andrew George was saying that it was entirely the other way around, and that Gilpin had been trying to *sell* the rings at the party. Lots of people, Grant suggested, could now prove that Gilpin was lying.

Gilpin asked if he could have a cigarette. He was duly given one. He asked for water because he was dry. A cup of water was obtained for him. He took a drink and then confessed in terms every bit as graphic as those of Andrew George.

He had put something under her head to make her more comfortable. She saw him. So he put something else around her eyes and tied her hands, but she kept walking about. Eventually he picked her up and took her into another room.

Detective Chief Superintendent Williams then asked if Gilpin wanted to make a statement. He nodded.

These exchanges and confessions are central to the case against Andrew George. There is one further conversation between Gilpin and the police which deserves to be reported.

It happened a few days later on 10 June at Old Street Magistrates' Court. Both Gilpin and George had, by this time, been charged with murder. George had replied when charged that he was innocent. He had already withdrawn his 'confession' and claimed that it had been unfairly extracted from him.

The police had a matter to clear up with Gilpin. Detective Inspector Grant cautioned him and said that he had come to see him again because in his statement under caution he had said that he had been alone on the night of the break-in and the murder. He then told Gilpin that he had charged Andrew George with being concerned with him in the murder. He added that it was proper for him to give Gilpin the opportunity, under caution, to comment on this. Gilpin made no reply.

Grant went on to question Gilpin about a knife that he was alleged to have used to break into Mrs Morelli's house and details of the jewellery he was alleged to have stolen. The exchange must have taken about half-a-minute. Then Gilpin suddenly asked, as if something was just dawning on him, whether Grant would repeat the first question. Grant did so and Gilpin then said that Mr George was the person who broke into the place. Thank you very much, he went on, I told you that in the first place.

A lot can be read into that exchange, although at the moment it is mere conjecture. Was Gilpin thinking quickly in order to protect Andrew or to sell him down the river? Was he thinking that if there was a co-defendant then he might be able to load the blame onto him? Conjecture it may be, but Gilpin's subsequent actions at the trial leave room for only one conclusion. He sensed a scapegoat and he jumped at the opportunity it might provide.

Mrs Morelli was cruelly dead. Gilpin had confessed. George had confessed to the murder and to more than a hundred other minor crimes as well. The trial looked like being a formality and it was.

The jury can have been in little doubt that Gilpin was there on the night of the murder. You will recall that his palm print was found; his girlfriend and he had various rings in their possession; he had been spending lots of money; he had confessed.

In George's case the police had no direct evidence of his involvement in the theft and murder at Mrs Morelli's. But they *did* have his lengthy confession, and they seemed confident that Gilpin would name him as an accomplice. However George had withdrawn his confession almost immediately after it was made. Further he had now produced an alibi covering the period in question. Neither the police nor the jury though seem to have been impressed by this alibi. It was a hard alibi to sustain.

Because the old lady had not been found for so long and the time of death could not be accurately established, the alibi had to extend over five days. Andrew George managed to string together enough friends and relations to achieve this considerable cover. Yet the critical moment, the night of the murder, is all that really mattered. His father, Mr Eustachius George and his grandmother, Mrs Alcindor, said that they had been in a pub with him for most of the evening. They were backed up by a strange old West Indian character called 'Duke' Wellington. He appears to have been a sort of uncle figure. He too said that Andrew had been there all evening apart from a brief excursion to another pub with a friend. After the pub closed they all went back to Mrs Alcindor's flat where Andrew went to bed. The

doors were locked and Andrew did not have a key. Despite the fact that the alibi depended largely on the testimony of close relatives it did seem fairly convincing. Later, in our reinvestigation of the case, we were to reconstruct it to the best of our ability. At the trial though it seems to have gone for nothing.

What the jury must have made of Andrew George can only be imagined. It was decided he should not be called to give evidence. But, judging by the pictures of him in which his lower jaw is seen to sag open, the jury must have realised that he was of limited intelligence. Gilpin must have seemed the likely leader if indeed they had burgled Mrs Morelli's together.

Before the trial proper, the prosecution made an offer. They were, apparently, prepared to accept pleas of manslaughter from both defendants. But only from *both* of them. Gilpin was, not unnaturally, predisposed to accept this. It was, after all, the difference between a life sentence and a few years' imprisonment.

Andrew George's father, Mr Eustachius George, went to see his son in prison. Had he been there that night, he wanted to know? Andrew said he had not. Then the only plea could be 'Not Guilty' to murder. Andrew duly pleaded not guilty and Gilpin lost his opportunity to plead to the lesser charge. They were both tried for murder. What effect that little drama might have had on Gilpin's state of mind can only be guessed at, although his action at the end of the trial may give a clear indication of the vindictiveness he may have felt towards Andrew George.

Gilpin, at the last moment, asked to make a statement from the dock. It was devastating. It sank Andrew George. This is what Gilpin told the Court:

'On Thursday, 19 May 1977, I was at a pub in Kingsland High Street and Andy – who I now know to be Andrew George – came to that pub some time after about 11.15 p.m. I was playing pool in the pub. When he saw me he said that he had nowhere to stay and we got talking and I said actually we were both in the same boat. He wanted to go to my house. I explained to him I had lost the house and I no longer lived there and we kept on walking from the pub and he would not believe I lost the house. He thought maybe I didn't want to put him up.

'However, I had been drinking that night at the pub, and how the actual events came about for what happened after is rather confusing. But I recall that we – that is Andy and myself – arrived in the road and he saw my house which was 95 Durrington Road had been zinced up, but the window of the room above

the sitting room, the room in the upstairs which I gather is the first floor, the window was open and a pane of glass of that window was broken also. Andy said to me that he could get in and he was explaining that he was in some form of cadet of some sort and he said to me, 'Have you got your knife?' I had the knife which was in my attaché case which has been called in reference in this case and he asked me for it. I gave him the knife. He said that when he gets in he is going to come down and let me in. He took something from his pocket, which I gather later on to be socks from the police, which he put over his hands. He climbed up on to the sill of the window on the outside and there is something that runs across the window and the front door and he climbed up from that position and entered into my ex-bedroom in the house where I used to live.

'Some time later, about twenty to twenty-five minutes later, the door was unlocked, which is the front door of No 97 Durrington Road. Andy unlocked that door and he came out and he said to me it was easy. He gave that knife to me: it is the knife shown in this case. I took the knife and put it in my pocket, my inside overcoat pocket. He said to me to come in. I went into the house. He said he had looked around on the downstairs of that house and he led the way upstairs. There was a door at the top of the stairs. The room is almost similar to that of my own house. There was a door at the top of the house which he unlocked and we went inside. There was nothing inside that room which I can describe other than a table which was over by a window. I was the first one out of that room. I went up the other flight of stairs and there was a door in front of me which led to the front room facing the road, and there was nothing inside that room: that room was empty.

'Andy, he went out of the room first because he was behind me then and he went to a room. It is on the right-hand side of the building when you go down the passageway, and he unlocked the door and went in. No light was turned on inside the house. He was searching around which I get to discover later on from the police to be the dressing table or the chest of drawers. Something was knocked over and someone called out. I cannot be sure of what was said when the old lady called out and I bolted for the door and Andy went over and he said – went over to the bed and said – 'Don't let her see you. She knows you.' Anyway, he said to me that I should get something to tie this woman with and I went away from the door and went out into the passage. I looked around and I couldn't see anything. However, I noticed that

there was something curved around the bannister of that landing and I saw it was a bit of rope. I unwind this rope and take a portion of this rope which I threw to Andy. When I went to that room on the occasion when I went to get the rope and went back to the room, the woman's hands was already tied as far as I could see; and after I throw the rope to Andy, Andy tied the woman and asked me to open the door. I opened the door and he pulled the woman from the room and he went to a room which is the first room that I went to with him in the building and he left her there. He came back up and he went into the bedroom.

'I went down into the room where he had taken the woman. At this stage I don't know what to do so I stood up facing the table, facing the window that overlooks the garden – you know, the concrete path on the other side of the house – and I leaned up on the window-sill. I was trying to clear my mind and trying to think. When I looked down at the table I saw something: I don't know whether it was a blanket or curtains or what at the time when I took these and I placed it underneath the woman's head. I took out my knife and I cut the rope. By that time Andy came down to the room where I was with the woman and we had an argument. I turned round to him and I says 'Look, let her go.' He says 'All right.' I took up my attaché case and I went from the house.

'I walked from the building and went out on to the road, turned left into Durrington Road, went up on to Glenham Road which is across Ashenden Road. I turned there and went up to the one-way system where the 22 bus runs. It was at this stage where Andy caught up with me and he was running. He was talking to me but my thoughts were far away. I couldn't hear what was said. Anyway, we ended up at Downs Park, which is a park off Downs Park Road, and I sat down on a bench, just drifting, and Andy was at the other end of the bench and he kept asking me what was the matter. That is how the entry of the house as far as I know was done and the other thing now is I have explained what took place there as far as I know.

'While I was there I had not seen the old lady being hit or anything. I was seeing her being tied and I had cut the rope. I had put something under her head. I was not aware that anything was inside her mouth. I had not seen anything inside her mouth.

'I like to explain that I had no intention when the woman was tied up that she would suffer any form of serious harm or die, and when I found out from the police that she had died I could not believe it. On the other hand, I recall that Andy had told me

after we had been in the park if it made me feel any better he had let the old woman go after I told him to: that's what he told me. I felt relieved. I knew that her family comes to visit her very, very often, and I thought maybe if Andy had not let her go she would have been discovered by them. But I had tried to let her go. I cut the rope. I did cut the rope, which I saw in the photograph there that she had been tied again because when she was tied with the rope when I cut it the rope was not tied in that way. Her feet was touching her hands and when I cut the rope her feet had come down and the position which I notice in the photograph was not the position when I left; and when I left the house she was alive and Andy was the last person who came from the house because I left him there to release the woman.

'Since my arrest I have regretted that night. It was not my intention – or I don't believe it was also Andy's intention – what happened. I am not trying to take blame off my shoulders because I should have known better than to have gone to the house, but I had been drinking heavily that evening. I am not blaming my actions on beer or drinks and it has been a terrible burden for me since that time.'

Under the laws of evidence, the statement could not be cross-examined. The judge reminded the jury on several occasions that Gilpin's statement could only influence the case for or against Gilpin. They should not allow it to influence their view of George's guilt or innocence. However the statement from the dock hung there in the jury's mind, incriminating George. Both he and Gilpin were convicted of murder and sentenced to life imprisonment. They are both still in prison at the time of writing.

As we have already mentioned, the reinvestigation began with the assertion from Tracey Hercules that he had heard Gilpin confess in prison that he had framed George, and that George was not even there that night.

Hercules is built like a night-club bouncer. He is not very tall but he has a barrel chest, an affable manner and could strike terror into you with just an inflection. He is also the guardian of some fairly exotic religious beliefs and garrulous to boot. Not the easiest man in the world to deal with.

We were naturally wary of believing Hercules' story in its entirety. Yet why should he lie? He had apparently heard the Gilpin confession soon after he went to Wormwood Scrubs, before he even knew Andrew George. He had smuggled it out of jail on scraps of paper to his wife, Cordelia, and she had written it out in full. It did not seem possible that he had been paid

money, otherwise he would surely have asked his wife to release the information as soon as she could, so that he might be paid. Instead Hercules had waited until he was outside prison himself before telling Tom Sargant about the 'confession'. And it was to Justice he went, not to the *News of the World*. The suspicion remained that Gilpin himself had been paid to renege on his earlier incrimination of Andrew George. The same argument applied. Why had he not insisted on immediate publication? More importantly, when Gilpin was approached by a solicitor acting for Andrew he denied that he had ever made the confession. Hercules explains this denial by saying that Gilpin would only confess to a friend – he would have nothing to do with lawyers. While the confession, it was claimed, would ease his conscience, he still hated Andrew George, or 'Chicken George' as he called him.

This is the substance of the confession Gilpin is alleged to have made to Hercules. The spelling and the mode of expression are faithful to the original. The names of Gilpin's alleged accomplices and his girlfriend have been changed.

'Reporting Confession of Inmate GILPIN This day Friday 16th March 1979. Time:- 7.10 p.m. Place:- Landing 2. Cell 85. D Wing, Wormwood Scrubs Prison.

'I Tracey Lowin Hercules (B14642) Inmate, Hereby writing this statement of facts. I swear that this statement is true to the very best of my knowledge and belief, and I make it knowing that if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

(SIGN) T. L. Hercules.

'On Friday 16th of March 1979, at exactly 7.10 p.m. I was allocated to 'D Wing'. During the time I was there GILPIN became my most regular and frequent pal, and although on most occasions I shrugged off any attempt from him discussing his or any other's buisness, of which he made several attempts to try and bring a conversation towards his case.

'However; In view of the seriousness of what I have been told by Gilpin I feel it is my duty to write down this conversation as accuratly as possibly, should it serve any justifiable purporses. And in respect of what Gilpin has just told me it would be a total tragedy for this man Andrew George to suffer the dilemma of serving time in prison for the crime which I now know he is entirely innocent of.

'The conversation between myself and Gilpin went as followed:- My cell door was only just open by a prison officer, whose name I do not know. Immediately as it opened the man known to me as Gilpin, come into my cell and on arrival, he said, "Hercie, sorry to trouble you, but I have got this thing on my conscience, and the truth is I honestly cannot hold it a secret any longer, and you are the onlyest one I can talk to." I said "I am not a minister, neither am I a civil servant, so how can I help you? I have got my own buisness and problems to handle." Gilpin said "I know that Herc's but please listen as it would be such a relief to get this thing off my conscience." I said "O.K. it better be good." Gilpin then proceeded to tell me by saying, "You know Herc's, I can see this dead woman, who myself and Crazy Horse and Black Lance killed. It is like she and two more others are trying to tie my two hands around my back and the same way I gagged and suffercated that rass-clot, is the same thing that they are trying to do to me. How shall I get reid of her Hercie?" I then reply "Ask GOD forgiveness, not mines." Gilpin continued to say "Herc's, I met a girl on a Saturday, I think it was the 13th May 1977. Her name was Gilly and Oh Boy! she had me knocked out, but hadn't it been for her, I am sure I would not have been in this shit now." I replied "What do you mean?" He answered "Wait you would hear it all." He went on to say, "I love her from the first time I set eyes on her. I began chatting her up and she fancied me too, and right away Hercie, I knew I had to go and find some money, but fuck-knows where from, all I could think of was this old cow. But I could not do it on my own as the old bastard knows me, you see I was living next door to her. So I had to ask my two buddies to do it." I said "Who buddies?" He then told me "Well I know them for about two and a half years. One of them I know when I was last in prison, they all used to call him Crazy Horse. The other I knows on the outside they calls him Black Lance, and Oh Boy these two are really something. Anyway I went and get these two guys and we went to her place, but when we got to the house those rass-clots lost their bottle. Crazy Horse said "You know how to get in, so unless you don't come we won't get in. I already told them how to get in but they still wants me to come, and I had to go because it was too late to kick out. So we went and I climb through the house because I was the thinner of the 3 of us. I gotted in and I let the other two in by the front door. After we get in we went and start searching. Black Lance put his hand first on some rings, he shouted 'Over here Man!" as me and Crazy Horse went, Crazy

Horse hit something over and it fall down. The silly cow, before she stayed in her bed, she was coming down shouting "Who's there?! THIEF, WHO'S There! GET OUT" She kept comming to us and I believe I was fucked if she came any nearer. So I told my two mates to come and let's go as I began getting frightened, and Crazy Horse went straight for her and grabbed her by the hair, he was shouting "Shut this fucking bastard up before I kill her!" I then went to quieten her down but as soon as I reach to her, that rass-clot woman start saying "Gilpin! Prince! of all the people, I would never believed you would do this to me." Hercie, I went so fucking mad from then on, and all I could remember was having my left hand under her chin, with my right arm tightly closed around the back of her neck. I think Crazy Horse was tieing her hands behind her back with something and I am sure that Black Lance was gagging her by the mouth, Hercie, I swear to GOD that I did not mean to kill her, all I wanted to do as things went wrong was for her to lose consciousness, but she was a strong old bastard and all the time she was fighting back like hell, so I had to rough her up, don't I, Herc's? at some time she went very limp, and when we let go of her she just fell to the ground. I then had the fealings that she was dead. I then told my mates to let us go as she seems dead but had it not been for me, my two mates would have been here with me." I then asked Gilpin what he meant. He replied "I had to stop them from running out of the door, as someone might of hear the noise so we all left one or two minutes after one another, so no-one could of seen 3 black men walk out at the same time.

"I went and got Gilly and we both went to a hotel which was in Kings Cross, it was on my conscence all day long. I had most of the jewellery, at sometime. I could not sit indoors no more, so I went out and sat in a park bench to think things out. I was thinking all sorts of things, and it was then I remembered this flash rass-clott who calls himself Georgie, then I know it had to be him and not me. You see, Herc's, the flash bastard is stupid enough to buy anything he gets hold of. So you see my prayers was answered because I was going to get this stupid rass-clott out of the way for good." I then asked Gilpin how he would get George out of the way? He then replied "Just immagine Herc's, If I went to a party and sold him the rings he would be done not only for the rings but for the murder as well. But when I found him and showed him the rings he said he would have to get his money out of the Post Office, then asking me for H.P., like I'm running a fucking Hire Purchase Buisness. I really regret not let-

ting him have the rass-clot lot of them there and then." I then said "But what have this guy Georgie done you so bad that you have to put him in jail for LIFE? Who is he anyway, do I know him?" Gilpin replied "His name is Andrew George – they call him "Chicken George" he is a right flash little cunt, and I'm sure he messed with my woman, Gilly, just immagine Herc's the onlyest woman I ever fucking loves and that little pussy-clot knew that and he still went and fucked with her." I said "So how come you got him invoveled with the police when he didn't have none of the rings or nothing?" He said "Oh that, but you don't know how fucking easy it is, Man? I know had it not been for me giving a statement in the dock as well as one to the police, the bastard would of feel he own the world so I had to put him in jail don't I? He feels he can grind every mans woman." I said "So how come the two of you ended up in the dock together then?" He said "Well you see Herc's I was so fucking silly I left my finger prints around and they caught me with some of the stuff and Gilly had one of the old cows rings on." I replied "But wait Gilpin I really don't understand this, how come George was given a life sentence for something you said he did not do?" Gilpin replied "The prosecuting council would have accept a plea of man-slaughter, but the flash little bastard would not accept it and pleaded not guilty but then I could not blame him Herc's because he really did not do it." I said "Go on Gilpin, now I can see your conscious is really biting you Boy. Tell me all, it's a shame we don't have a tape recorder init?" Gilpin replied in a very abrupt way "Not fucking likely not if it means confessing to a crime that, that flash little bastard George did not do. I hate that Boy so much that if it means my last minute to live he would rot in jail for all I care and I would see to it that I will swear on every Bible there is to keep him in jail as long as I am alive." I said "Gilpin, surely to fuck, you cannot do that to another human being?" Gilpin replied "I've already done it don't I? I hate that flash little bastard so much that if ever he was to be in the Thames and I was the tide I will drag him to the bottemless pit." I said "Tell me more about what you and your two mates done to that poor old girl?" Gilpin said "She was not fucking poor. If she was she won't be fucking dead now would she?" He went on to say "When I realize she was dead me and my two friends left. They found her body on Tuesday night, Wednesday morning of the 25th May 1977. They said she die in the hours very late Thursday early Friday but I can't see how they are right, as before we left she was dead."

(SIGNED) T. L. Hercules

'In addition to all the above mentioned, I have had words with the Ass. Gov. Mr Gregory Smith and various prison officers due to the fact of what Gilpin had said to me and because I was deeply troubled by the callous and treachorous injustice this man Gilpin had inflict upon another human being. To the Officer who become known by this fact all of whom share the same view as myself and had asked me never to keep this abomibable secret untold. I would like to mention also that most of the inmates have become fully aware of what Gilpin had said to me and because of this fact due to the responsibilities which lies upon the prison officers and the Governors, Gilpin was rescued from any serious injuries being inflicted from the inmates because of his evil vendatta towards an innocent young retarded man. Another fact that I would like to put forward is that I have written to Mrs George the Granmother of inmate Andrew George informing her of this confesion which I had obtained from inmate Gilpin. I was then been called up before the aforesaid Ass. Gov. Smith but because circumstances and most of all my present situation had deprived me the right to discuss or disclose anything with a solicitor who was sent on behalf of Andy George. I refused to speak to any such Solicitors as my faith and trust in them has diminished. I therefore intend to forward this statement of facts if and when I am released from prison, in the hope that given into the right hands only then will justice may seem to be done.

T. L. Hercules.
Sign by me this Friday 16th March 1979.'

We were intrigued to meet the girl we have called Gillian. Discovering her whereabouts in Coventry took us a day of diligent searching. Gillian turned out to be an attractive West Indian girl, now working as a nurse. Once she had recovered from the sight of two tired hacks turning up at eight o'clock at night on her doorstep, the wary look in her eye gave way to a more customary sparkle, which in turn became great amusement as she read the copy of the 'confession' that we showed her. She did not seem to remember much about 'Chicken George'. She vaguely remembered him being around at that time in her life. But there had never, she assured us, been any relationship between them. She did, however, remember that Gilpin had been crazy about her and very jealous. It seems that his main reason for needing money was to impress Gillian. Hence the new clothes, the ring he gave her and the night he paid for at the

Royal Scot Hotel near King's Cross. That was just the day after the death of Mrs Morelli.

Gillian certainly fitted the picture we had of her, but she seemed to know little.

We went back to interview Hercules. He alleged that Gilpin repeated time and time again that Andrew George was innocent of the charge. He said Gilpin admitted that he had joined with the prosecution to put Andy away for the simple reason that Andrew George had been messing about with his woman. Gilpin had been very jealous of Andrew George. Hercules could not understand why. 'Andy George is backward, he is a stupid guy. He is not a guy that you'd say was a lecher.' Hercules went on to tell us his reaction:

'When I heard Gilpin's confession I know it to be true, because quite obviously something was troubling this cat, the cat being a man, a man like myself. Now I know it to be conscience because Gilpin is obviously a troubled man. Maybe not physically, but mentally and spiritually.

'Well, the truth is, if you want to know, I would class Gilpin as a total rat and a mongoose. . . .'

Much of this it seemed prudent to doubt. Yet we recalled that there had been no forensic evidence against Andrew George. He had no criminal record, except for some trivial offence at school. He was a dumb child who had apparently made an elaborate confession to the police. You did not even need to cast doubt on the integrity of the police. You could say, as Andrew's father did, that the boy was eminently 'suggestible'. Andrew's father also alleged that just after Gilpin's statement from the dock, he had gone down to see Andrew in his cell. Gilpin had asked to see him and, according to Mr Eustachius George, had confessed to him that he had told a lie in his statement and that Andrew was, after all, innocent. This could not be proved.

Mr Eustachius George was the first man we went to see in the entire George case. He is a startling, enigmatic figure – not least because he is an Albino West Indian. The effect of his white skin, West Indian features and ginger, curly hair is not easily missed. He seems a genuine man, concerned for his son. There is no Mrs George in evidence, but Andrew seems to have been brought up largely by his grandmother, a Mrs Alcindor. Eustachius George has been the main driving force behind the moves to have Andrew freed.

Earlier he had provided the main alibi evidence for his son, supported by the boy's grandmother Mrs Alcindor, and a kind of

uncle figure called 'Duke' Wellington. We interviewed all three of them, most notably the 'Duke' of Wellington. To be perfectly fair, he seemed prepared to say anything that we suggested to him and we tended to discount his evidence. But Andrew's father and grandmother insisted, and still insist today, that at the time of the crime the boy was in his bed and the house doors were locked. Mr George, Snr further asserts that it is a family custom for some West Indians to check on the sleeping members of the family when they leave the house in the morning. He claims that he checked on Andrew the following morning and saw him asleep in his bed.

When we had read the Gilpin confession Mr George was therefore the first person we went to see.

Did he know if the elaborately titled accomplices which we have called Crazy Horse and Black Lance actually existed? If we could prove that they did exist; that they lived in the same general area as Gilpin; that they knew him, then we would be some way towards substantiating a part of the confession. It was unlikely that Hercules knew them, so that part of the statement would seem true.

With the help of one of Eustachius' relatives we found Crazy Horse and Black Lance. They were sharing a basement flat in another scruffy road in Dalston. We discovered that they had known Gilpin and had been seen around together.

This was the kind of evidence we were looking for. But we had other inquiries under way as well. For some days we had been trying to substantiate the fact that the Gilpin 'confession' was made to Hercules *before* Andrew George came to Wormwood Scrubs. When the dates of imprisonment finally filtered back to us it turned out that this could not be the truth. George had been in prison at the same time. He could have talked about Crazy Horse and Black Lance. He could have told Hercules the details of the crime. Our doubts began to increase.

We needed someone else who could support the Gilpin confession. Perhaps another convict had heard Gilpin make the same remarks. We approached Eustachius George again. Had he ever heard anyone else say that Gilpin had confessed to framing Andrew? Yes, he said, there was a prisoner who had shared a cell with Andrew. We shall call him O. Ferdinand to protect his real identity. He had said that Andrew was innocent. Andrew's grandmother, Mrs Alcindor produced an old pocket diary. There in the back of it was written in a painstaking hand; 'O. Ferdinand' and a prison number. He had apparently written

to Andrew's grandmother suggesting that he believed the boy was innocent. Armed with O. Ferdinand and a prison number we set out to find this possible source of corroboration.

In the Jock Russell case we had had the sheer weight of contradictory evidence.

In the McDonagh case we had found support from two independent witnesses.

But in the Andrew George case there was a police confession and a convict's confession which directly contradicted it. That could not be enough. Perhaps O. Ferdinand was the key. As it turned out, he was, but not in the way we had expected.

What did we know about Ferdinand? The initial of his Christian name and the fact that he had been in prison. That was all. We decided to check out the court records, firstly in London. We were lucky, up came Oscar Ferdinand on the records of the Inner London Crown Court. We were able to discover the solicitors who had acted for him in his last appearance – indeed in his ongoing appearances!

It took thirty-six hours of shuttling between various Hackney solicitors before we settled on the man who was looking after Ferdinand now. He seemed to change lawyers with alarming frequency.

The solicitor in question was a cross between kindly Latin master and gruff Brigadier. He listened to our problem with care and agreed that he would contact his client and ask him simply if he wanted to see us.

Within twenty-four hours we were back in his office, confronted by a tall, lanky West Indian of slightly frightening mien. It took a long time for the story to emerge, partly because we were as careful as ever not to put words in his mouth. It would have been a particularly foolish action in the presence of his solicitor. And it would have been counter-productive to our case. This, in paraphrase, is what Mr Oscar Ferdinand finally had to say. It is worth remembering that he did not even know what we were after. He had simply been asked to remember what happened a few years beforehand when he was in Wormwood Scrubs:

'Yes, I remember the young, little boy. He was a frightened boy. No, no, he didn't do it. He didn't murder no old lady. That was the other one, the Gilpin man, the man they call Prince. George, the young, little boy he was there in the house all right, but he not attack the old lady. He might 'a knocked her about a bit, but he didn't do no murder. I felt sorry for the young, little boy.'

The interview went on at some length, but we knew the story

from our point of view at least was over. It might well be true that the boy had nothing to do with the actual murder but of course, in law, he was an accomplice to the murder. Mr Ferdinand, in a slightly disconcerting way, did not seem to feel that there was anything inherently wrong in housebreaking, burglary and 'a bit of knocking about'. He did, however, seem to draw the line at murder, particularly when someone was falsely accused of it.

We withdrew to think again. The problem was that Ferdinand's story had about it what we had come to recognise as 'the ring of truth'. First of all, why should he lie? He did not even know what we were looking for. We represented no threat to him, particularly when we were interviewing him in the presence of his own solicitor. Mr Ferdinand in any case did not look like the kind of man who was easily scared. He also explained why he would not say to Mr George that Andrew was innocent. Andrew George's defence solicitor had gone to see Ferdinand to try to substantiate the story of Gilpin's confession, just as we had done. It seemed that Ferdinand was prepared to 'stand false evidence' for Andrew, as he put it, if Mr Eustachius George would do the same for him when his case came up in due course. Mr George Senior, quite correctly, did not take up the offer. The matter ended there.

Despite the fact that there seemed to be a lot of lying going on, the Ferdinand evidence seemed true. It merely set the seal on the increasing doubts we had been having about the case for some weeks.

Reluctantly we decided that we could no longer continue with the case. We no longer believed the story that Andrew George had not been there that night. We had always been sceptical about the alibi he had produced. It came from his father, his doting grandmother and the never-to-be-forgotten Duke of Wellington, who, we imagined, might be persuaded to say just about anything.

When we told Mr Eustachius George he was devastated. We had expected that. What we had not expected was his total refusal to give in. We had thought that he would say, 'All right, it was worth a try, but I thought Andrew was there all along.' Not a bit of it. To this day Mr George Senior insists that the alibi is true and that Andrew was asleep in his bed at the time of the old lady's murder.

We will, maybe, be criticised for taking the story as far as we did, or for doubting the original confession by Andrew. It was though, a confession he later completely denied; it was allied to

another confession where he claimed to have done over a hundred crimes in a couple of years; he was a highly suggestible, educationally sub-normal child. There was no other evidence against him and he did have an alibi, however slim.

But for the moment there was nothing more we could do in the case of Andrew George. Now we needed to find another story which would be more convincing. It was as well that our first major setback came after we had learnt something about the reinvestigation side of *Rough Justice*. For we now had to find, research and film a story in a fraction of the time we had spent on Russell and McDonagh. It did not prove as hard as we expected.

'THE NEVER-ENDING SENTENCE OF JOHN WALTERS'

Suitably chastened and wary after our experience with the Andrew George case, we returned to Tom Sargant and his considerable files.

Before we began to look for something to fill the gap left by the George story, we had to report the new evidence to Tom. Being a fair-minded man, Tom accepted our change of heart and understood why the interview with Ferdinand had seemed so important in the midst of all the worries we already had about the George case. But it was typical of the man that he immediately began to wonder how this new turn of events could be used to the advantage of George himself.

It seemed to prove that Andrew George had confessed to his cell mate that he was present during the theft and murder at Mrs Morelli's. That made him, technically, an accomplice to murder. But, looked at another way, Ferdinand's evidence also suggested that all along Andrew had been led by Gilpin. Furthermore, there seemed to be no intent to murder on Andrew's part and he appeared to have taken no direct part in the assault that led to her death. All in all, there was a good case to be made out for a reduction in charge from murder to manslaughter. Ironically, that was the very plea which the prosecution had been prepared to accept but which Andrew and his father had turned down.

Tom carried on with his investigations into what could be done for Andrew George, while we turned once more to his files.

For two days we considered several more cases that had found their way into the files of Justice. We will mention some of them in a later chapter together with the reasons why, in the exigencies of the moment, we were not able to investigate them.

In the end it was our colleague and researcher, Martin Wright, who first highlighted the case of John Walters. He pointed out, quite rightly that, not only did the Walters case have all the elements of a potential injustice, but it also had a 'sting in the tail'. The Walters case had one element that is often central to dis-

puted verdicts, but which had not been a feature of either the Russell case or the McDonagh saga. John Walters' guilt or innocence depended on some remarkably contradictory identification evidence.

Pause for a moment, if you will, and try to remember the clothes that the paper boy was wearing when he came through your gate this morning; the colour of the postman's hair; what kind of suit the boss had on yesterday; even what your husband was wearing when he left the house. Many of us have a very poor visual memory. Our minds are full of money troubles, family arguments, anticipation of joyful events, dread of unpleasant ones. We know what the paper boy looks like, we recognise him. There can be no possible need to describe him. He is simply the lad who comes with the papers. John Walters' life has been ruined because he was reckoned to be a man getting on a train one afternoon nine years ago. To add a further twist to the argument, the four people who described him, including the victim of the crime herself, outlined an entirely different individual. Yet Walters went to prison for four years. That was in 1973. Today he is still detained, but now he is in Broadmoor Mental Hospital.

John Walters' surrealist story begins on a sunny day in May in 1973.

A young French girl, Roselyne Auffret, stepped onto a train in Surbiton in the early afternoon. She was on her way to a job interview in London.

Roselyne had been living in England for two and a half years. Her English was practically perfect, so good in fact that she had even mastered a very passable South London accent. A girl travelling alone, she chose a single compartment in the old Southern Region rolling stock. No doubt she gave a passing thought to her Catholic home across the Channel as a nun entered the compartment and shared the journey with her as far as Wimbledon.

The nun stepped out at Wimbledon and the train was just about to leave when at the last minute a man jumped into her compartment.

Single compartments, what the railwaymen call 'non-corridor stock', are gradually being phased out by British Rail. Southern Region, with its high density of traffic at peak hours, still has a few of these old compartments. Their unpopularity has a lot to do with the kind of ugly incident that was about to befall Roselyne Auffret that afternoon, the 10 May 1973.

The man who had jumped onto the train at the last minute

had attracted some attention. Three railwaymen were later able to describe him.

A porter on Wimbledon station, Rupert Boyce described him as 5ft 7 inches to 5ft 8 inches in height, slimly built, with a slim waist. He judged his weight at around ten stones. He was wearing square, dark-rimmed glasses. There can be no doubt that Boyce had seen the man quite clearly.

He said that there were only four or five people on the platform at the time. The attacker was right in front of him and acting oddly. Boyce was waiting for the Hampton Court train to arrive on platform five and the Waterloo train (the one carrying Miss Auffret) to arrive on the adjoining platform six. The man in the blue jeans and denim top joined the second last carriage of the Hampton Court train. At the last minute Boyce saw him jump off the Hampton Court train and join a single compartment on the Waterloo train.

Boyce was sure that if he ever saw the man again he would recognise him. According to Boyce the man was dressed in light blue jeans and he had a top to match in the same material. Boyce said he had noticed the man particularly since the platform was so quiet at the time. More than that, the train was quite empty at four o'clock in the afternoon, and the man seemed to be searching unnecessarily for a compartment. Boyce would have been a convincing witness.

The driver of the train was Alfred Lobb. He has just retired after a life-time of service with the railways. He's a small, thickset, reassuring sort of man. His testimony, delivered with calm certainty, would surely have been convincing to a jury as well. Lobb looked back along his train before he pulled out of the station: 'It was a last-minute jump-in, and because it was a last-minute jump-in, it made me notice him. The fact that he was in a blue jacket, kind of little short jacket,' (Lobb was indicating around his waist) 'and dungaree trousers, and he had a pair of like sandal-type of shoe, and that was blue, with white around the edge. And I thought to meself – Oh, blimey! Little Boy Blue! Last minute jump-in, like, and with that, away we went.'

Lobb went on to describe the attacker as 5ft 8 inches to 5ft 9 inches tall, weighing about eleven stones. He summed him up: 'You know, just a medium average man.'

The third railwayman who spotted the man was Richard Parham. He is retired now and is also the sort of man with a life-time of quiet, undramatic service behind him, whom you would instinctively trust. He also remembered the man walking along

the platform. It was the sound of his whistle, he recalls, that made the man finally jump aboard.

Parham's description almost exactly matches those of his two colleagues. It might be worth noting in passing that, in the nature of railwaymen, they all lived in different parts of the country –Boyce near Wimbledon; Lobb in Southsea; Parham in Guildford – so their opportunity for collaboration was minimal. Their motive for collaboration, more importantly, is non-existent. Parham remembers a smallish, lightly-built man of around 5ft 7 inches jumping aboard the train. He was dressed in a short blue denim jacket and jeans, all in blue.

It is time we introduced you to John Walters. He is 6ft tall, at the time of the crime he weighed fourteen and a half stone, and he did not own any blue denim clothes.

Whoever the boy in blue was, he sat quietly in the compartment as the train pulled out of Wimbledon Station on its non-stop seventeen minute journey to Waterloo.

Suddenly he got up and approached Roselyne. She heard the noise, looked up and saw that he was approaching. She saw that the front of his trousers was open and that he was holding his penis in his right hand. He sat down on the seat directly opposite her. He put his hand on her knee. She pushed it away. Four times he put it back, always higher up her leg. He kept saying, 'Kiss me, kiss me.' She said to him, amid her mounting fear, 'Get off me, if you don't stop, I'll scream.'

He put a hand on her shoulder. His other hand stayed fixed at the top of her legs. He bent over her, trying to kiss her. She screamed.

He thrust both his hands round her neck, pushing her down with her back along the seat cushion. She felt him squeezing her neck. She tried to pinch him and kick him, but she could not move.

She passed out.

In a few seconds she came to. She felt her throat completely blocked, she could not properly catch her breath. Her attacker was still there in front of her, still exposing himself.

He held his penis towards her saying, 'Kiss it.' She tried to stall, telling him she could not breathe. He put his left hand behind her head and pulled her face down towards his penis. He pushed it into her mouth for a few seconds. He sat down beside her, opened her blouse and fondled her breast, kissing her as he did so. Then he lifted her skirt up, pulled down her tights and pants, held them away from her body and kissed her on the pubic hair, demanding that she open her legs.

He suddenly sat up. Just as strangely as it had all begun, it was all over.

The scene in the compartment, wretched as it must have been, is hard to visualise. The deed itself, or rather the two deeds, for they constitute two sexual assaults, are real and horrid enough. But the aftermath is as unreal as the consequent treatment of John Walters.

The man sat back in the seat opposite Roselyne. He said, 'I'm sorry.' He seemed quite normal again. Roselyne asked him why he had done such a thing. 'I don't know,' he replied, 'it just comes over me.' She told him he could have killed her. He said nothing. She asked him if he had seen a doctor. He said he had. She asked him if he had a girlfriend. He said that he did not have a girlfriend and that he had never had sex properly in his whole life, although he was now twenty-five years old.

He told her to do herself up. She obeyed. Then she started rubbing her neck where it still hurt. Several times he asked her if she was all right. He wanted to know if she was going to tell anybody. Quickly she said no. He made her promise. Sensibly, she did so.

The train was entering Waterloo. He got up, told her again that he was sorry for what he had done, and jumped out while the train was still moving. He disappeared into the anonymity of Waterloo.

Now that her attacker had left, the brave Miss Auffret who had managed to remain so self-possessed after the attack, broke down.

As she sat crying in the compartment, Alfred Lobb the driver got another look at her attacker. 'I was changing the headcode,' he told us, 'when this fellow ran by. I wouldn't say he was running fast, but he was out the station smartly. And I just happened to glance and I thought to myself, Oh, he's in a hurry.

'I jumped out the train to walk back, because I was taking the same train out of Waterloo again. And it was only then that I came across the girl that was sobbing bitterly like. I said to her, what's the matter and she said something. I couldn't quite understand what she said. And she sobbed and sobbed.' Mr Lobb, assuming the girl had personal problems, left her alone and got on with his work.

Slowly Roselyne Auffret began to recover. Her legs no longer felt so weak and she struggled to stand up. Uncertainly she made her way up the platform. She saw two British Transport policemen and begged them for help.

It was by now around twenty past four. The London rush hour was about to start. The policemen were preoccupied by the story the girl had to tell. But even as they listened to her and questioned her, most of the evidence that related to her crime was being trampled by dozens of commuters and being whisked away into South East England. The train was leaving, with the relevant single compartment uninspected and unlocked. It was an inauspicious start to the police investigation.

The major question mark which still hangs over the Walters' case must be: 'Why did the police pick up John Walters?' That has never been satisfactorily answered. It is true that Walters was a known sexual offender. He had several convictions for exposing himself. Most of the offences had taken place on trains in the Southern Region. But the police had three clear descriptions of a man much smaller and thinner than John Walters. In addition they now had a description from the victim herself, Miss Auffret. She too described him as 5ft 8 inches tall, wearing blue denim clothes. She said he had small blue-grey eyes.

Early in 1982 we traced Miss Auffret to a small farmhouse near Cherbourg in Northern France.

It was, naturally, a delicate business raising the memory of that indecent assault all those years beforehand. But Roselyne Auffret still said that the man had been about 5ft 7ins to 5ft 8ins in height and slimly built.

More interestingly, she told us that just after the attack the British Transport Police had shown her a file of photographs of known sexual offenders. She could not recognise any of them. A few days later, after Walters had been arrested, a police officer told her that his photograph was among the 'mug shots' she had seen that afternoon. The fact that a short time after the assault she had failed to recognise a photograph of Walters as her attacker did not emerge in the subsequent trial of John Walters.

So why did the police pick up Walters? He did not match the description given by three witnesses or the victim herself. She had failed to pick out his photograph. And, while it might be a nice distinction as far as the general public is concerned, policemen know that there is a considerable difference between the kind of sexual offender who exposes himself, and the kind of man who nearly throttles a girl and attempts to have sex with her. Put at its most simple, one offender is passive and rather pathetic, the other is active and very dangerous.

The nearest we could come to an explanation for Walters' arrest was an elaborate story we were unable to prove or disprove. We recount it here for what it is worth.

The crime happened on a Thursday afternoon. On the following Monday, Walters was trying to get himself re-admitted to a hospital for treatment for his sexual problem of exposing himself. He had undertaken treatment on several occasions before. Indeed he had even married a nurse whom he met during one of his 'rehabilitation' sessions. John Walters is an intelligent and able man. He says that he knew he would not be admitted unless he could convince the psychiatrists that his need for treatment was urgent. He says he had pulled the wool over their eyes before. So he told this particular psychiatrist that he had a dream about assaulting a nurse on a train. He says now that he had got the idea for this from a film he had seen on ATV on the Saturday night, called *The Colour of Blood.*

We checked with ATV. Yes, there had been a film like that on the night of Saturday, 12 May. We viewed it. It was an unconvincing drama, heavy with glowering looks and threats of horrid things about to happen. It did concern an escaped sexual offender strangling a girl in a train and threatening to kill another girl. It could have given Walters the idea for the story he told the psychiatrist. The girl on the train was not a nurse, but Walters says he chose a nurse because his wife was one. It is now suggested by some people that the psychiatrist linked Walters' story with the news reports of the attack on Roselyn Auffret and telephoned the police. We just do not know.

A few days after the assault, the police called Miss Auffret to an identification parade at Waterloo. She walked carefully down the line but failed to pick anyone out. Walters was not there. A few days later, on 21 May, eleven days after the offence, they called her back for a second parade. She stopped in front of John Walters. She said that she recognised him immediately as the man who had attacked her on the train.

Today Roselyne Auffret has a new life and a small baby. In her small apartment in Normandy she has put all thought of the unpleasant events of May 1973 behind her. But today she still insists on three things: the attacker in the train was a smallish, slimly built man, around five feet seven to eight. Walters is large and six feet tall.

She says she recognised Walters immediately she stepped into the second identification parade. Yet she is almost bound to say that. There is a possibility that she is now conditioned to think of him as the attacker after seeing a photograph of him which she failed to pick out; after seeing him at the I.D. parade; and after watching him in the dock at his trial. It is also a side issue that,

having seen Walters' face among the 'mug-shots' in the sexual offenders' book, she may have recognised him at the parade from that picture, still somewhere in her consciousness.

But all that is mere theory. There is a concrete fact that tends to support it. Miss Auffret now says that the main feature that drew her to Walters in the identification parade was his large, staring eyes. Other people who have met John Walters, like George Vale and his wife – friends who still visit him in Broadmoor – agree that this is a very noticeable feature of his face. However, in Roselyne Auffret's original statement to the police she made a point of saying that her attacker had small, blue-grey eyes. There was an anomaly in the original descriptions given by two of the three railwaymen and Miss Auffret. Two of the railwaymen did not mention the attacker wearing glasses. Miss Auffret and Rupert Boyce however described him wearing glasses. Miss Auffret added they had thick lenses. As a result, the officer conducting the identity parade issued all the men with glasses. Walters alleges that all the others on the parade were issued with National Health Service spectacle frames. He was wearing his large, horn-rimmed spectacles. They make his eyes seem even more prominent. He claims he was sticking out like a sore thumb.

Despite the conflicting identification evidence the police felt that Miss Auffret's identification of Walters was enough. It was later agreed by the police at the trial that she shook her head three times before she said, 'I think that's him'. It is also agreed that she said at one point, 'I don't know'. Today she says that her hesitation was brought on by nerves at seeing the man again, not by uncertainty.

The police charged Walters. There were to be two charges of indecent assault relating to the oral sex incidents. In addition there was to be a charge of attempted murder. The marks on the girl's throat suggested that there had been sufficient force used to justify such a charge. Six months later, John Walters came to trial at the Old Bailey.

There were four major strands of evidence against John Walters.

The first, of course, was the description given by the three railwaymen and the victim herself – on the face of it, very helpful to Walters' defence.

The second main plank of the prosecution case was forensic evidence. This may seem ironic in view of the fact that the scene of the crime, traditionally a vital area for the collection of

forensic clues, had disappeared so abruptly along the rails of the Southern Region. But the police had searched Walters' flat for a set of clothes which might be considered to match the denims described by all the witnesses. They had found a pair of green corduroy trousers and a normal length blue/mauve corduroy jacket.

On Miss Auffret's clothes the forensic scientist had found twenty-eight fibres that were 'microscopically similar' to fibres from Walters' jacket and trousers. The forensic people drew no conclusions from this. The prosecution, quite correctly, considered it good circumstantial evidence that Walters had been present and in close contact with Miss Auffret in that railway carriage on 10 May. There was a startling contradiction here, of course. If the first major piece of evidence was correct, i.e. that the attacker was wearing a short denim jacket and blue jeans, then these clothes were irrelevant to the trial. They simply had not been seen on the attacker.

If on the other hand the forensic evidence was meaningful, and Walters really had been there that day, wearing a long, mauve jacket and green trousers, then all the descriptions from three reliable, independent witnesses and the victim herself, were totally wrong. It was a contradiction that never seems to have been put to the jury.

The third element of the evidence against John Walters was the identification parade. Despite her original contention that her attacker was small, slight and dressed in blue, with small eyes, Miss Auffret and the prosecution were now saying that she had recognised a six-footer, weighing fourteen and a half stones, whose eyes were prominent, even bulging. This contradiction was lost on the jury as well.

The fourth area was alibi evidence. Here, if Walters is innocent, he was quite remarkably unlucky. Walters was in work at the time of the offence. That in itself seems surprising after the aimless histories of Russell and the McDonaghs. Walters was holding down a reasonable job as a clerk in the Department of Health and Social Security office in London's Holland Park Avenue. It was an office housing around fifty people on the average afternoon. Yet none of Walters' closest colleagues could remember him being present on the afternoon of the crime when questioned a week later. He maintained consistently that he was there. To the jury it must have seemed that he had had the opportunity to board the train at Wimbledon in the mid-afternoon.

So, briefly, the forensic evidence was essentially a contradiction, but proved to be helpful circumstantial evidence against Walters; the evidence of the identification parade seemed to point to Walters as the culprit; the alibi evidence was non-existent. But how could a jury listen to the descriptions of the attacker given by the railwaymen and still convict? The answer is simple. The railwaymen were never called to court. Not even Rupert Boyce was called. He, you will recall, was the man who told the police that he felt he would recognise the man if he saw him. He, just like the other two, was neither called to court nor to an identification parade.

We asked Mr Lobb, the train driver, if he had been called to an identification parade: 'No, no, I was never called. As I say, the next day when I rung in, the British Railways Police Sergeant was there with a woman Police Constable and the girl in question. But they said very little to me and that was all, and I carried on and went away with the train. I didn't go on an identification parade, I didn't go to the trial. I was never called no more.'

We had a similar surprised exchange with the train guard, Richard Parham:

INTERVIEWER: Were you called to an identification parade?
PARHAM: No, not at all.
INTERVIEWER: Not at all. Were you called to court?
PARHAM: We attended court, but we were not called as witnesses. Not in the court.
INTERVIEWER: That seems extraordinary, doesn't it?
PARHAM: Yes, we were surprised, but we were under the impression, at least I was, that the man pleaded guilty and therefore our evidence was not required.
INTERVIEWER: What was your impression when you heard that he was still inside Broadmoor?
PARHAM: Very surprised, very surprised. It's the first question I asked when you first interviewed me. Why is he still inside if he had done four years?

Given the contradictory nature of their evidence it is perhaps no surprise that the prosecution chose not to call them. They must have been worried that the defence counsel would contrive to have them say that the man in the dock was not the man they had seen entering Miss Auffret's compartment. Yet the police statements by the railwaymen and Roselyne Auffret were served, in the normal way, on the defence. Why did they not call the railwaymen? It must have been their strongest card.

The only logical conclusion can be that their fear was the opposite of the prosecution's. They were presumably worried that the railwaymen would point to their client in the dock and say, 'Yes, that's the man we saw'.

The vital statements were simply read into the court record. No special significance was attached to them. No attempt seems to have been made to point up the contradictions inherent in them.

The jury retired for an hour and twenty-five minutes. His Honour, Judge Lawson, QC, had cautioned them, 'You must be satisfied so that you are sure.'

On the charge of attempted murder they were not sure. They found Walters not guilty. But on all the other charges, by a majority verdict of eleven to one in each case, they found Walters guilty. He was duly convicted of indecent assault and sentenced to four years in prison.

That was in 1973. Today he is still inside, detained in Broadmoor Mental Hospital. He has served nearly nine years of a sentence that, with remission should have lasted for less than three years.

As we shall hope to show later, Walters was the victim of an injustice when he was sent, indefinitely, to Broadmoor. That, in the opinion of some medical and legal experts, holds true even if he were guilty of the original assaults on Miss Auffret. If, on the other hand, he was innocent of those crimes, then he has not been falsely convicted once, but twice.

We set out to show that Walters' original conviction was, in the words normally used by the Appeal Court, 'unsafe and unsatisfactory'. But before detailing our reinvestigation, it is worth highlighting the main reason put forward at Walters' Public Review Tribunal for his continued detention. According to various people who attended on John Walters' behalf, it was stated by the Broadmoor authorities that the main bar to Walters' release was his continued insistence on his innocence of the original charge. Without his contrition, without his acceptance of his evil nature, he could not be given treatment, so he could not be 'cured' and released.

In the light of what follows, that might be reasonably described as 'Catch 22'.

The areas for re-investigation in the Walters' case were really predetermined by those the trial concentrated on: description, forensic, identification parade, and alibi.

The first job was to find at least two of the railwaymen. It

would be important to establish whether their police statements had really reflected the kind of certainty that had so impressed us.

We went to the electoral rolls in the British Museum, not exactly for the first time! One of us looked up Boyce, Lobb and Parham, while the other went off in search of their original addresses as given to the police nearly nine years beforehand. By comparison with the world of Deptford squatters or Irish tinkers the world of John Walters was an investigator's dream. The British Museum had not lost its charm after all – two of the railwaymen, Lobb and Parham, still seemed to be living at the same addresses. That evening we talked to them both individually. We went through the by now customary procedure. 'Yes, we appreciated it was all a long time ago, but what exactly could they remember?' Only once they had told us as much as they could, did we tell them what they had originally said back in 1973.

What they had to say was remarkably accurate. Alfred Lobb, the retired driver, now had a neat memory of the attacker as 'little boy blue'. He even remembered his blue shoes. Richard Parham was equally confident of his description, unshakeable even.

They also pointed out to us that they were operating in familiar surroundings. One was a driver looking back along his train as he had done a thousand times, the other a guard checking that all his passengers were aboard before blowing his whistle. Quite simply, they were confident of how big or small a man looked against the side of their train. It was a familiar frame of reference.

Alfred Lobb was particularly clear on this point. John Walters, as we have said, is six feet tall and weighed fourteen and a half stones at the time of the crime. Even by the standards of the English Rugby Union scrum, that is a big man. Lobb just could not imagine that a man of those dimensions had jumped so nimbly through the comparatively small door of a train compartment. Nor could he reconcile Walters' bulk with his own hastily applied description of 'little boy blue'.

Both men were adamant that he could not have been wearing green trousers, and that his jacket was waist-length, not full length.

Rupert Boyce, the guard at Wimbledon was not easily traceable, but we felt the driver and the guard were sufficient to reinforce the central point about the description evidence.

To discover the strength of the forensic evidence – something

we could not hope to judge ourselves, of course – we decided to consult a forensic scientist recommended to us by Professor Alistair Cameron of the London Hospital, one of the leading experts in the country. He was Doctor Julius Grant. If you were a casting director looking for a man to play a forensic scientist and Marius Goring were already booked, Dr Grant would be the answer. He is a small, elderly, studious man with quick, bird-like movements and the clear mind of both a scientist and a man used to giving precise evidence in court.

It was obvious that we could not expect a full forensic re-examination. We could only ask Dr Grant to read the statements made by the police senior scientific officer and indicate the strength of the evidence. Or could we? We asked John Walters what had happened to the clothes that the police had produced at his trial.

It transpired that the green trousers and blue/mauve jacket had been returned to Walters in prison. They were still wrapped up in a plastic bag. They had been transferred with him through various prisons and had finally been taken by Walters' father. We recovered them, in the same plastic bag, from the home of John Walters' father. Mr Walters, Snr wrote to us confirming that the clothes had remained in his home, totally untouched.

We asked Dr Grant, first of all, to explain to us what 'microscopically similar' meant. You will recall that twenty-eight fibres described as 'similar' to ones from Walters' jacket and trousers had been found on Miss Auffret's clothing. Was it a significant number? Yes, Dr Grant did think it was a significant number, but its significance he suggested, could only really be judged once you knew how many other extraneous fibres had been found on the victim's clothes. If, for instance there were hundreds, it devalued the significance of the twenty-eight. That evidence did not appear to have been collected. Or if it had been collected, it had not been presented in court. As far as the phrase 'microscopically similar' was concerned, Dr Grant pointed out that, particularly when dealing with common fibres like the ones in Walters' jacket and trousers, 'microscopically similar means really very little at all'.

By far the majority of the fibres found by the original scientific officer were mauve cotton fibres, similar to ones that could have come from the outer surface of Walters' jacket. But Dr Grant's attention was drawn to the inside of the jacket where there was a large tear in the lining. He found that fibres from the tear were shedding readily onto his own clothes. And, he discovered, those

fibres were not cotton, but synthetic. According to the forensic evidence given at the trial, no such synthetic fibres had been found. Since it appeared that the jacket had not been worn or interfered with since the original examination, and since it was alleged to have been in close, violent contact with the clothes of Miss Auffret, why were no fibres from the frayed and torn lining found on her clothes?

There were in fact two kinds of synthetic fibres found in the torn lining, and neither of them were found on the victim's clothing.

It should be pointed out here that neither Dr Grant nor ourselves set out to criticise the senior scientific officer involved in the original examination. Miss Elizabeth Muir Wilson carried out the task assigned to her and gave correct evidence. We were merely examining, as defence counsel for instance is entitled to do, whether the evidence is weighty or merely circumstantial. In addition, it is quite proper to ask, not what fibres were there which would appear to incriminate Walters, but what fibres were not present which you would have expected had Walters been the culprit. Dr Grant's evidence tended to support one other odd omission in the forensic picture. It was admitted by the prosecution that no fibres from Miss Auffret's clothes had been found on Walters' jacket and trousers. The transference, if such it had been, was only 'one way'.

At the trial it was proved by the defence that the clothes had been transferred at the forensic laboratory from plastic bags to paper bags. The Detective Sergeant who had taken Miss Auffret's and John Walters' clothes to the laboratory said that he had seen the laboratory liaison officer transfer both lots of clothes to paper bags with his bare hands. It was subsequently suggested by the defence that transference could have taken place at that time, despite the fact that the items had been handled separately.

We asked Roselyne Auffret about the clothes she had been wearing that day. Naturally she no longer had them, but she described them as a skirt tailored from a French man-made fibre called 'Tergal', a blouse, and a jacket in similar material. We bought a sample of 'Tergal' in France and took it along to Dr Grant. Would he expect that sort of material to shed fibres? Yes, he said, it would be most unusual if the transference were only one way. 'Tergal' was prone to shed fibres when rubbed.

The forensic evidence against John Walters, it was safe to assume, was little more than circumstantial and certainly unconvincing.

It is interesting to note that we were, in our turn, attacked for presuming to attack the forensic science laboratories. We will explore the details at the end of this chapter, but for now, suffice it to say that we were not attacking anyone. Miss Wilson behaved honourably and correctly. She never suggested in her brief statement anything more than the similarity of fibres. We reported that fact, but chose to take it further. All along it has been fascinating to watch the relevant authorities searching for a way to attack us and the BBC rather than asking what surely must be the more important question, 'Has there really been a mistake, a miscarriage of justice, and if so, how can we right it?'

The identification parade evidence offered little scope for reinvestigation beyond what we have already recounted. Walters has made, and still maintains several allegations about the identification parade. He says that shortly before the parade he was sitting in a room with two policemen when the door opened and Miss Auffret, in the company of a policewoman, saw him. This is denied by the police and by Miss Auffret. But the most significant allegation we have already reported. Walters claims that his thick glasses made him conspicuous. Certainly, Miss Auffret's contention that his large, staring eyes drew her to him would tend to support this theory. Particularly when you consider again that her original description to the police described a man with small eyes.

Perhaps the most fruitful area for reinvestigation, we decided, was the strange business of the alibi. Here there were several unsatisfactory stories. Many of the people who worked in the close vicinity of John Walters seemed confused. The old man who brought round the tea decided that Walters was absent during the afternoon of the 10 May because his tea was left untouched that afternoon. But it was generally agreed that Walters had been there in the morning, and he had not drunk his tea in the morning either. Perhaps he did not like tea.

One woman in the same office was absolutely certain that Walters had been absent that afternoon. She was so definite because she said that she knew that Walters had never been absent before. In fact Walters was going through the pain of a divorce from his wife and in the few months preceding the crime he had frequently been absent.

There were many other equally confusing stories. But by far the most damaging from Walters' point of view was the evidence given by the girl who was working most closely with him at the time. She had only been in the office for a few days. She was a

trainee who was being taught partly by John Walters. She gave the police two completely contradictory statements.

In the first statement she told the police that on Thursday, 10 May she had returned to the office after her lunch , and was working constantly with Walters until 4.50 p.m., when they prepared to close. The perfect alibi for a crime that happened at 4.00 p.m.

In the second statement the lady changed her mind. She told the police that at 2.00 p.m. when she returned, she saw Walters was not back. She insisted that he had not returned at 5.00 p.m.

There is some evidence that the reason for her confusion was that she had mixed up the Tuesday and the Thursday. On the Tuesday Walters had been out of the office during lunchtime and part of the afternoon. He had an appointment with a marriage guidance counsellor in a last effort to save his marriage. Walters was subsequently able to get a letter from the Council to support his claim that it was on Tuesday, 8 May that he was absent and not on Thursday, 10 May.

In a statement to Walters' solicitor, the employee in question, Miss Hilary Wheeler, said that she had only been working three days in the department by Thursday, 10 May. In fact it was possible to find out that Miss Wheeler had first joined the Department of Health and Social Security in December 1972. She was sent off to a college for some extra training and returned to the office where Walters was working on Friday, 4 May 1973. That then would have been her first working day. Monday, 7 May would be her second, and Tuesday, 8 May her third. So she might well have meant the Tuesday. And Walters was out of the office that day.

The General Secretary of the London Marriage Guidance Council wrote to Walters on 30 May 1975:

Dear Mr Walters,

Mrs Forrell has asked me to reply to your letter of the 19th May and say that you did indeed see her for counselling between 1.00 p.m. and 2.00 p.m. on Tuesday 8th May, 1973.

Yours faithfully,

E. A. L. Watts
General Secretary.

Confusion about people and days seems to have been endemic in the Holland Park Avenue office. We traced the manager of the office, now living in retirement with his MBE in Surbiton. Mr

Peter Tutte is a pleasant, honest, dedicated civil servant who recalled the details of his last posting very clearly. What was the place like, we asked him:

'Well, the premises were very small, and it was designed to take twenty-eight people originally, and at that time we had roughly about fifty, so that people were living, you know, cheek by jowel, you might say . . . there were always a lot of people scurrying about.

'It would be possible not to know whether somebody was there or not, particularly if that person was not very well known. You know, because there were people going in to interview the public, coming back from the public, answering phones, looking for papers, etc, and so forth.

'John Walters wasn't particularly well-known to the staff. He was engaged as a casual, on a week to week basis, for a special job, and he was a very quiet type of fellow, who more or less kept himself to himself; came in, got on with his work, and went home. He didn't socialise a great deal. It's possible that he might have been there but was not immediately obvious to everybody.'

The lack of an alibi seems to have been a shock to Walters. Indeed, if he really was there that afternoon and his workmates were denying it, it would have been a shock to anybody. Since his conviction he has thought long and hard about the trivia of the events of that afternoon. He has come up with a startling amount of information. By far the most convincing memory concerns a man called Thomas Rochford.

Walters remembered, he claims now, that the day before the crime he had booked an appointment for the DHSS claimant, Thomas Rochford, to attend at two-thirty the following afternoon, the Thursday. He says that Rochford turned up about half-an-hour late. The counter staff would not deal with him because he had missed his appointment. Rochford became furious and began to make a noisy scene. If you make the quantum leap from his appointment time to pub closing time in the lunch session you may begin to understand the nature of the scene. What made it more memorable and more embarrassing to the DHSS staff was the fact that Rochford had come with his social worker, a Miss Janet Smith. She had sat with an amused expression on her face throughout the whole noisy incident. If it was true that this happened on the Thursday afternoon, how did Walters know? He had never returned to the office after the Thursday. On the Friday he made another of his regular attempts to seek help for his sexual problems. In the morning he

visited his GP and that afternoon was interviewed at the Maudsley Hospital. On Monday, as we have mentioned before, he saw a psychiatrist at the Maudsley and told him the elaborate tale about the nurse on the train. Soon afterwards he was admitted for treatment to the Royal Bethlem Hospital.

While all this was going on, and before he even knew he was a suspect, was it likely that he had carefully telephoned colleagues to find out office gossip like the noisy incident with Thomas Rochford?

There seemed to be some sort of confirmation if the incident was confirmed by the organisation that had engaged the social worker, the Blenheim Project. We decided to try to trace the girl involved. You will recall that she rejoiced in the good old English name of Smith. Not only did that make her difficult to trace, but she had been a young girl at the time. Now she was almost certainly married. And married women change their names.

One day we found out that she was Janet Smith of the Midlands. That is some sort of progress. The next day we found out that she was now called Janet Rose, and lived in Maidenhead. The next day we interviewed her.

Walters had written to the Blenheim Project asking them whether they could confirm that one of their social workers had come to the office with Thomas Rochford that day. They wrote in turn to Janet Smith, now Rose. She told us:

'Yes, I do remember receiving that letter, and at the time I looked in my own records, and found that I had been to Social Security that day, and I wrote back and confirmed that. And I did remember that there had been a scene there, yes.

'I think that other people in the office would have remarked on it, yes because Mr Rochford would have been noticed anyway, because he was scruffily dressed, and it would have been quite – quite a noisy scene, yes.'

Walters could have been in work that afternoon, while Roselyne Auffret was being attacked. The forensic evidence against him was unsatisfactory and certainly not conclusive. Miss Auffret could have made a mistake at the identification parade. And, most significantly of all, four people, including the victim of the attack had described the culprit clearly. The man they described could not have been John Walters.

So why is he still detained?

In some cases where miscarriages of justice have subsequently been proved and accepted by the Home Office the innocent men

actually made police confessions. The most notable example in recent years is probably the Confait case. Walters had never made a confession. He has stoutly maintained his innocence all along.

George Vale is now a personnel officer with a large company. Many years ago he employed John Walters. When he heard that Walters had been imprisoned he started to visit him. Vale fully believes in Walters' innocence. He points out that Walters does have a sexual problem with his 'flashing'. But John, he says, has never made any great secret of that. He discusses it and admits it freely. But even suggest to him that he might actually in some sort of aberration have attacked the girl on the train and he gets very angry and upset. His denials have been strident and consistent for nine years.

Contrition is an old fashioned concept. It seems to have grown up as the target of a Victorian prison system which believed in rehabilitation and the re-establishment, through punishment, of the essential goodness of men. Today's prison system, as a recent letter to *The Times* from the governor of Wormwood Scrubs indicated, is predicated on less certain beliefs.

But Parole Boards and Governors of prisons still set great store by a man's contrition. Unless you are prepared to admit your crime and to express regret for it, your chances of parole are minimal, if not non-existent. Walters would not admit his guilt and so did not get parole. But worse was to come from his point of view. It is a cynical reaction among those who know prisons that 'there are no guilty men behind bars'. Everyone has a hard luck story. But none of that is taken seriously by either convicts or 'screws'. Walters did want to be taken seriously and seems to have made himself unpopular by his continued protestations of innocence. He was moved repeatedly from one prison to another: Wandsworth, Reading, Grendon and then back to Reading, and on to Wormwood Scrubs. At Reading Prison in November 1974 Walters was accused of assaulting a prison officer. He was found guilty and lost twenty-eight days remission. Walters has his own version of what happened. He claims that he was provoked by the officer and was only acting in self-defence. He was disbelieved.

The incident has regularly been adduced as evidence of the continued violence of his nature. Yet there is no way of knowing what actually happened. Prison is a closed society that must maintain and effect its own discipline. The only single direct piece of evidence of Walters' alleged violent nature is the attack

on Miss Auffret which he has strenuously denied, to his own detriment, for nearly nine years.

Other even more tenuous arguments have been advanced. It has been alleged that he threatened his wife with violence during their marriage. In many marriages, and particularly in those that are heading for divorce, as Walters' was, that may not be regarded as a sufficient reason for detaining either or both of the partners in Broadmoor indefinitely.

He was also said, at one time, to have threatened his father with a knife. They clearly had a stormy, unhappy relationship. Today his father says that although he remembers the incident it was a mild gesture of frustration and it came to nothing.

So the entire case against Walters came down to the original conviction against him. And by the 17 February 1976 that sentence was due to end.

By this stage Walters had been transferred yet again, from Reading to Wormwood Scrubs. There he was visited by a doctor from Broadmoor who had once examined him before. Nineteen days before he was due to be released, on 29 January 1976, he was 'sectioned' and sent to Broadmoor. In more formal language, he was committed to Broadmoor as a criminally dangerous person under Section 72 of the Mental Health Act (1959). The reasons for that decision, the ramifications of which Walters is still enduring, remain unclear. No reason has ever been given to Walters himself, nor to any public inquiry. We tried asking the doctor at Broadmoor and were told that, even though Walters himself was more than happy for us to know the reasons, they would not be provided.

It remained, and remains, confidential. Which makes it more than a little difficult for Walters to argue against his continued detention.

We consulted Dr David Crawford, a psychologist who had examined Walters at Broadmoor. He said that the idea behind that particular section of the Act was essentially humanitarian. The thought was that if a prisoner became mentally unhinged during his imprisonment there should be some mechanism for removing him to a mental hospital for the duration of his sentence. It does not seem to have been intended as an additional sentence. In the case of John Walters that is exactly what it appears to be.

Walters was tried as a sane man. No attempt was made to plead diminished responsibility or insanity. Yet just over three years later he is considered mad enough to be 'sectioned'. It is

not, of course, for unqualified people to judge whether he is sane or not. So we asked Dr Crawford about Walters' state of mental health. He first made the point that it would be possible to consider Walters out of touch with reality if he continually protests his innocence with great vigour, but he went on:

'The possibility has to be considered that if indeed he (Walters) is truly innocent – that there has been a miscarriage of justice – of course that very same behaviour, far from being a symptom of psychopathic disorder, would be seen as very rational normal behaviour. The same behaviour that you or I would do, if in that situation, we would pursue our innocence with the utmost vigour.'

Dr Crawford had put Walters through a number of tests to determine just how dangerous his sexual or violent instincts might be. He concluded that neither instinct was dangerous at all. He used some of the latest techniques to measure response. Dr Crawford had learnt them in California. They involve showing stimulating films to the patient, depicting heterosexual sex, homosexual sex, violent sex and violence on its own. He found that Walters was uninterested in the violence, either on its own or linked to the sexual element. He did not find him particularly stimulated by either homosexual or heterosexual scenes. He concluded:

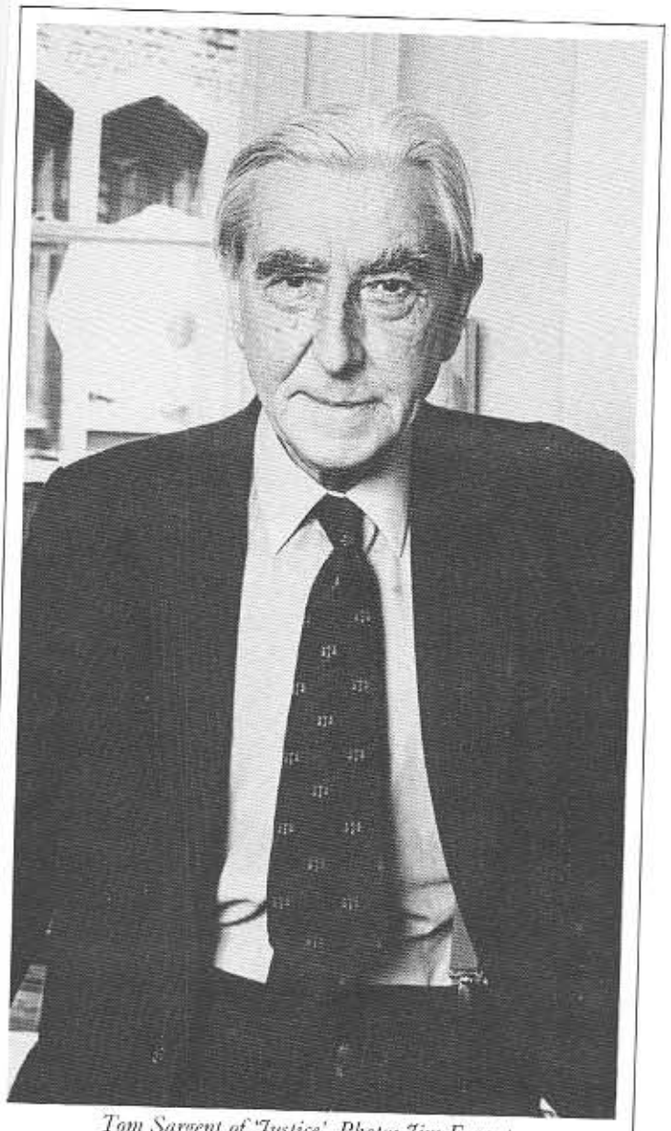
'There is little evidence . . . that he has interests in sexual violence or is aroused by aggressive sexual behaviour.'

The only reason for assuming him to be dangerous now, today, is the original conviction for assaulting the girl. What would Crawford's assessment be if Walters were actually innocent of that crime?

'Clearly he should never have been convicted and gone to prison in the first place. And there is, I'm sure, not enough other evidence to suggest that he should be detained under the Mental Health Act. So, without that important piece of evidence I would not consider that it would be justified for him to be detained.'

So why is Walters detained? He has been granted two Mental Health Review Tribunals. These are the tribunals which will listen to and judge his claims of sanity. They are the only way he can escape from his present predicament. The first was private, but Walters asked that the second be held in public. Elizabeth Goldthorpe, the legal assistant, who prepared his case and attended the hearing was left in no doubt about the main reason for his continued detention:

'Quite simply, it was put, by his responsible medical officer,



Tom Sargent of 'Justice'. Photo: Jim Forrest

Michael McDonagh

Patrick McDonagh

that his refusal to admit to his guilt of the original conviction represented a block, a barrier, to therapy; which is another way of saying that unless you confess, you cannot be given treatment. Therefore it's a stalemate, he is in Catch 22 without a doubt.'

Tom Sargant, the Secretary of Justice also gave evidence on Walters' behalf at the MHRT. When we were first looking at the Walters' case we ventured to suggest to Tom that we were not entirely sure of his innocence. It was not ultimately provable. He was scandalised. 'It's a very bad case,' he insisted, 'one of my worst, one of the most scandalous cases I have had to deal with.' When he attended the Tribunal he did not mince his words:

'I said that I thought it was a violation of John Walters' integrity to try to force him to confess to a crime which he may well not have done, and which he has consistently denied. And I added to that, that it was a violation of my own integrity to advise him to do this, because I wholly believe him to be innocent.

'I went so far as to say, at the last Tribunal, to the psychiatrist, that if he thought Walters was mad, and should not be released because he still protested his innocence, then I was also a candidate for being detained at Broadmoor.

'If I can sum this up, I think it was monstrous that he should be asked to sell his soul as the price of his liberty.'

At the Tribunal other expert opinion from a psychiatrist agreed with Dr Crawford's assessment that there was no continued reason for Walters' detention. Yet his appeal to the tribunal for immediate release was turned down.

Walters is in an impossible dilemma. He has to prove to the medical and judicial men that he is sane, cured of his delusions. Yet his belief in his innocence is, in itself regarded as a delusion.

The paradox is that in order to be released as an innocent man, he must confess he is a guilty man.

And, all the while, Walters has set up a rather grim record; he has now served nearly nine years of a four year sentence.

The case of John Walters was the only one of the three *Rough Justice* films which dealt in any detail with forensic evidence. As we have said earlier, we were not impugning the honesty or diligence of the forensic officers. We were merely seeking to highlight the circumstantial nature of much of the forensic evidence against Walters. Nonetheless, within a few days of transmission the programme drew the following response in the form of a letter to *The Times*, who had reported on the Walters' case themselves:

From the Director of the Metropolitan Forensic Science Laboratory:

Sir, In last Saturday's issue (April 17) you commented in a preview on the BBC programme *Rough Justice*, which was subsequently transmitted on Wednesday evening, April 21. Unfortunately, the section dealing with the forensic evidence, both in your feature and in the BBC transmission, was incorrect. The details are as follows:

The clothing of the victim and of the accused were received in separate sealed packages.

That of the victim was examined in the laboratory and the extraneous fibres removed from it before the suspect's clothing was unsealed.

Therefore there can be no substance in the allegations of fibre transference by accident in the laboratory.

The suspect's coat was a blue/mauve cotton corduroy jacket with a mauve synthetic lining. (Fibres from the blue coat appeared mauve under the microscope.) There were 28 fibres matching those of the jacket found in the victim's clothes.

These were mauve cotton, matching the OUTSIDE of the jacket. They were found on the blouse, skirt, and jacket of the victim.

Also found on the clothing of the victim were some green cotton fibres which matched those composing the suspect's trousers.

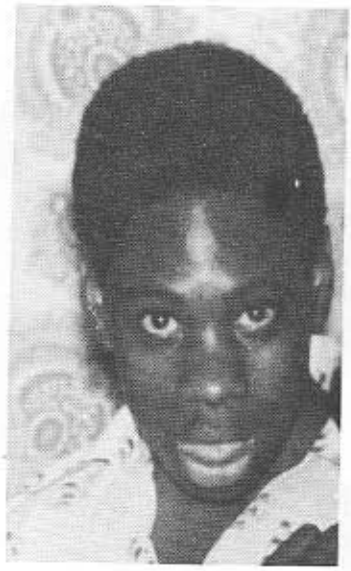
The matching of the fibres was not just visually by colour. It included comparison microscopy, ultra-violet fluorescence microscopy, and thin layer chromatographic analysis of the dyes. The mauve colour had four different dye components and that of the green fibres had three.

It is highly improbable that these fibres would be picked up by the victim by random chance.

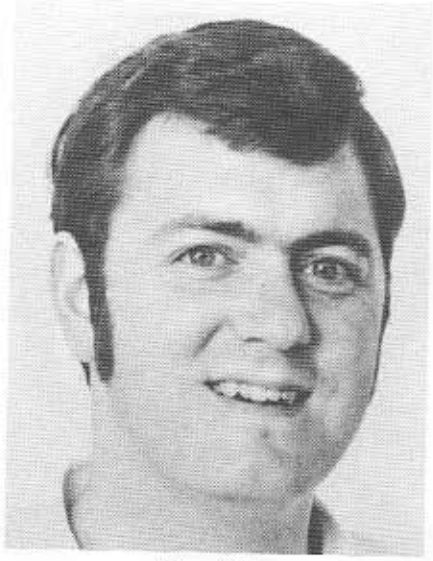
Yours truly,

R. L. WILLIAMS,
The Metropolitan Police Forensic Science Laboratory,
109, Lambeth Road, SE1.

The first point that needs to be made is that the programme had included all the substantial elements of the forensic evidence against Walters as outlined above. The letter's implication was



Andrew George



John Walters

Jock Russell with his dog, Sheba

Jane Bigwood

that none of it had been included or correctly reported. A few days later *The Times* printed our reply:

Mr Peter Hill and Mr Martin Young:

Sir, Our film about John Walters in the *Rough Justice* series was not at all incorrect in its reference to forensic evidence.

Dr Raymond Williams (letter April 29) will recall that evidence was brought at the trial that a laboratory liaison officer was seen by a police witness handling the clothes of both accused and victim while he moved them from plastic to paper bags ready for subsequent analysis. The defence suggested, as we said in the film, that this was how the fibres from John Walters' clothes could have come to be on the clothes of the victim, Miss Auffret.

We are, of course, aware of the techniques used to analyse the COTTON fibres. Our film included the main points of the forensic evidence presented at the trial and repeated in Dr Williams' letter. We did not dispute the analysis and neither did Dr Julius Grant, himself a leading fibres expert and forensic scientist. What Dr Grant did do, however, was to raise the important question about why there were no fibres to be found on the victim's clothing from the torn SYNTHETIC lining of Mr Walters' jacket.

Yours faithfully,

Peter Hill,
Martin Young,
British Broadcasting Corporation,
Lime Grove Studios, W12

Dr Williams' letter, while appearing to refute the programme simply restated the forensic details that were presented at the time and which our own independent expert, Dr Grant, had succeeded in revealing as contradictory and insubstantial. But in fact there was one very interesting detail in what Dr Williams had to say. It was clear that, whereas we had been working from the written statement of forensic evidence presented to the court, Dr Williams had been working from a slightly fuller report that he had found in his files.

If Dr Williams had a report which contained more information than had been available at the trial, and available to Walters' Defence Counsel, what else might it contain? Might it have evidence of fibres on the girl's clothing which came from blue

jeans? After all, the girl herself said that her attacker had worn blue jeans, and that description had been supported by the three railwaymen who saw the attacker enter her compartment.

There is no suggestion that this information might have been deliberately suppressed, nor that it was negligently dismissed. But as the Walters' case is reinvestigated these are surely legitimate areas in which to concentrate. Simply accusing the BBC of presenting incorrect information, when in fact they are quoting directly from the public record, is not helpful. The truth is that the forensic evidence in the Walters' case was not conclusive; there was a legitimate case made out by defence for accidental transference in the laboratory; the clothes examined were not those seen by the four witnesses at the time of the crime; and synthetic fibres which should have been shed in the course of a violent assault were *not* found on the victim's clothing. In short, the forensic evidence did *not* place John Walters convincingly at the scene of the crime.

In fact some six months after the programme a former British Rail policeman came forward with a statement which, if corroborated, would substantiate one of John Walter's Defence Counsel's theories of how the fibres came to be transferred from Walter's clothing to Miss Auffret's. This further evidence will form part of Walter's petition for a free pardon.

REACTIONS

Jock Russell, 'The Case of the Handful of Hair'; Michael McDonagh, 'The Case of the Thin-bladed Knife'; John Walters, 'The Case of Little Boy Blue'; that was the final series of three films that comprised the *Rough Justice* series. We were surprised by the reactions of the public and of the authorities.

The case titles that accompanied each story were almost the only concession to popularism. We deliberately copied the old, alliterative convention of Erle Stanley Gardner the man who created the Perry Mason courtroom dramas. There were three reasons. Firstly it was worth emphasising the 'whodunnit' nature of the stories. Secondly, it was a tacit acknowledgement of the fact that Gardner himself had pioneered an action group against injustice in America in the 1950s. We shall explore Gardner's concept of the 'Court of Last Resort' in a later chapter. Thirdly, in each case the title highlighted the key clue which made it practically impossible for the convicted man to be guilty.

But, apart from that one short nod in the direction of popular taste, the series deliberately set itself constraints. We had decided to present the programmes as factually as possible.

Yet the three programmes in *Rough Justice* were watched by over twenty-seven million people. The complicated story of the McDonagh clan alone attracted over eleven million viewers. We had seen it as a worthy but relentless tale – a demanding programme to watch, sandwiched between the Nine O'clock News and European Football! Yet here was a record audience for a current affairs programme. Why?

Part of the answer must be that the subject matter of two of the programmes was murder. Yet according to the British Audience Research Bureau's figures the highest audience response was to the third case, that of Walters, which did not deal with murder at all.

But what *Rough Justice* was doing was not new. There have been numerous programmes over the years that have investi-

gated alleged miscarriages of justice. Television can bring the cases to life, allow the viewer to see the scene of the crime, invite him or her to weigh up the strength of the witnesses. And of course newspapers have also pursued the claims of those who say they are falsely imprisoned. While serious newspapers may lack the immediacy of the televisual approach they have one distinct advantage. They can go into much more detail than a spoken commentary ever can. And the reader can always look back to the previous paragraph or the previous page.

Books have been written on the subject too. Outstanding among them are Ludovic Kennedy's *10 Rillington Place* about the hanging of Timothy Evans and the *A6 Murder* about Hanratty by Louis Blom Cooper. More recently, Ludovic Kennedy's book on the Luton Post Office Murder led to the release of the men who had been trying unsuccessfully for ten years to proclaim their innocence. No television series could hope to have the same impact as those books.

Yet *Rough Justice* did promote a debate among lawyers, policemen and the general public. It did, against all the odds, do something new. *Rough Justice* broadcast cases of apparent injustice three weeks in a row.

This created a cumulative effect, an impression that there might be a general problem beyond the specific details of each case. Issues were raised by the series which might have gone unremarked if the cases had been transmitted separately on *Panorama* or *Nationwide,* say. In our final week *The Times* contributed with its own investigation into a murder conviction, a feature article about *Rough Justice* and a leading article which asked, in relation to miscarriages of justice: 'Who will judge the judges?'

Gratifying as many of these reactions were, they did highlight our investigations in a fairly vivid manner. The strength of the response did seem to require us to justify our presumption in re-examining cases which the courts considered closed.

The fact that the courts had finished with the cases was actually one of the main reasons for proceeding with *Rough Justice.* All the cases we dealt with had exhausted every possible avenue of appeal.

There was no official reaction from the Home Office until the Deputy Under Secretary, Anthony Brennan, undertook to reinvestigate the three cases. This was not in response to us but in answer to inquiries from a Home Affairs Select Committee of MPs. The Manchester police reacted angrily. The forensic people involved in the Walters' case also protested as outlined above.

We were not, however, faulted on any question of fact. And facts were all we had presented.

From the outset, we had reasoned that the only way of examining any of the cases again in a court of law would be if the Home Secretary were to refer them back to the judiciary. The Home Secretary is appointed by the Prime Minister, but nevertheless he is a political individual, subject to the policies and decisions of a government, which is, in turn, subject to public opinion.

If the programmes consisted simply of facts, unadorned by comment, if they were intended to inform public opinion, and thereby the Home Secretary more fully, then they could surely be regarded as legitimate journalism.

So we chose to observe a number of constraints. The first was that the programmes should deal in facts, not opinions. We would corroborate these facts as far as possible. We would authenticate any documents that we quoted or used.

The second constraint was that we should not yield to the temptation to become judge and jury, to draw inferences from the conduct of the original investigation and trial.

We decided too that the prosecution case must be fairly and fully represented in each case. This was a third constraint. We guessed that people were going to ask, 'But just how did he get convicted?' We wanted to be able to say that all the salient facts that the prosecution had presented against the defendant had been reported in our films.

We asked our lawyers to check the script on each occasion against the transcript of the judge's summing-up to ensure that we had been fair to the presentation of the prosecution case.

This was more than a mere cosmetic exercise. We recognised that we were taking up cases after a gap of many years. We could not know what the atmosphere or conduct of the original trial had been like. The distance in time from the original events caused us problems, of course, particularly in tracing witnesses, but it gave us occasional advantages as well.

Some witnesses obviously felt freer to talk now than at the time of the crime. And freer, in particular, to talk to journalists rather than to the official authorities. There was always the chance that some new witnesses might present themselves or we might succeed in finding some and encouraging them to talk.

In short, there might now be more truth available than had been presented to the Court all those years ago.

In all our cases, all of the above actually happened. But the

greatest controversy about new witnesses concerned the McDonagh case.

After a great deal of debate we decided to name Isaac Panton as a potential murder suspect. In that programme, as previously reported in chapter two, Clara Esty told us:

'I saw Isaac . . . he had blood over his coat and his hands, I'm not quite sure of his words, but he was telling his lady that he had just killed someone outside.'

We had many reasons for believing what Clara Esty had told us. One of the main reasons concerned the details of another interview we had recorded on film. It was not used in the film because we had made undertakings about protecting our sources. But it corroborated Clara's story in considerable detail. This other witness stated:

'The front door was wide open . . . there was Francis (the murdered man) outside the front room door with blood on his face . . . and Isaac said he'd stabbed the guy and he had the knife in his hand . . . he had a small penknife with a white handle, used to carry it in his pocket . . . it was only a small blade, a pocket penknife.'

The two stories were mutually supporting. Naturally, we considered the possibility that there had been some sort of collusion. We cannot say in detail why we were able to rule this out without giving away something of the identity and location of our other witness. But, after all the tests that we could devise we felt sure that this was a case of 'clear corroboration'. We also felt, as described earlier that Clara's story had 'the ring of truth'. It is a nebulous concept, but we came to recognise it in concrete terms. Clara's story and that of the other witness backed up some of the evidence that had been presented by Michael McDonagh's defence counsel. But we had also heard evidence from a senior police officer who was in charge of the case, who had told us that he thought that 'Isaac Panton got away with murder'.

The fight inside that scruffy house in Moss Side was a messy affair. But the stories about Panton were the clearest evidence by far that Michael McDonagh and his son Patrick had not murdered Francis. In this book we have not included all the evidence against Panton for the same reason that we elected not to present it all in *Rough Justice.*

It is for other properly constituted bodies to prove men guilty, not for us. But there is no official body which concerns itself with proving a man innocent once he has been convicted of a crime. The objective of *Rough Justice* was to present the facts which

suggested the McDonaghs' innocence; evidence of Panton's possible guilt was only used in so far as it furthered the cause of Michael and Patrick's innocence. During the McDonagh investigation, we were fortunate in having the advice and support of a former High Court Judge. He was able to give us valuable judgement on the interview with Clara Esty which caused such an uproar. He also 'cross-examined' us about how we had obtained that interview and what pressures we had, or had not, brought to bear on the witness. We were able to convince him that we had obtained the information fairly and with due regard for the truth.

But the worries about Isaac Panton persisted. Panton was wanted by the Greater Manchester Police because he had skipped bail on a serious charge back in 1977. We were talking to people who had known Panton in the past. It was possible that we might run into him, or get to know where he was living. Had we done so, we would have been legally bound to inform the police. They would have arrested him on the 'bench warrant' which had already been issued by the Crown Court in Manchester.

This would have placed the entire story of Panton *sub-judice*. In order to be fair to the prosecution case in the McDonagh trial Panton would have to be mentioned. So the whole film would have been in jeopardy. The case for the McDonaghs' innocence could not have been put.

In the event, when we heard about the bench warrant we told Manchester police everything we had learned about Panton's possible location. In the light of the police's subsequent interest in us, it was as well we did. For a time they seemed much more interested in investigating the BBC production team than they did in re-examining the case against the McDonaghs.

We did try to build fairness into our approach. We did not want to be seen to be too obviously partisan. The very fact that we had chosen to highlight three cases in a series about injustice made it clear that we believed the people in question had been falsely convicted. But we did not need to turn that belief into propaganda. We needed a cool analysis of the case, so that we could be said to be providing more information to the public at large, the people who would ultimately decide whether a case should be re-examined by the judiciary.

'WHATEVER THE QUESTION, THE ANSWER IS NO'

The self-imposed restraints we outlined in the previous chapter may well be dismissed as mere window dressing. But that would be unfair. We were aware that we would probably be attacked by the authorities for our investigations, so we protected our backs. We played by the rules.

We believe that the dynamic that ought to exist between the journalist and authority is a healthy one in a free society. Put crudely, it is a case of mutual mistrust. This makes life hard or irritating for both sides. But why is it that the journalist sometimes succeeds, against all the odds, in unearthing an awkward truth? Partly because people will tell a journalist things that they would never tell to a policeman or a lawyer. It has to be a basic tenet of the trade that sources of information will be protected. But that always assumes that the authorities will let you get near the sources of information in the first place. Here we discuss their various techniques of denial. It is not really a complaint, – no one should, or will, shed a tear for the poor journalist. It is here, like most reporting, merely to inform.

In 'The Case of the Handful of Hair' a serving RAF parachute officer called John Cole gave evidence that most of his trained men would have been injured by the jump from Jane Bigwood's third storey window. Naturally we wanted to recreate his testimony. It was a matter of public record, after all.

He told us he was happy to give us an interview on film, but as a serving officer he would have to ask permission of the Ministry of Defence. He was sure it would only be a formality. But it was not a formality. The Ministry of Defence refused to let him talk. And, to add insult to injury, they refused to give any reason.

We had told the Ministry exactly what kind of programme we were making. We had stressed that we were trying to right a possible miscarriage of justice. So why did they not co-operate? It had no relation to security matters whatsoever. Often, we feel

the answer must be that it is simply easier to say 'no' and avoid contact with the media as much as possible. It is the intellectual stance that a fairly dim ostrich might adopt.

In the end we found a retired parachute instructor with even greater experience than John Cole. His opinion coincided with the testimony at the trial. The effect in our film was the same, but the amount of unnecessary trouble caused by the Ministry of Defence was irritating.

At least the Ministry of Defence were open about denying us access. In the John Walters' case the Department of Health and Social Security carried on this dubious tradition in a more devious manner. Just as in the Russell case, we wanted to record statements on film which had already been made in open court. On this occasion we wanted to talk to about a dozen people who had worked with John Walters in the DHSS office in Notting Hill. Walters claimed that he had been in the office on the afternoon when the crime had been committed. The police had questioned his colleagues in the office and taken statements. Some said that Walters had been there, some were adamant that he had not been in the office that afternoon. We simply wanted to repeat these statements.

Since the time of the trial, the DHSS had closed down the Notting Hill office, so the staff were dispersed all over the country. Several of the women had married and now had different surnames. We approached the DHSS press office and explained the purpose of the programme. We thought that they might help us to trace these people, a fairly simple job for them. Nor were we asking them to give away private information. We would only ask them to contact the individuals privately and ask whether they were prepared to talk to the BBC.

The DHSS did not of course help us. That was sadly predictable – we would have been surprised if they had. So we set about finding these people by our usual methods. It took us a fortnight but we succeeded in finding them all. Their response was most unusual. Only one of them – a retired pensioner – would talk to us. Some simply refused to say anything to us about the case. But six of them, in different parts of the country, all replied that they could not discuss whether Walters had been in the office that day or not because the Official Secrets Act did not allow them to talk about anything that they saw in a DHSS office – that most holy of holies! One of the statements taken by the police centred on the question of whether Walters had had a cup of tea in the afternoon or not – pretty controversial stuff, this. Clearly, we

reasoned, it must be an official secret that civil servants have cups of tea. All of the people who trotted out this excuse still worked in DHSS offices. Their unity of reply was a remarkable coincidence. By and large we subscribe rather to the cock-up theory of history than to the conspiracy theory. But it is worth pointing out, perhaps, that not only had John Walters worked in a DHSS office, but in Broadmoor he is now detained by the same outfit, the DHSS. It is tempting to wonder if, for once, the bureaucracy actually made the connection.

The silliest denial of access came from British Rail. In the Walters' case the crime which began the whole sorry affair had taken place in a single compartment of a train travelling to Waterloo. We needed to film on just such a train to demonstrate the circumstances of the crime. Indeed, certain aspects of those single compartments were important in the analysis of the trial: the method of opening the doors would have meant that the girl's attacker should have left finger prints; the rough material of the seats should have picked up fibres from his clothing; the general layout of the seats should have given the girl a good framework in which to judge height.

When we approached British Rail for permission to film in one of these compartments – preferably between Wimbledon and Waterloo – the response from the press office was quite positive. They had special rates for the hire of their compartments to television crews. It was a routine job in fact, so there would be no trouble.

But when we rang again to fix a time for the filming, the response was quite different. The request was 'being referred upwards'. Then our request was turned down – and the reason given: 'We don't want you running around giving the impression that every young woman who travels alone on the Southern Region is going to be attacked.' It was obviously a waste of time to explain that this was hardly our main intention in making the film, that we had already told them what the film was about and that there was no denying that at least one particular young woman had been attacked in one of these compartments. It was, after all a matter of public record. But we did explain all this – and the answer remained the same.

In this case we hired a single compartment coach from a private railway in Hampshire. We took pictures of Southern Region trains from public land and slotted in the interiors of the single compartment. The effect was exactly the same as if the Southern Region had been helpful rather than pusillanimous.

There was one difference. We saved about twenty pounds in fees.

One of the obstacles placed in our way was so unsubtle as to be positively amusing. It happened during the making of the John Walters' film. We had a good picture of John Walters, but it had been taken before his trial and was therefore more than eight years old. John Walters, unlike the other convicted men in the series, was in Broadmoor where the rules are different to prison rules. It was Walters himself who pointed out that he has a right to have a photograph taken of him inside Broadmoor. He could send it out to anyone he cared to name. He asked how he should go about requesting one, and was told that Broadmoor organised everything – and it would take about a week.

That was early in March – and the programme was due to be transmitted on 21 April as everyone, including the Broadmoor authorities knew. But there must have been more paperwork to process than usual because it all took a little longer – or maybe the Broadmoor photographer was ill. But of course John Walters was finally given his legal right. Everything was fixed. He could have his photograph taken – on 22 April – just one day, in fact, after the transmission of the film.

But no one need agonise over the rights of journalists. The prisoners themselves do not have the right of access to some of the evidence that they believe will be able to clear their names. John Walters, for instance, never understood why the police had picked him as the attacker of the girl on the Wimbledon train. He firmly believes that they were drawn to his name because of a mistake in the notes a doctor had taken during an interview with him just after the crime. If not a mistake, then a misunderstanding or misinterpretation of what he had told the doctor in confidence. He does not know, and cannot find out if the police ever saw those notes, and he cannot even demand to see what the doctor wrote down during that consultation. When we filmed his case he wrote us a letter giving us permission to see all his medical records. When we presented it to the hospital concerned we were told that the notes are the copyright of the doctor concerned and that he would not give us permission to see them. Our researcher, Martin Wright, worked full time for several weeks just trying to clear permission for us to see Walters' records. Walters was very keen, of course, that we should have permission. In the event, getting those records was like swimming in treacle.

Walters also has no idea of what he did that caused him to be

transferred to Broadmoor just before the end of his prison sentence. We too could not be told the reason, nor could we be told why Walters is being kept in Broadmoor.

Jock Russell's case could possibly have been taken much further if we had been able to obtain access to two key pieces of evidence. They were available to the police when they charged him and should still be kept in the files. Both relate to Michael Molnar, the man who might have murdered the girl. The murdered girl, you will remember, died clutching twenty-two strands of hair which must have come from the murderer's head. That hair was available for inspection by Russell and his defence counsel during the trial. Its only importance then seemed to be the obvious fact that it did not match Russell's hair. Now, after the *Rough Justice* investigation, the vital question is whether it might match Molnar's hair. Secondly, there were several sets of fingerprints in the girl's flat which were not identified. It was established during the police investigation that the murderer did not wear gloves. Michael Molnar had a long criminal record in Bristol and his fingerprints may still be on file there. What if those prints matched any of the unidentified ones in the flat? Russell however, indeed no one outside the police force, has the right to try to match those prints. No one outside the police force has a right to try to match Molnar's hair with the hair that was found in the dead girl's hand.

So, all in all, *Rough Justice* went on the air *despite* the efforts of many officials who had been asked to help while it was in production. This unhelpful attitude continued after transmission. The police, for instance, used an old ploy; first of all you criticise the programme on the grounds that it was inaccurate, then you quote the truth, which is in fact exactly what the programme said. Many people reading the statement or letter have not seen the programme in question, so they assume that it must have said something different to the truth. Even those who saw the programme cannot remember the precise details, so you are bound to win the point.

Finally, though, the most annoying aspect of all this is the willingness to say 'No'. In filming *Rough Justice* we were not trying to attack anyone, we were trying to show that some men might be falsely imprisoned; that they ought to be set free. We asked for small amounts of help from numerous authorities. The reaction came back: No.

But we think, in each case, we still came as close as we could to the truth of the events we investigated.

'WHAT IS JUSTICE?'

'What is Justice?' is, of course, a ridiculously ambitious question to ask.

The answer, at one level at least, is very simple. To a generation of prisoners who believe that they have been falsely imprisoned and that they have exhausted all hope of legal redress Justice has been immediately identifiable.

He is a seventy-seven-year-old man who works in an office on the third floor of an aged block in Chancery Lane, adjacent to the Law Society. His name is Tom Sargant. He is the Secretary of the organisation 'Justice', the British Section of the International Commission of Jurists.

Justice as an organisation was set up 'to uphold and strengthen the principles of the Rule of Law' and a great deal else.

Justice, as Tom Sargant over the past twenty-five years has personified it, has become the last resort for the man who continues to protest his innocence long after no one is listening. No one except Tom. After the arrest, the trial, the conviction, the appeal, even the petition to the Home Secretary – after they have all established guilt and not innocence, there is still Tom Sargant of Justice who will be prepared to believe in the possibility of your innocence.

Tom retired late in 1982. He had been the first and only Secretary of Justice since its foundation in 1957. To make his mission clearer in that time it is worth recording his answer to the question, 'What has been your greatest triumph in all that time?'

He embarked on one of his lengthy, infuriatingly quiet anecdotes. Indeed, if Christine, his secretary is typing in the room next door, he is almost impossible to pick up.

Four Pakistanis had been convicted of a murder committed during an inter-family fight. The victim had been knocked to the ground and then fatally struck with a brick. Tom was later to discover that the man who had delivered the fatal blow had flown off to India the following day.

Two of the four Pakistanis, Joginder and Swarn Singh, proclaimed their innocence. They said they had taken no part in the fight and had just been standing by watching it. At the trial one of the prosecution witnesses gave evidence, through an interpreter, that they were both 'striking' the man as he lay on the ground.

The trial was, in fact, a bit of a shambles according to Tom Sargant. The other two Pakistanis who actually had been involved in the fight persuaded Joginder and Swarn that they should all share the same solicitor and counsel. The witness and the victim were also called Swarn, so the possibilities for confusion in a trial conducted half in Urdu and half in English were considerable.

They were all convicted and Joginder and Swarn made futile efforts to appeal. Joginder was sent to Wormwood Scrubs. For four years he protested his innocence without any effect. Then he was fortunate enough to meet a prison officer who spoke Urdu and believed what Joginder had to tell him. The prison officer approached the Governor who in turn asked Tom Sargant if he could find a Pakistani lawyer to come and see Joginder.

He found one who was a member of Justice. On the strength of his report Tom interviewed the other three men and some witnesses in Coventry. Unfortunately, he discovered that all four men had been involved in lies and were unwilling or afraid to admit it. But eventually Tom got hold of a complete set of depositions and discovered that at the magistrates' court the vital witness had told a different story. Apparently he had actually said that Joginder and Swarn were standing by and taking no part in the fight.

The trial's shorthand writer looked out his notebook of the witness's evidence and showed it to the Pakistani lawyer. He turned to Tom with astonishing news: 'He is not saying the two men were "striking" the man on the ground. He is definitely saying that the two men were "standing by" the man on the ground.' Tom could not understand how such a simple but vital mistake could be made. 'The words in Urdu for "striking" and "standing by" sound almost exactly the same. The interpreter must have misheard. It is quite clear from the context that he meant the men were simply standing by as the victim was lying on the ground.'

Submissions were made to the Home Office. After the usual Home Office delay Joginder and Swarn were released but not

pardoned. They had served seven years in jail for a crime they had not committed and were given no compensation. The other two men were released not long after.

Few cases provide such a simple solution, though the lack of a pardon and compensation still rankles with Tom Sargant. Over the years he has taken on every conceivable kind of case. He has listened to 'all those hard luck stories they all hand you'. With some he has succeeded, with some he has failed, but with everyone he has perservered.

And all the while, in conjunction with bodies of distinguished lawyers who have served Justice, he has been advancing the aims of the organisation.

Justice has worked hard to remain a non-party organisation. Its funds come purely from subscriptions and charitable donations. It has had representatives from the Society of Conservative Lawyers, the Society of Labour Lawyers and the Association of Liberal Lawyers. Now it also has representation from the Social Democrat Party. It has never advocated revolution, but rather constant willingness to accept and to welcome change. As they themselves put it:

'Justice believes that no legal system can stand still. There must be continuous reform if the law is to remain relevant to social needs. But the reformed law must be workable, and not create more problems than it solves. To devise workable reforms requires thought, research and practical experience.'

That makes it very clear that if you are going to concern yourself with reform you must study all the mistakes that our system of law is bound to produce. Justice tries to persuade from an informed and responsible point of view. It leaves others to protest. I suppose that in our close work with Tom Sargant and Justice some of this philosophy must have rubbed off. As described in an earlier chapter, we decided to present our three cases as plainly and clearly as possible. We decided not to add issues or opinions of our own. It was for others to protest if they felt that protest was appropriate.

For many years Justice would report each year in general terms about issues it perceived to be problems of criminal law. Each annual report would complain about aspects of the Appeal Court procedure; allegations that the police had failed to provide full statements to the prosecution and thereby the defence; complaints that trial lawyers had been too quick to dismiss the idea of an appeal after an unsuccessful case and so forth.

But in 1978, when the Royal Commission on Criminal Pro-

cedure had been established, Justice decided to 'flesh out' their general criticisms with examples of the kind of cases they were dealing with each year. They would serve as rather more arresting examples, if you will pardon the pun, of areas where a reform of the law seemed essential.

So it was that we found our cases for the television series *Rough Justice*. To our surprise there was no shortage of material. Indeed, to begin with we selected three names from the various case histories. They all seemed to be genuine cases of miscarriage of justice. The names were: Kennedy, Mohinder and Naylor. None were to appear in the series. Kennedy was released on parole before we began to investigate. Even though his case might yet have been worthy of examination with a view to a full pardon, we decided not to go ahead. We had intended that the series would look at the plight of men still in prison.

We have not yet had the opportunity to investigate the case of Mohinder in any detail. But we investigated the case of Naylor in such detail that we will devote the whole of the following chapter to his extraordinary tale.

Below we have set out Tom Sargant's own analysis of the other two cases that we originally selected as examples of rough justice. The first we had decided to call:

THE CASE OF THE CONFUSING CLOCKS

Tom Sargant wrote:

'Robert Kennedy was convicted of wounding a police officer during an affray in a London club and sentenced to ten years imprisonment. He and a friend called Thomas Mott had gone there with their wives for a drink, and a fight broke out with three off-duty police officers. Kennedy claimed that he took no part in the fight but was knocked down. He and his friends then left the club and made off down a side street. They were followed and arrested by police officers who had answered a call for help, and after a violent struggle they were loaded into a police van and taken to Harrow Road Police Station. After some delay, and without any formal identification, Kennedy was charged with having attacked and wounded P.C. Bond, and Mott was charged with affray.

The only witness against Kennedy was P.C. Menary who, in a deposition statement and later at the trial, said that he had seen two men waiting to be loaded into a police van and recognised them as two of the men he had seen attack P.C. Bond in the

club. No other witness said that Kennedy had taken part in the fight. There were also two discrepancies in P.C. Menary's evidence. The officers who arrested Kennedy and Mott testified to a violent struggle in which Kennedy's wife was involved, whereas P.C. Menary simply said that he saw Kennedy and Mott being held by two police officers when P.C. Bond was being carried out to an ambulance. P.C. Menary attributed the blows aimed at P.C. Bond to a man in a grey check suit, whereas Kennedy was wearing a green suit.

These two discrepancies were not exploited by the defence or mentioned by the trial judge in his summing up. He did, however, give the jury a reasonably adequate warning about evidence of identification.

Kennedy was advised by counsel that he had no grounds of appeal and his own submissions were rejected by the single judge. He then wrote to Justice giving some information he had obtained from the police, and it was eventually possible to present to the court letters from the police and the London ambulance service to the effect that:

(1) Kennedy and Mott had been loaded into a police van between 12.10 a.m. and 12.15 a.m. and had been booked in at Harrow Road Police Station at 12.20 a.m.
(2) P.C. Bond had arrived at the hospital at 12.31 a.m. and would have been put into the ambulance five or six minutes earlier.

This made it clear that Kennedy and Mott had been under police observation or in police custody for some twenty minutes before Menary 'recognised' them, and that the two men he saw must have been two other men who were arrested that night.

The counsel who defended Kennedy agreed to take the application to the Full Court and it was expected that leave would be given without argument and the conviction quashed. But the court had other views. It maintained that the police clocks and the ambulance clocks were not necessarily reliable and that no evidence had been produced to show that two other men were arrested at 12.30 a.m. The new evidence therefore did not satisfy the requirements laid down in the Criminal Appeal Act 1968, and so could not be admitted. The Court further refused an adjournment and assistance in obtaining the additional information, and dismissed the application.

The hearing took place on 7 November 1977 and since that date repeated applications by the instructing solicitor to the Commissioner of Police and the Director of Public Prosecutions

have failed to elicit the required information. Meanwhile Robert Kennedy has served two years of his ten year sentence.

The legal arguments from Justice's point of view are clearly set out in Tom Sargant's submission in the Twenty-first Annual Report of Justice. The reluctance of the Appeal Court to accept new evidence is a continual shock to them . . . Two years later Tom Sargant returned to the subject of Kennedy to explain the continuing efforts that Justice was making:

'The Kennedy case happened in 1977, and we have been trying ever since by direct approaches to the Commissioner of Police and the Director of Public Prosecutions to obtain confirmation that there were two other men arrested that night and the statement (not served on the defence) describing the events in the police station which resulted in Kennedy being charged. After a long interval we were told that there was no evidence of two other men being arrested but as yet we have received no explanation of P.C. Menary's unsatisfactory sighting and how it led to the charging of Kennedy.

'The DPP has taken over the prosecution from the Metropolitan Police and there are indications that neither authority has wanted to take responsibility or to involve the other.

'This is a disturbing situation which could have been resolved one way or the other in 24 hours by an independent lawyer with full powers of investigation.'

Kennedy was released on parole before we could further investigate his case. It seems to us a sad reflection, in considering possible miscarriages of justice, that it is hardly worthwhile to reinvestigate anything other than a life sentence. Kennedy got ten years. After the prolonged business of appeals and petitions and further submissions, followed by the months that a new investigation can take, your determination to see justice done is seriously diminished by the fact that the man concerned has now served most of his sentence and has been released on parole. The fact does nothing to alter the justice of his cause but it makes the argument over his imprisonment somewhat academic. Certainly it is still worth trying to prove his innocence in the hopes that a free pardon might be granted. But free pardons are hard to come by and the damage to the man's life and reputation has already been done.

The second case that we originally intended to reinvestigate DID involve a life sentence – for murder. This is how Tom Sargant analysed the case in the Twenty-third Annual Report of Justice, the case that we would have entitled:

THE CASE OF THE NEFARIOUS NEPHEW

On 9 December 1979, Mohinder Singh Sidhu and his nephew Ravinder Singh were found guilty of the murder of Lember Singh in the course of an affray in Plumstead, Kent. They will hereinafter be referred to as Mohinder, Ravinder and Lember.

Mohinder's account of the matter, from which he never deviated, was that he and his nephew had been out drinking. On coming out of an off-licence Ravinder had seen Lember on the other side of the road and went over to him. They were old enemies and started to fight. Mohinder went across to separate them and as Ravinder ran off, Lember grabbed him. He managed to disengage, went to his car and drove home.

Lember later collapsed. He was found to have been stabbed five times and he died shortly after he reached hospital. Witnesses who saw the last stage of the fight took the number of Mohinder's car. On reaching home he had noticed blood on his coat and when the police arrived he pretended not to be at home and, they alleged, had hidden his clothes in the loft. On being taken to the police station for questioning, he told them what had happened and denied any knowledge of a knife having been used in the fight.

Ravinder, for his part, had made for his uncle's house and told his aunt that he was in trouble. She did not want him to stay as he was an illegal immigrant, so he then went to the house of Mohinder's father who put him to sleep on the sofa. In the morning, having found that Lember had died, he went to the house of Jugtor Singh, a friend of his uncle who told him to give himself up and plead that he was very drunk and stabbed Lember in self-defence. He telephoned the police and before they arrived Ravinder telephoned a friend in Birmingham, Balbir Singh Bains, told him the full story and was given the same advice. He signed a full confession which ascribed no blame to his uncle. The prosecution nevertheless took the view that the killing was a joint enterprise and charged them both with murder.

It was agreed and fully expected that Ravinder would give evidence at the trial in accordance with his confession. At the trial, after the prosecution had closed its case and Mohinder had given his evidence, Ravinder went into the witness box and to Mohinder's dismay completely reversed his story, saying that his uncle had attacked Lember and that he had gone to the rescue. He went on to claim that he had confessed to the killing under pressure from members of the family in order to protect his uncle.

Mohinder was powerless to rebut this accusation. Balbir Singh Bains had attended the first four days of the trial but had not

expected he would be wanted and gone off on a previously planned trip to India. The owner of the off-licence, a fully bound prosecution witness whose evidence at the committal proceedings had supported Mohinder's story, had been allowed to go abroad (where he later died) and the judge would not allow his statement to be read. Ravinder's counsel became in effect a second counsel for the prosecution. In the outcome Ravinder's tactics availed him nothing and both men were found guilty.

Mohinder's appeal was inadequately presented, being based mainly on a request to call two prisoners to whom Ravinder had confessed while awaiting trial, and the witness who had gone off to India. The court refused to hear the two prisoners because of the convictions and Balbir Singh Bains because he could have given evidence at the trial and should not have gone to India. This refusal took no account of the last minute change in Ravinder's story which could not reasonably have been foreseen.

After his appeal was dismissed, Mohinder approached Justice, and from information obtained it appeared highly probable that Ravinder's story had been engineered by a cousin from India. Mohinder's wife was asked to provide the names and addresses of all the two men's relatives and friends who had visited them in Brixton. Letters or statements were obtained from twelve of them saying that Ravinder had consistently exonerated his uncle. More importantly, one of them, a Mr Dhesi, gave a detailed account of the conspiracy which led up to the change of story.

With the full support of Sir John Foster, Chairman of the Council of Justice, Tom Sargant submitted representations to the Home Office asking for the case to be referred back to the Court of Appeal so that the new witnesses could be heard and the element of surprise taken into account. The response was wholly negative and has remained so despite further repeated representations. The new witnesses were disposed of by the argument that they contributed nothing new to what was already known despite the fact that Ravinder had not told any of them that he had confessed to protect his uncle.

Ways and means are still being sought to secure Mohinder's release but there is little hope of success. The difficulties have undoubtedly been increased by the fact that there have been two changes of Minister in the period covered by the representations.'

Had we been able to follow up the Mohinder case – and we may very well do so in a further series of *Rough Justice*, it is very clear where we should concentrate. What *did* Mr Dhesi, the two

prisoners and Balbir Singh Bains have to say? Who was the cousin from India and had he really engineered the whole change of story?

The case of Mohinder Singh Sidhu may yet be reinvestigated. In the meantime the efforts of Tom Sargant and Justice are all that Mohinder has to cling to.

We have deliberately highlighted three cases where repeated attempts to secure a release were unsuccessful. These, after all, are the people who most need their cases to be aired in public. But, naturally, with such a prolonged effort over the years Justice has won as well as lost. Here, from the last five years are a few of the successes:

Tom Naughton was sentenced to ten years for armed robbery. An investigation by Justice led to a reference by the Home Office and his acquittal by the Court of Appeal.

Donald Benjamin got twelve years for rape. After the intervention of Justice, the Court of Appeal ordered a new trial. The jury retired for just thirty-five minutes and came back to pronounce Benjamin 'Not Guilty'.

Peter Greensword was sentenced to seven years for manslaughter of a three year old boy. He protested to Justice who read the transcript of his trial, drafted new grounds of appeal, and the conviction was quashed by the Full Court.

Yvonne Jones made a change from the usual sordid list of murder, armed robbery and rape. She was convicted of dangerous driving and assaulting two policemen. When she finally appealed to Justice not only did the Full Court quash all her convictions, but it ordered that all her costs, including the cost of her trial should be paid out of central funds.

James Stevens was convicted in March 1976 of robbery with violence and he got five years. He protested his innocence and a police inquiry was instituted. The Chief Superintendent who led it actually told Stevens that he was satisfied that he was innocent. Yet it was only in May 1979 that his case came to the Court of Appeal after the intervention of Justice. After very brief argument, the court treated Stevens' application for leave to appeal as a fully-fledged appeal and quashed his conviction. As Tom Sargant added to his summary at the time:

'We regard it as quite unacceptable that so many obstacles should be put in the way of a man who is believed to be innocent by a senior police officer who has investigated the case in depth.'

Stephen King was convicted of the burglary of a vicarage and sentenced to eighteen months imprisonment. He claimed that

the police had broken the Judges Rules in their interview with him and that at his trial the Judge had behaved improperly. Justice discovered that whereas Queen's Counsel had asked him 120 questions the judge had intervened with comments and questions 197 times . . . King's convictions was quashed and he was immediately released.

Anthony Smith was wrongly convicted in October 1978 of causing death by reckless driving. He got seven years. Justice drafted his grounds of appeal and his conviction was quashed.

Those are only a few of the twenty-five or more cases that Justice has seen through to early release. In the list of Justice's other achievements it is easy to see how their work on wrongful conviction has influenced their attitude towards the law.

These are some of the law reforms that have been enacted as a result of recommendations by Justice:

1 Reforms in the system of criminal appeals.
2 The appointment of duty solicitors in magistrates' courts.
3 Fairer provisions for bail.
4 An independent element in the investigations of complaints against the police.
5 The Criminal Injuries Compensation scheme. It now pays out more than twenty-one million pounds a year to victims who would otherwise have received no compensation whatsoever.
6 The Rehabilitation of Offenders Act 1974 which lifted the fear of exposure from a million families.

The impressive element in Justice is that its members are all highly respected within their own profession. There are many worthy pressure groups in all areas of society. But when Justice puts pressure on through one of its many authoritative reports people tend to take notice, from the Home Secretary and the Lord Chancellor downwards . . . They can also claim a list of successes in civil and administrative law:

1 The creation of the office of Ombudsman, the Parliamentary Commissioner for Administration.
2 Fairer procedure at planning appeals and inquiries.
3 Fairer compensation in cases of compulsory purchase.
4 More effective safeguards for small landowners under the Community Land Act 1975.
5 Interim payments in personal injury actions.
6 An independent element in the investigation of complaints against lawyers.

It is a revealing list. It reveals a consistent concern for the small man, particularly when he is confronted by the monolith of authority. It is reassuring that an august body of lawyers who might otherwise be far removed from the concerns of the little man should spend so much of their time trying to arm him against impersonal authorities who might take away his house without adequate compensation, or take away his liberty without adequate proof. It is that concern which lies behind Justice's belief in the Rule of Law.

Tom Sargant would say, and many would surely agree with him, that nowhere is the small man seen to be more vulnerable than before a criminal court. If he is innocent, but the victim of a set of circumstances, then malpractice, negligence, or just sheer bad luck can put him behind bars for the best part of his life. No one has any idea how often this happens. It may be five cases a year, it may be five hundred. There is no way of finding out. But we know that it does happen.

It is the earnest wish of Justice, men like Tom Sargant and indeed ourselves, that there should be some effective, properly funded organisation that can devote its time and money to seeking out those cases and ensuring that the 'Rule of Law' has been applied and that justice has been seen to be done.

GEORGE NAYLOR: 'THE CASE OF THE CARPET FIBRES'

'This case was conducted in a thoroughly unsatisfactory manner and in my view reflects great discredit upon the law. If the victim's original description of her assailant was true in the whole or even in part, then it is clear that the assailant could not have been George Naylor. But even if it is believed that he was guilty despite the description, this is a case of a man being convicted by improper evidence.

'I shall not shrink from saying that Naylor has a justifiable grievance and is serving a sentence for a conviction which I shall always believe was obtained in an improper manner.'

Thus we began research on the George Naylor story, by reading a confidential memorandum about it from an eminent lawyer. We approached the victim, who said that her original description of her assailant was indeed the truth. Naylor had been convicted and sentenced on 23 February 1976 on charges which included rape and theft; he was given fifteen years imprisonment. It was clearly a case which *Rough Justice* should investigate, but it was to teach us our hardest lesson, and end in failure.

Crimes which merit long prison sentences are never pleasant to investigate; this was a particularly nasty one. The victim was a quiet sixty-one year old maiden lady living in a council flat in one of the poorer areas of Bradford. Though many women would have retired at her age, she had worked for most of her life, and she still did, as a winder in a local mill. Her life was not easy and she had always had to be careful with her money. She had established a pattern of living which meant that everything which needed to be done would be done; she would never be deeply in debt; she would never need to venture far into the outside world where the frailty of her existence might be exposed. Outwardly, these fears never showed. But the events of the night of Tuesday 10 December 1974 were to destroy the fragile existence she had constructed. Today she lives in a sheltered cul-de-sac on the

outskirts of Bradford. Her life has been broken. She has lost several stones in weight, she is frightened of most men, she speaks hesitantly, always apparently on the edge of tears.

On that Tuesday, 10 December 1974, she came home from work as usual. She went to the local newspaper shop for the *Bradford Telegraph*, just as she always did. She lived alone in her ground floor flat which looked out onto the communal area by the main door of the whole block. She had four rooms – a living room, a kitchen, a bedroom and a bathroom with a toilet. Behind the block, her living room looked out onto a small area of grassland which surrounded the flats, then onto the yard of a Catholic school. She arrived home at five p.m., it was winter, so she went into the living room and closed the curtains; only then did she put on the light, such was her routine.

At six-thirty she took the rubbish out and then returned to the flat to lock it up for the night. Her front door – her only door – had a mortice lock. She locked it before she put the chain on the door. Then, as always, she put the key from the lock in a comb box which was part of a mirror set on the wall near the door. She then had a bath, dressed again, and watched television until nine-thirty p.m. After that she put her pyjamas on in front of the fire in the living room. She placed her clothes, carefully folded, on a blanket box at the side of her bed – as she always did. Each night she checked her money, so she opened her purse and counted what she had left for the rest of the week. She had forty-six pounds. She closed her purse carefully and put it under her clothes on the blanket box. She got into bed and soon she was dozing off.

Before midnight she woke up. She looked at the luminous dial of her alarm clock. It was 11.45. But she always set her clock ten minutes fast so that she would never be late getting up in the morning. She never wanted to be late for work. So it must have been 11.35 when she got up and went to the toilet. Even though she was alone in the flat, she carefully closed the bathroom door. She always closed doors behind her.

Within a few minutes she was back in bed. Now she could not sleep, so she lay there thinking. After ten minutes she heard a noise – someone, it seemed, was throwing rubbish down the chute somewhere in the flats, something heavy. She wondered what it might be, and who might be throwing rubbish out after midnight.

Then her world of careful endeavour fell apart. There was a scuffling noise inside her flat. She got up, reaching for the light

switch by her bedroom door – but before she could turn it on, the door was roughly pushed open by a man with a flashlight. She fell back, blinking at the flash of the torch. For the next hour she was to suffer the most vicious sexual humiliation that any woman could imagine. But for this woman, who had never had any sexual experience, the degradation must have been truly awful.

When the man was gone, she fell back onto her bed exhausted, shaking with fright, and very cold. She tried knocking on the wall to attract the attention of her neighbours, but no one heard her. She got up and staggered to the front door. But the attacker had found the key and had locked her in as he left. She could not get out. She went back to her bedroom and collapsed on the bed. Her body was in pain. She desperately needed rest. Her mind must have wanted to blot out the memory of what had happened, but her years of quiet self-control slowly began to restructure her thoughts. She remembered that one of the women living in the flats upstairs had a cleaning job and left the block by the main door at a quarter to six. That would be her chance to get help. She lay on her side watching the clock until it was time to move.

When she heard the woman coming down the stairs, she got up as quickly as she could and went to the front door. She took the brush from the mirror set in the hall and pounded on the wall. At first the woman did not hear, but then she turned at the sound of her name and walked back. Someone else heard her too. George Naylor, the young man who lived upstairs came to the door as well. Neither he nor the cleaning lady could break the door down, so George ran off into the road outside and stopped a taxi driver who was on his way into the city centre. The taxi driver used the radio in his cab to call the police. They arrived within a few minutes.

Now the machinery of the police investigation took over. First a policeman came to the door, and with the help of Naylor and the taxi driver, he broke it down. They all went in. The cleaning lady comforted the victim. The policeman assessed the evidence. It was clearly a case of rape and he radioed for extra help. Detectives arrived and began to look at the evidence and to take statements.

In the living room a small transom window above the main casement had been completely knocked out. The casement itself was screwed to the window sill, but a large hole had been broken in the casement window, so this appeared to be the means of

entry. Beneath this window was a drop leaf table, the top of which was about a foot below the window. The intruder must have stepped through onto it. The victim's clothes were strewn all over the bedroom floor. Her pyjamas were torn, so too was a vest which had apparently been used to gag her. A brassière had also been torn. Her dressing table had been ransacked. There might be fingerprints on it. There might be fingerprint evidence on the windows too. There might be clothing fibres which could confirm the evidence against a suspect. Since it had been raining quite heavily in the night, there might also be some signs of footprints outside the window, or on the window frame. Since it was a rape case there might also be semen on some of the victim's clothing which should indicate the blood group of the attacker.

But above all there was the evidence that would come from the victim herself. She had spent nearly an hour at the mercy of this man. Although the attack had been in the dark she might be able to indicate his height, his accent, the colour and length of his hair. She might remember whether he had been drinking or not. She might also be able to describe at least some of his clothing. Before she was taken to hospital, the victim gave a statement to a police officer at the local station.

It was at this point that Detective Inspector Leslie Kenneth Senior arrived to take charge of the case. It was to prove a disturbing case for DI Senior. As soon as the fingerprint men got to work he ran into his first problem. There were no fingerprints on the dressing table. There were no prints on the windows – indeed no 'foreign' prints anywhere. Neither were there any footprints outside the window, in spite of the rain. But the news from the police station was better. The woman had given a description, and now there was further forensic evidence – two hairs had been found on her body. They might have come from her assailant. There were also some marks on her breast. She claimed that they were bite marks, inflicted during the attack. They might produce some worthwhile evidence. There was also an imprint of something in blood on her leg. But above all, the victim's description of the man was reasonably good in the circumstances. He was 'a few inches taller' than she was. That would make him at the most about five feet six, for she was five feet one. She thought he had either an Irish or Scottish accent and his voice was not deep. His breath did not smell of alcohol. He had been wearing gloves of a leathery material, and his jacket had been made of a similar leathery material.

A week later, when she returned briefly to the flat to help the police, she also discovered that not only had the money gone from her purse, but another purse containing thirty pounds had been stolen. It had been secreted in the drawer of a drop leaf table in the dining room where the man had entered. The drawer was hidden behind a door in the side of the table. That was the final clue. The woman left the flat and she never returned.

In the meantime the police had given an informal press briefing to a reporter from the *Bradford Telegraph*. They were confident enough in the description to announce that the attacker was 'young, about 5ft 6ins tall and with a Scottish or Irish accent'. Detective Chief Inspector Dawson Horn who was in overall charge of the enquiry added that the man had been wearing 'either a nylon or leather-type jacket'.

Since the police appeared to have confidence in this description, it is perhaps a little surprising that they should have taken any more than a passing interest in George Naylor, the young man who had first summoned the police through the taxi driver's radio. Naylor, after all, was six feet tall, and had a deep voice, with a clear West Riding accent. What's more he had been out drinking on the night of the crime. He had parted from his wife a few months earlier and had returned to live above the victim's flat with his mother. In fact the victim had known him casually for eleven years.

But Naylor came 'into the frame' very early on. He appears to have been seen at lunchtime in a pub on the same day as the crime was discovered. He was reported to be flashing some money about. But whatever the reason, a policeman went to interview him at five-thirty that evening and happened to see him pull a number of pound notes from his pocket. The policeman decided that was important, and took him down to the police station to make a statement. An impression of his teeth was taken.

At about the same time as the policeman was visiting Naylor in the upstairs flat, the police photographer took an exterior shot of the block which showed the proximity of Naylor's flat to the victim's flat. Naylor was not an obvious suspect at that time, for he did not fit the description given by the victim. Perhaps that is why he was allowed to go home after his visit to the police station.

Three days later however, Naylor was back in the police station again, this time being interviewed by Detective Inspector

Senior. He was asked a lot of questions about his sexual habits and his financial position. Another impression was taken of his teeth. Once more he was allowed to leave. That was on 14 December 1974. On the 23 December 1975, more than a year later, George Naylor was arrested and charged with the offences.

What had happened in those twelve months between the crime and the arrest which had persuaded Detective Inspector Senior that George Naylor had committed the crime? The evidence in court was to demonstrate the hard work which policemen are capable of. Some of the evidence not in court was also to reveal what policemen are capable of.

One of the main areas of Detective Inspector Senior's investigation where the jury did not hear 'the whole truth' was that of the 'teethmarks' on the victim's breast. As we have seen teethmarks were first seen on the morning after the attack. Later that evening the police rang a leading expert in forensics, Francis D. Ayton, who is a Lecturer in Forensic Dentistry, Dental Anatomy and Physiology at the University of Leeds as well as being a Forensic Odontologist to the West Riding Police. What Mr Ayton doesn't know about teeth is probably not worth knowing. He saw the victim at about six p.m. on the day of the crime, some eighteen hours after the attack on her. His conclusion was that 'there were no marks to suggest bite marks, no crescentic pattern to suggest teeth marks, and it would not be possible to identify the assailant from toothmarks'. When it came to the trial, this evidence was not presented in court, though two photographs that Mr Ayton took at the time were presented. They confirm his opinion, no clear crescentic shape is discernible. He also took an impression of George Naylor's teeth. But the jury never heard any of this.

The jury only heard from the West Riding Force Medical Officer, Dr Jean Harry Ellis. He had also examined the 'teethmarks', indeed he was the only man to identify them as such. He had examined the victim at seven-fifteen a.m., some seven hours after the attack. He did not take photographs of what he saw, he preferred to make a sketch. He said that he had found indentations in the skin in an oval shape, with minute haemorrhages within this pattern. He admitted that more than half of this pattern was indistinct. He also took an impression of George Naylor's teeth and compared the cast with his sketch. He used ordinary plasticine. This is not the practice of an expert, but he further compounded his error. From this plasticine he made a cast, then pressed the cast into another piece of plasticine, so

making another impression. He covered this second impression with a thick film of rubber 'to mimic more or less the consistency and hardness of human skin'. Then finally he took a plaster cast of that. This was the evidence presented to the court – not the impression correctly taken by the dental expert, Mr Ayton.

Basing his evidence on his own findings, Dr Ellis told the Court that there was a strong suspicion that Naylor's teeth corresponded to the marks on the victim's breast.

But who could have seen the teethmarks best? Dr Ellis, who examined the victim seven hours after the attack – or Mr Ayton who saw her some ten hours later? Common sense might suggest that Dr Ellis had the better chance – no doubt the jury thought so. But research suggests the contrary.

If Mr Ayton had been called, he would have cited authorities on the subject of teethmarks, *Dental Identification and Forensic Odontology* by Warren Harvey. It was the latest authority on the subject and quoted the important work of Sebata in Tokyo which had first been published in 1963.

Sebata stated, 'Depression of the tooth mark lasted three to five minutes prior to swelling, which was complete in the area in ten to fifteen minutes. The marks of individual teeth are no longer discernible twenty minutes after the bite. Maximum swelling was reached in twenty to sixty minutes and lasted five hours, disappearing in twenty-four hours, leaving haemorrhagic areas in the toothmarks and sucked zone.'

The experiment conducted by Sebata has particular relevance to the bite marks on the breast of the victim in the Naylor case. Using Sebata's results, it can be seen that when Dr Ellis examined the victim, seven hours after the attack, the marks of individual teeth had vanished more than six hours before; maximum swelling had been reached one hour before he saw her. Mr Ayton, on the other hand, had seen the victim about eighteen hours after the attack. By then the swelling had decreased, for it would disappear in a further six hours; and the bruising, or haemorrhagic areas in the toothmarks would have been appearing as the swelling went down. So, according to one of the leading authorities on the subject in the world, Mr Ayton had a better chance of seeing toothmarks than Dr Ellis had.

It was therefore probably a mistake on Detective Inspector Senior's part during his investigation to prefer Dr Ellis' views on the 'toothmarks' which Mr Ayton said did not exist. Perhaps he can be excused for not having read an obscure Japanese authority on the subject. But back in the early months of 1975,

when he was still putting the case together, he had other forensic evidence, which also pointed to George Naylor. It concerned microscopic fibres.

On the Saturday evening after the crime, George Naylor had been taken to the police station to make a second statement. At that time various articles of his clothing had been picked up from his flat including a leather jacket and a blue pullover. From there they presumably went to the police station and were stored over the Sunday. They were given to the forensic scientist on the Monday. When they were examined in the laboratory a remarkably damning list was compiled:

1 On the victim's pyjama jacket there were thirteen fibres which apparently matched fibres from Naylor's pullover.
2 On her undervest, pyjama trousers and sheet – seven fibres apparently matching those from Naylor's pullover.
3 On Naylor's pullover, fifty-seven fibres of seven different types which apparently matched the fibres of the carpet in the victim's bedroom.
4 On Naylor's pullover – one thread apparently matching the threads from the victim's pyjamas.

In addition, there were three specks of glass found among others in the pocket of Naylor's jacket which matched the type of glass used in the victim's dining room window.

The forensic report was prepared and signed on 4 February 1975. Eleven days after this report, Detective Inspector Senior paid another visit to the victim of the attack. She made a second statement to him. It covered everything that had happened on the night in question, from her leaving work on the Tuesday evening to the arrival of the police on the Wednesday morning. But there were two significant differences in her memory of the night's events. In this statement the man was 'tallish – at least a head taller'. Other than that there was no further description, except that 'from the build, stature and demeanour of the man that attacked me I would say this could have been George Naylor.'

Detective Inspector Senior now had a lot of evidence; Dr Ellis' comments, the forensic report, the victim's second statement. He added to it some other points – semen had been found on various items of clothing in the bedroom. Analysis had shown that it was infertile. George Naylor had had a vasectomy. Naylor lived close to her, he might have seen her putting her money away in the 'hidden drawer' in the drop-leaf table. And then

there was the bloodstain evidence – blood of type A had been found on the inside and outside of the first and second fingers of Naylor's right glove: the victim's blood was type A, Naylor's was type O. Some of this blood had also been found on a pair of Naylor's jeans.

Detective Inspector Senior thought about all this for some eight months, then he had Naylor arrested and charged him with robbery and rape. He had come to the conclusion at last that he had enough evidence. In fact he had a bit too much. Before he made the arrest the decision had already been taken to ignore what Mr Ayton had said after his examination of the victim. Now the first statement of the victim herself was proving to be a further embarrassment. However, it didn't embarrass many people, because not many people knew about it; and that was the way the police wanted it to remain. Prosecution Counsel, for example, was not told about it, so of course neither was the Defence. Detective Inspector Senior almost admitted its existence in his evidence to the court, but not quite.

COUNSEL: Now, were you in charge of this enquiry?
D.I. SENIOR: Yes sir.
COUNSEL: And I suppose in every case of major crime somebody speaks to the press?
SENIOR: Well, it is someone. You are probably right.
COUNSEL: Were you the person –
SENIOR: No sir.
COUNSEL: – Who gave any information to the press about who they were looking for?
SENIOR: No, we have a press office. This was dealt with from Wakefield. He is a civilian. There is more than one.
COUNSEL: I tell you why I am asking. Did you get any description from anybody that the attacker had long blond hair?
SENIOR: No sir.
COUNSEL: Or had a Scottish or Irish accent?
SENIOR: No, that was in the press. The press published that.
COUNSEL: Where had they got that from?
SENIOR: I have no idea. The press office at Wakefield presumably.
COUNSEL: The victim had said something about the man having a Scottish or Irish accent, had she not?
SENIOR: Not to my knowledge.
COUNSEL: Are you sure? I asked her about it.
SENIOR: She has never mentioned it to me. I know that was in the papers. I will accept that, that was in the newspapers.

The information about the first statement stayed hidden throughout the trial of George Naylor. Only the second statement was pro-

duced. Justice was now informed of the case and prepared grounds for appeal. They believed there was a first statement and took official steps to obtain it. At the Court of Appeal in July 1977 Detective Inspector Senior returned to his version of the truth about the first statement.

COUNSEL: Did you have that first statement with you when you attended the trial?
SENIOR: I did sir.
COUNSEL: Do you remember being asked by Counsel for the accused, 'Did you get any description from anyone that the attacker had blond hair?'
SENIOR: I do not remember. I have not seen the transcript. If you say it is there I must have been asked.
COUNSEL: And you answered, 'no sir', and the question was asked, 'or had a Scottish or Irish accent'. Do you remember being asked that question?
SENIOR: I remember being asked that question in relation to the press.
COUNSEL: The press published that?
SENIOR: Yes.
COUNSEL: You knew did you not that the description (i.e. Scottish or Irish accent) was in the statement of the victim?
SENIOR: The first statement, yes.
COUNSEL: So you had received a description that the attacker had a Scottish or Irish accent?
SENIOR: No, it was in the statement. I had not received it from the victim, it was in the statement. She denied it to me when I saw her. She said, 'that is not so', before I took the second statement.
COUNSEL: Listen to this question. 'The victim had said something about the man having a Scottish or Irish accent, had she not.' Your reply was 'not to my knowledge.'
SENIOR: Well, the proper answer should have been 'not to me'.
COUNSEL: That was an untruthful answer was it not?
SENIOR: No.
COUNSEL: The victim had said something about the man having a Scottish or Irish accent.
SENIOR: She put it in the original statement.
COUNSEL: Which you had read?
SENIOR: Yes.
COUNSEL: And you answered 'not to my knowledge'. It was within your knowledge.
SENIOR: It does not make sense sir.

If the victim had been tested on her ability to repeat her statement of December 1974 word for word in her statement of February 1975, she would have got very high marks indeed. She recounts the events, even the trivial ones, in almost exactly the same order. She repeats at least half a dozen paragraphs virtually word for word – even when her recollection must have been hazy because of her sleepiness at the time of the events earlier in the evening.

But when it came to remembering the description of her assailant in the second statement her memory seemed to fail her.

It is only fair to the victim in this case to remember that police statements are usually compiled from question and answer sessions. The questions are subsequently dropped: obviously they can not be a part of a witness statement. Some information – which perhaps should be in the statement on grounds of relevancy – is not included simply because the officer taking the statement did not put a particular question to the witness.

Although the victim in this case was subsequently to tell us that both statements were the truth, her second statement contained some surprising omissions. She did not, for instance, make any comment on the colour of hair, the tone or accent of voice or the smell of her assailant's breath. She remembered to mention several points which had become irrelevant to the investigation by February (when she made the second statement) but she apparently forgot to mention the description of the attacker. This was far from irrelevant. It would also appear that her memory on this point was not jogged by a question from Detective Inspector Senior who had read the first statement containing the description. Indeed, the Inspector might have saved a lot of time if he had asked the victim to sign a statement which simply said, 'I no longer feel able to swear that my assailant had blond hair, spoke with a Scottish or Irish accent and was about five feet six inches tall. In fact I now believe that he was at least a head taller than I am, and that it could have been George Naylor. Other than that, my first statement is the truth'. But the victim of course would not have signed such a statement, for she says to this day that she told the truth throughout the first statement. No doubt Detective Inspector Senior's reluctance to admit the existence of the first statement with its unhelpful description of the attacker did little to clear the minds of the jury at the original trial. But that was not the only part of the trial which must have been confusing. Much of the judge's summary had to be repeated because a member of the jury fell asleep during the

judge's first version. However, the judge himself appears to have become confused by the details. Earlier in his summing up he maintained for several minutes that the police had arrived at the victim's flat some five hours before they actually did. Having corrected this error, he then went on to point out that, 'There's blood on his blue pullover and it's of her blood group', whereas the medical report before him stated, 'Light bloodstaining is also present on the back of the pullover . . . I have tested the bloodstains . . . and have found it to be of human origin, but I have been unable to determine the blood group.'No one noticed this error, so the statement about the blood being of the same group as that of the victim went uncorrected. Towards the end of his summing-up, the judge even admitted that he had allowed his own opinion to stray into his words to the jury.

PROSECUTION COUNSEL: Perhaps this is being pernickety . . .
JUDGE: Nothing is too pernickety as long as it is in order to get things right.
COUNSEL: I think Your Lordship made the matter clear when you were dealing with corroborative evidence, but I noticed Your Lordship introduced things of supporting rather than being capable of supporting.
JUDGE: Yes, I think I did, capable of being supporting if you think so. Counsel for the Prosecution quite rightly points out I was putting my opinion instead of yours. I have told you things that could amount to corroboration, but counsel is absolutely right, it is for you to say whether they do support, is that clear, members of the jury. It was a slip of the tongue. It is not my opinion that counts, it is yours on these matters of fact.

Perhaps it was also a slip of the tongue which led the judge to declare in an earlier part of his summing-up, 'The one thing that the victim was able to say about her assailant was that he had a leather jacket on.' It is true that the victim had said this in her statement to the police – only one of which was available to the Judge of course – but she had never actually said it before the Jury. What she said is as follows:

'And then a light flashed into my eyes and of course I put my hands up, and someone – I felt something round my throat – and pushed me to the ground. As I put my hands up it felt like leathery, you know. Anyway he still had his hands round my throat . . .

Q. I would like to know a bit more about your putting your hands up and what you touched. Tell us a bit more about that will you?

A. Well, I just put my hands up and nothing really much only I just had this thought it felt leathery. I mean, immediately he had me on the floor, you see – the light went out then and he had me straight on the floor.

Prosecution persisted on the question of the 'leathery substance'.

Q. Can you tell us anything more about this surface that your hands came upon when you put them out. Did you notice anything in particular about it?
A. No, well there was no light. I couldn't see you see. Really my hands only sort of touched it for sort of perhaps a second or so, because he had me on the floor then.
JUDGE: What material was it? Did you notice that?
A. Well I didn't see it but it felt sort of leathery – leathery type.
COUNSEL: Were you aware of coming into contact with that leathery substance again at all during the course of what happened? Did it touch you again; can you remember?
A. I don't remember.

These were the answers which led the judge to claim that the one thing she was able to say was that her assailant had a leather jacket on. What's more, he emphasised the jacket several times. Later he said about the 'wetness' of the intruder, 'The victim noticed no wet on the coat of the man who you may think must, if you accept her evidence, have been in extremely close contact with her from time to time during the assault . . . if a man had come in from the rain in that leather jacket, could he really have left no sign of rain in the victim's mind . . .'

Perhaps the jury were still wondering which leather jacket he was referring to – and wondering why he failed to point out that if her evidence on the substance of the jacket was not firm, then equally her evidence on its wetness or otherwise must be equally uncertain. After the victim's initial contact with the leathery substance, she said she did not remember being in contact with it again.

Having read the court transcripts of Naylor's case, we were sympathetic to any members of the jury who became confused. The case had even confused the Appeal Court judges. They made a basic error of fact when they stated: 'Two varieties of fibre, constituting the material from which the pullover was made, were found in the carpet.' There were no fibres from George Naylor's pullover found on the victim's carpet, yet this error was a part of the section which the Appeal Court called 'the real evidence'.

Other areas of the evidence intrigued us as we examined the court records. We wondered why Naylor had been allowed to remain free from February to December when Detective Inspector Senior had all the evidence he was ever to have that Naylor was a vicious rapist. Naylor had been questioned three times already, and was always accessible to the police. With this in mind, we also wondered why the following curious passage got into the court record. It concerned the two human hairs which had been found on the body of the victim when she was first examined.

COUNSEL: Do I take it that there were two hairs which were found to have come from the victim which were not the accused's?
JOHN MITCHELL (FORENSIC SCIENTIST): They did not match the accused's hair samples.
COUNSEL: If they had matched you would have said so?
MITCHELL: Indeed.
COUNSEL: Did you take any samples, or have any samples from the victim's hairs?
MITCHELL: I did not have a hair sample from the victim, no.
COUNSEL: . . . You cannot tell whose they are?
MITCHELL: No, I cannot tell. They are not from the accused's hair. The sample I had from the accused was not a large one, but the two hairs that have been recovered from the victim did not match the accused. Because of the small sample of hair from the accused I cannot say whether they might match.
COUNSEL: You mean you cannot say they were his, or you can say they were not?
MITCHELL: I cannot say they were not his, but they did not match the hairs that were submitted.

This episode appeared in the judge's summary as follows:
'There is a little evidence about hair in this respect, that Mr Mitchell was given two hairs which Dr Ellis had got from the victim's body. You remember that at some time her clothes had had to come off when he was examining her and he had a sheet to catch them. Those hairs were examined by Mr Mitchell, who told you that nothing could be told from them. They were not like the defendant's hair, of which he had a sample, but equally – and this is perhaps important – he was not able to say that they were not the defendant's. He said in fact they might have been the victim's own hair . . . and certainly he could not say they were not the defendant's.'

It was probably confusing for the jury. These two passages ought to be read again most carefully before any judgement be made as to whether that was a fair summary of the evidence before the court or not. But one aspect struck us in particular. We reasoned from the statements that no more than a dozen people had been in contact with the victim between the time of the attack and the recovery of the hairs. Yet the police seemed to have made no attempt to eliminate any of these people. They had simply taken samples from George Naylor – and samples, what's more, which were too small to prove anything. Yet, he was available to give further samples of hair for a year and two months before the trial. Why had he not been approached? And why was the victim's hair not tested?

We decided to look at other aspects of the police investigation. Everyone had known it had been raining during the night of the attack. In fact the rain had only just stopped when the victim had finally managed to get help at 5.45 a.m. The forensic scientist had looked for footprints outside the window where the attacker had entered and found none. Oddly there were no signs of mud on the window frame or anywhere else where the attacker must have put his feet as he climbed in through the hole in the window. Yet the victim had not been asked about the wetness or otherwise of her attacker, nor had she volunteered information about this in her statement. The first time she ever mentioned it on the record was in the Court when she had simply answered, 'No, I don't remember feeling any wet'.

It seems to have been Detective Inspector Senior who first mentioned wetness. On the Saturday after the attack, he said to George Naylor in the Police Headquarters, 'Furthermore it was raining at the time, yet the man responsible wasn't wet, you would not be wet, you only had to go outside and break in.' His assumption was, it seems, that a man could knock out the high transom window completely, discover that he could then not open the casement window by the catch, so break the casement window and climb in – all without getting wet, even though one of his own officers said in a statement that there was a downpour at the time.

Nevertheless, in spite of his comments to Naylor in December, when Detective Inspector Senior took the second statement from the victim in February, he forgot to ask her about the wetness of her attacker. Perhaps he had not checked the question of rain with his 'rain witness', Detective Sergeant Michael Simpson who was on duty that night, and vividly

remembered when it had rained. We cannot even tell when Simpson told Senior about the rain because Simpson forgot to date his statement. Not only that but his statement does not say where he was on duty that night. Yet DI Senior could have checked the rainfall more accurately by driving to Lister Park, less than three miles from the scene of the crime. The Meteorological Station there would have given him the figures. It was not uncommon for them to be consulted by the police anyway. There he would have found that his sergeant's account of the rain was not as thorough as perhaps it might have been. The Sergeant timed the 'downpour' as starting at 11.30 p.m. and lasting until 3.00 a.m. In fact the 'downpour' had begun at 9.00 p.m., slackened off at 10.00 p.m. until 11.00 p.m. then become heavy again until 2.00 a.m. not 3.00 a.m.

How might this affect the evidence? Well, Detective Inspector Senior said at the trial that it was only as a result of what the victim had said in court the day before that he thought Naylor might have used the balcony of his flat – which was above part of the victim's rear window – both for looking into her window to see where she hid her money, and for jumping down in order to break in. Senior conducted an experiment that very day. He leant over the balcony to see if he could see the 'hidden drawer' where half of the stolen money had been. He said he could, although the table, of course was no longer there. Then he measured the drop from the balcony and jumped down from it himself to test out his new theory.

This new theory seemed to solve two of the problems before the jury. The first problem had been that the 'hidden drawer' was more than a foot below the window sill, so it would have been very difficult for anyone to have seen what the victim was doing by the window as she put the money into the drawer unless they were standing very close to it. DI Senior's surprise evidence suggested that Naylor could have seen the victim from his balcony without her noticing. The second problem had been that the victim had not noticed any wetness on her attacker. Senior's new evidence decreased the amount of time that Naylor would have been in the rain if he had broken in in this way.

What Detective Inspector Senior had missed because of his inadequate investigation of the rain was that the downpour had begun at 9.00 p.m. If Naylor had avoided getting wet by jumping down from the balcony, he would almost certainly have left footprints – and no footprints were found. The ground was far wetter than the jury had been led to believe. Three-sixteenths of

an inch of rain fell between 9.00 p.m. and 10.00 p.m., more than during the 'downpour' at 11.00 p.m.

Naylor said at the trial that he had been thrown through a car windscreen in July 1973 and had dislocated his hip. For some weeks he had walked around with a stick, and been told by his doctor that he might never be able to walk properly with his right leg again. So would he have made such a jump only eighteen months later?

Senior appeared to be wanting to have it both ways: not only with the rain evidence, but with the fingerprint evidence too. No fingerprints were found in the flat other than the victim's. She told the Court that the intruder had been wearing gloves. Yet at some stage during the rape he must have taken them off, for she suffered several scratches on her body which the police claimed were made by fingernails. Yet no fingerprints were found, even on the dressing table which the attacker had rummaged through during the crime. When George Naylor was examined, it was found that he was a 'nail-biter'. At the trial Dr Ellis, the Police Medical Officer, claimed that Naylor's nails were long enough to cause scratches, yet he admitted that they were too short for him to take nail paring samples from: nail-parings which might have had traces of the victim's blood still on them if Naylor had been the assailant.

It occurred to us that if Naylor had indeed done this crime, then it would have saved everyone a lot of time and trouble if he had kept his gloves on throughout. This would have explained the lack of fingerprints, and avoided the obvious problem of how fingernail scratches could have been inflicted by nails which were too short to have anything cut off them.

Another puzzle that the police apparently never unravelled was the question of George Naylor's belt. This problem arose when Dr Ellis discovered two parallel blood lines on the thigh of the victim. The distance between them was 9/16ths of an inch, and they were imprinted on the leg for a length of nearly two and a half inches. Dr Ellis concluded that these could have been the imprint of a blood-stained object something like a strap – presumably worn by the attacker.

We drew these lines on a piece of paper, just as described by Dr Ellis and realised that this 'belt' was probably too thin to have been for a trouser belt. It may have been a decorative belt on a leather jacket. The origin of the blood was not tested, but there was a strong suspicion that it was that of the victim, for she had bled profusely. So the attacker might have had blood on his belt;

either on the belt of his jacket or of his trousers. An alternative, possibly better, theory was that the marks were actually caused by a buckle, since they were two distinct lines – not the sort of mark a bloodstained belt would make.

Nothing of this nature was ever found to be in George Naylor's possession. In fact Naylor's only leather jacket had neither a belt nor a buckle. A bloodstained pair of jeans were found, and a pair of gloves with blood on them also. The blood was of the victim's blood group which covers forty-two per cent of the population. But if he did the crime, he apparently threw away the belt. If it had been a part of the belt of the jacket, then a further question had to be answered – why did George Naylor's jacket have no bloodstains on it?

The jury were not however asked to ponder this problem. The reason that they never heard of these lines of blood is simply that Dr Ellis missed them out of his account of the examination of the victim. He was asked a very general question, 'Will you tell us about your examination of the victim?' He was allowed to consult the examination records. But when he came to the place in his records where he had noted the marks on the thigh, he left them out.

It seemed to us odd, if Naylor had indeed raped the lady, that he should have been so selective in throwing away the belt with blood on it, but not the jeans and the gloves. The same thought occurred to us on the question of the torch.

No torch was ever found in George Naylor's possession. The rapist had one, but it must have been the least incriminating piece of evidence against him. It had probably not been spattered with blood because it had fallen onto the floor before the attack. Yet Naylor – according to the police theory – apparently chose to throw the torch away whilst keeping in his possession his blue pullover, his leather jacket and his bloodstained jeans and gloves.

Early in his summing up, the judge had likened the evidence to grains of sand, and posed the question – how many grains make a heap? We began to see our doubts about this case also as grains of sand. But there were three pieces of evidence that prevented our grains becoming the heap that would prove him innocent. We had already decided that George Naylor had not been seen to be found guilty; but was he, in spite of the irregularities of his trial, actually guilty? The three key pieces of evidence were: the glass splinters found in his pocket, the sterile semen found in the victim's bedroom, and the fibre evidence.

Of these it seemed to us that the glass and the semen were of

lesser importance since it was obvious from the start that they alone did not place George Naylor at the scene of the crime. Obviously the victim's window panes were not the only panes with that particular refractive index in the whole of the Bradford area. It was also obvious that George Naylor was not the only man in the Bradford area who had infertile semen.

The judge himself cast much doubt on the question of the glass in his summing up. He also gave his own summary of the figures of infertile males in the total population. He said of the infertile semen: '. . . it could have come from the defendant. Equally, as you are well aware now, it could have come from five per cent of the adult population of this country, indeed perhaps 5·1% according to one, and a figure he gave was six per cent . . . Six per cent if you take into account people who are naturally infertile.'

We tried to check these figures and found that there are no national figures for natural infertility. Five per cent is generally accepted as the rate for vasectomies, but it is impossible to get an accurate figure on natural infertility because many people do not know they are infertile, and those that do are often reluctant to admit it is so – particularly among men. We could not guess where the figure of one per cent for natural infertility had come from. The Family Planning Association who often come into contact with infertile couples guessed that the national figure for both male and female was about five per cent. But they were the first to admit that it was a most untrustworthy estimate.

No one had thought to project these percentages into figures. The crime had appeared to be a burglary first and a rape second. Burglars are increasingly employing the trick of driving to a location well away from their own homes in order to avoid suspicion. So we made a rough estimate, based on the judge's own figures, of how many men those percentages might mean. An area within a half hour drive of the scene of the crime at that time of night would cover something like twenty thousand infertile men.

We did not therefore believe that the semen alone could prove that George Naylor was guilty, although we accepted that a jury might regard it as damning evidence and a remarkable coincidence.

But the forensic evidence of the fibres, which the jury could not see for themselves because they were so small, was the indestructible part of the prosecution case. It is worth look-

ing at again, because the fibres more than any other factor have kept George Naylor in jail since 1975. The list was:

1 On the victim's pyjama jacket, thirteen fibres which apparently matched fibres from Naylor's blue pullover.
2 On her undervest, pyjama trousers and sheet – seven fibres apparently matching those from Naylor's blue pullover.
3 On Naylor's pullover, fifty-seven fibres of seven different types which apparently matched the fibres of the carpet in the victim's bedroom.
4 On Naylor's blue pullover – one thread apparently matching the threads from the victim's pyjamas.

Arguments about fibre evidence can run to many pages. Those concerning the fibres in the Naylor case are complicated indeed. Here they are condensed as much as possible, for we admit the strength of the prosecution case.

The defence chose to argue that the fibres could have got onto Naylor's clothing from the victim's by transference on the morning after the crime. This could have happened when people brushed against each other or simply because these microscopic fibres float in the air and are trapped by the clothing on the people in the room. After all, defence pointed out, it was Naylor who called the police through the taxi's radio; he had helped the police constable to break in and had gone into the flat to help comfort her. But they could not prove that he had been wearing the blue pullover on that morning – and that was the only article of his clothing that figured in the fibre evidence. Naylor said in court that he thought he had been wearing this blue pullover on that morning, but he admitted that he was not sure. He also said that he had gone into the bedroom, following the constable and the victim. After a while the policeman suggested he should make a cup of tea for the victim, so he went back upstairs to put the kettle on. He gave the tea to the constable at the door and did not enter the victim's flat again. His only other possible contact was with the cleaning lady who had also gone into the flat to console the victim and assist her in putting some clothes on. Naylor and the taxi driver had helped the cleaning lady to go upstairs to her own flat because she was distressed. Naylor said he put his arm around her shoulders.

The cleaning lady however said that Naylor had been wearing a raincoat. It was wrapped around him and she could not see underneath it. The victim said in her second statement that he had been wearing trousers and a pullover; in court she added

that it was a brownish or mustardy pullover. When it was pointed out to her by the defence that the light on a winter's morning was not good, she admitted that the pullover could have been blue.

But even if Naylor had been wearing the blue pullover on the morning – and the judge seemed to believe that he had – there did not seem to have been enough contact between him and the victim to produce the amount of transference that the fibre evidence required. Nor was the theory that there had been transference across the clothing of the cleaning lady very strong. Admittedly, she had been comforting the victim in the bedroom, and no doubt had many of the fibres from the victim's clothing and the bedroom carpet on her own clothing – but could this all have transferred to Naylor's pullover? And how did the fibres similar to those of his pullover get onto the victim's clothes? The jury could not believe the transference theory.

Nevertheless, (there were some tricky questions to answer if you believed Naylor to be guilty). If his pullover had picked up fibres from the carpet – why had his jeans not done so? The carpet fibres allegedly found on his pullover were found mainly on the cuffs – why then were none found on the inside of the sleeves of his jacket? A thread apparently from the victim's pyjamas was found on the back of the left sleeve of the pullover. How had it got there? Could it – as the forensic scientist suggested – have got there because the jumper had been folded up when the police took it? If so why had none of the carpet fibres on the cuffs transferred themselves to other parts of the pullover as well? And if the pullover shed fibres as readily as the evidence suggested, why were no fibres from it found on the bedroom carpet? How could it have been a purely one-way transfer? Bear in mind that Dr Mitchell, the Science Officer took his samples from the scene on the day of the crime; the victim's clothing was then taken off to the laboratory, though the carpet remained in her flat. Naylor's clothing was picked up three days later and taken to the lab two days after that. Moreover, it was suggested that the thread from the pyjamas had got onto Naylor's pullover when he ripped them in half during the struggle. But the attacker also tore a vest, and ripped the edging from a brassiere. Why were no fibres from these items found on George Naylor's clothing?

There are of course no answers to these questions. We therefore looked further into the available evidence. First we decided that the pyjama thread on the back of the pullover sleeve was not of prime importance since it might well be accounted for by

transference from the cleaning lady. She after all had been very close to the victim, and Naylor might well have put his arm around her as he helped her up the stairs to her flat as he claimed. The back of his left sleeve could then have picked up a thread from her clothing which she in turn might have picked up from the victim's pyjamas, or indeed from the bed.

Next we looked at the blue pullover in terms of the fibres shed from it. In all there were twenty fibres which appeared similar to those from Naylor's pullover which were found in the victim's bedroom. We obtained the pullover in question. It was an acrylic roll-neck pullover with a trade mark 'Prova', which meant that it had been made for, and presumably bought from British Home Stores. We checked this particular type of pullover through all the places where it had been sold, knitted, dyed, even where the yarn was spun. Some of the records were no longer in existence, but some remained. We discovered that British Home Stores had taken delivery of 8,400 pullovers of this particular type between October 1973 and June 1974. This was not the only order for the pullover, it had been made before and after these dates, but the records no longer existed. Moreover, the dyers in Leicester had one further interesting figure – they had dyed at least 500 kilos of the yarn which had been knitted into this sweater. That indicated that other items of clothing had been made from this yarn or, possibly, as a manager at the knitting factory half-remembered, there had been an imitation of it made at the request of another company. Apparently this happens if British Home Stores have a particularly successful line. The pullover was indeed a fast seller – British Home Stores sold 72,000 of them in four different shades during the run up to Christmas in 1973 alone! If only 20,000 of the blue pullovers had been sold in Britain – and the figure was probably higher than that – then, considering the style and the sizes of the jumper, at least a thousand men in the Bradford-Leeds area owned that particular jumper. This proliferation of the yarn would be increased of course if other clothes had been made in the same fibre.

It would appear to be a remarkable coincidence that George Naylor had a jumper of the same material as the intruder in the flat below him. But our figures showed that it was not impossible.

However, when we came to the third part of the fibre evidence we discovered the rock not only on which the prosecution case was founded, but on which the case for George Naylor's innocence was wrecked.

The carpet in the victim's flat was of a floral design in at least seven different colours. We could not find a sample of this carpet to check if it contained colours other than those found on Naylor's pullover. But even finding that would have proved little. It would have been a remarkable coincidence if 57 fibres of 7 different types and colours matching the victim's carpet had found their way onto Naylor's pullover by any other means than by contact between that pullover and that carpet. Naylor had not been in the victim's flat before the crime. Although he had been in the flat briefly after it, he had not been observed rubbing the cuffs of his pullover on the carpet – nor did he claim that he had. How else could those fibres have got onto his cuffs? Even though there were no fibres from the jumper on the carpet, the simple answer was that he had rubbed the cuffs on the carpet whilst raping the victim. We had no evidence to suggest any other means by which those pullover cuffs could have been rubbed against that carpet. He could not have got into the flat after the morning of the crime because the police were in charge of it whilst the victim was in hospital. The pullover was collected from his flat on the Saturday, stored in the Police Station, then taken to the laboratory on the Monday.

Since the brief of *Rough Justice* was to look at cases where we felt that innocent men had been wrongfully convicted, and not to look at cases where a man who might be guilty had been tried incorrectly, we decided that we could not continue with the Naylor case. That one piece of evidence could not be ignored.

Naylor himself still protests his innocence. This, after seven years, is impressive. One day perhaps some other investigator will discover how the carpet fibres could have been transferred to the cuffs by some other means. But we cannot say.

A CHAPTER OF ACCIDENTS

After the transmission of *Rough Justice*, the most frequent question seemed to be, 'How on earth were those men ever convicted?' The next question was almost always, 'Did you put all the prosecution case? Surely there was more evidence against the men than that?' We have already answered that second question, because the fair representation of the prosecution case was a basic element in all the scripts. But we could only guess at the answer to the first question. We are, of course, not qualified to say publicly why there appeared to have been a miscarriage of justice within a legal system which is acknowledged by many neutral observers as being probably the best in the world. And yet we were closest to the cases. Because of the time we had been able to devote to them, we probably knew at least as much, if not more, than anyone else who had worked on them.

As we have mentioned before, we did not feel we should discuss on television why the cases seemed to have miscarried. But in the format of a book it is perhaps legitimate to identify some reasons for these apparent miscarriages of justice.

Some of what follows is based on our own experience in reading the cases in question, but much more echoes conversations which we have had with eminent lawyers and police officers.

For those whose only experience of the machinery of British Justice has been gleaned from *Dixon of Dock Green* through to *The Sweeney* it is worth recalling some basic points in our legal system.

No man in the conduct of an investigation of a crime, or the subsequent trial of an accused person, can allow himself to prejudge the issue; that is, the guilt or otherwise of the accused. Judgements are certainly made throughout every case; the decision to choose a person as a main suspect; the decision to prosecute that person; the choice of the particular charge to be laid against that person; these are important judgements based upon a careful reading of all the evidence. But they do not of course pre-judge the accused's guilt.

A judge may occasionally decide that a defendant is innocent because there is insufficient evidence of his guilt. In those circumstances he may direct the jury to acquit.

But only a jury may decide that a man is guilty.

The jury may only come to a decision that is based on evidence presented before it in the court, evidence which is presented in accordance with a set procedure and with certain rules. The 'job definition' of the jury is as clear as that of every other person connected with the case. When certain people in the *Rough Justice* cases were blamed by the audience it was often for failing to do something which was actually outside the limits of their job.

The job of the police is to collect all the evidence that may help to find the culprit; identify the most logical suspect in the light of that evidence and present the case to the Director of Public Prosecutions. His job, in turn, is to assess the evidence against the suspect and to decide if it is in the public interest that the case should be tested in the courts. The job of prosecution counsel is to present that case before the jury within the rules of evidence which have evolved through hundreds of years of British justice. Defence solicitors advise the accused of his legal rights, research the possible evidence against the accused and prepare this for defence counsel. He in turn appears in the court on behalf of the accused to test the validity of the prosecution case before the jury. The judge ensures that rules of evidence are observed, and gives whatever advice is required to help the jury. After the conviction it is his job, of course, to decide on a sentence.

So, if the men in the cases of *Rough Justice* were found guilty, when in fact they were innocent, then ultimately the fault can only lie with the juries that convicted them. No one in any of these three cases acted incorrectly, no one maliciously prejudged the accused's guilt, no one suppressed any evidence. All the questions which could have been asked at the time were asked. But the programmes would never have been made had there not remained a lurking doubt that the decision of the jury in each case was wrong.

In the Russell case for example, the key clue was the handful of hair in the dead girl's hand. It seemed quite obvious, and the prosecution did not seriously disagree, that the hair must have come from the murderer's head. The prosecution's expert witness testified that the hair did not match Russell's, so Russell could not have been the murderer. All the facts about the hair

were quite clearly put to the jury, not only by the two counsel, but by the judge in his summing up.

In the McDonagh case the knife which killed Francis McDonagh was not produced, and the evidence that Michael McDonagh had ever had a knife on the evening in question was very thin: one witness who thought she had seen him with a knife said during the trial that she had been told that Isaac Panton had done the killing. A second witness, who claimed to have heard Michael shouting, 'Where's my knife?' was a Nigerian who speaks with a strong African accent. As we have pointed out before, he was listening to a drunken Irishman shouting in a heavy Irish brogue. Michael had little opportunity, if any, to dispose of the knife, yet the police, who arrived at the scene quite early, did not find the knife, even after the most thorough search. All this was quite properly put to the jury.

In the Walters' case the statements of four people who had seen the attacker were quite clear – the man had been wearing blue denims. Not only did Walters deny having had clothes such as these at the time (nor were any found), but the prosecution entered as evidence a dark blue/mauve corduroy jacket and green jeans. The man who had jumped into the compartment at Wimbledon had not been wearing these clothes, so how could Walters be guilty? This key point was put to the jury quite forcefully by the defence – and by the judge in his summing up.

Single points like these though do not form a case. The evidence presented before a jury is far more extensive than this. There are many minor judgements the jury must make on a whole range of facts and on the validity of the reasoning of the people before them in court. If a man is unjustly convicted, and few are, then it is because of a chapter of accidents which often start before the crime itself is committed, and end on the final day in court.

Jane Bigwood was murdered around 8.40 at night. If Jock Russell's dog, Sheba, had not fouled the floor of the Dover Castle pub in Deptford at about 8.10 that night he would not have been convicted of the crime. Yet soon after he voluntarily told the police that the knife they were displaying on their posters was his, he became a logical suspect. Indeed he very quickly became the most likely suspect. After all, he knew the girl, albeit not very well. He had access to the knife. It was his knife, although he claimed it had been stolen from him a few days before the murder. And he was certainly in the vicinity of the girl's flat at the time of the murder. No one else had been

found who fitted those characteristics of the murderer, although the police had about a dozen other suspects. Since there were no eye-witnesses to the stabbing, the first piece of evidence the police looked for was proof that the suspect was at the scene of the crime. The second piece of evidence they needed was proof that he had access to the weapon. Allied to other circumstantial evidence, proof on these two points would certainly result in a charge and probably a conviction. There seemed a *prima-facie* case that they had this proof against Russell. And it is not the job of the police to pre-judge a case.

But Russell appears to have been a suspect *faute de mieux*. Although he admitted having been in the vicinity of the girl's flat at the time, there was no evidence within the flat which proved that he had actually been inside. The murderer had not been wearing gloves, because the ridge marks from the tips of his fingers had been found on the window ledge where he had hung before jumping down. But Russell's fingerprints were not found anywhere in the flat. They were not on the knife, his own knife, not on the door knocker, nor on the window frame where the murderer escaped. And although it was, technically, his knife it appears to have been much more in the nature of 'communal property' in the flat where he lived. Moreover, there was no conclusive evidence brought that Russell had had the knife on the night in question, nor even on the day in question.

We were told by witnesses in the case, some of whom were in almost daily contact with the police, that the squad of detectives were divided on the question of whether or not to charge Russell. Such discussions are rarely made public, so we can only presume that the case was referred to the Director of Public Prosecutions because the Deptford Police thought Russell the most logical suspect. And Russell certainly was, because there was some evidence to show that he matched the two basic characteristics; being near the scene of the crime and having access to the knife.

When it came to the investigation of the murder of Francis McDonagh, the Manchester police had one advantage over the Deptford police. There were only a dozen people in the Manchester house when Francis McDonagh was stabbed. The murderer had to be one of them, since they were the only people at the scene of the crime. But in spite of the fact that there were several eye-witnesses to the fight on the stairs between the McDonaghs, there was no one who had actually seen the stabbing take place. The police never found the knife, so there was

an underlying weakness in the case. Any one of the dozen people might have had access to the weapon. The problem was made more difficult because some of the witnesses admitted several times that they had lied in their previous statements. In the end the police had two witnesses who said that Michael McDonagh had 'seemed' to have a knife. But they even had one witness who was sure he had seen Francis McDonagh, the murdered man, with a knife! Patrick McDonagh admitted to having had a screwdriver, indeed he admitted to having struck both Francis and Francis' wife with it. So these two men became the most logical suspects. In addition to all that, though it should not have affected the assessment of the factual evidence in the case, these two logical suspects appeared to have abundant motive. There had been a family argument earlier and Michael and Patrick were at the scene of the crime because they had gone there 'to have it out' with Francis.

So, on the evidence that the police had available to them, the McDonaghs were the logical men to refer to the Director of Public Prosecutions.

Since the *Rough Justice* series has produced evidence that another person in the house had a knife, it may be tempting to criticise the police. But without the benefit of hindsight it is difficult to see how they could have dealt with the case differently, given the kind of people they were questioning. Faced with some of the witnesses lying, then admitting to those lies and lying yet again – not once but several times – the police had to decide at some point that they had got as close to the truth as they could reasonably hope. What they could not do was what time and human behaviour has subsequently done, they could not eliminate the pressures that caused those witnesses to lie. The new evidence revealed in *Rough Justice* surfaced because Isaac Panton is no longer an influence on the lives of the witnesses concerned. But if the police had found Panton's knife, the McDonaghs might never have been accused.

In the Russell case the police had the scene of the crime, the time of the crime and the weapon. In the McDonagh case they had the scene of the crime, the time of the crime but not the weapon. In the case of the assault on Miss Auffret in the train from Wimbledon to Waterloo – the Walters case – the British Rail police had an eye-witness to the crime, Miss Auffret. But they did not have a weapon to attach to the suspect because there wasn't one – and they did not have the scene of the crime because it disappeared down the track back to Wimbledon before

they got to it. The most important factual evidence was wiped out by the rush of London commuters leaving Waterloo. Perhaps the police could have moved faster and sealed off the section of the train which contained the relevant compartment before anyone else had disturbed the fingerprint and fibre evidence. Miss Auffret was probably too disturbed to identify the compartment she had been travelling in, but the actual scene of the crime could have been identified later because her fingerprints would have been there. But one small accident probably caused the police to lose the important evidence in that compartment – evidence incidentally which might well have cleared John Walters. When the train reached Waterloo, Mr Alfred Lobb, the driver, observed the attacker, 'little boy blue' as he called him, running along the platform. At the time, Mr Lobb was changing the board on the front of the train to a red danger signal. He then walked along the platform to the other end of the train for the return journey. As he passed the front compartments he noticed Miss Auffret. She was still sitting in her compartment crying. He asked her what was wrong but her reply did not make much sense. Miss Auffret is a pretty girl, and that afternoon she was dressed particularly well because she was going for a job interview. Mr Lobb assumed that she was crying because she was having some trouble with her love life. He is a gentle, mild-mannered man and he did not want to intrude. He moved on. It took Miss Auffret several minutes to pull herself together. She staggered along the platform and found the police. By then Mr Lobb was ready to take the train out of the station, carrying the fingerprints and the fibre evidence with him.

Walters was not the first suspect for the crime. Why he was ever a suspect is still something of a mystery. After all, he did not fit the description that Miss Auffret and the three railwaymen had given of the attacker. It may have been the result of another accident. The attack in the train took place on a Thursday. As we have already reported, two days later on the Saturday, Independant Television transmitted a film which included a long scene in which a man made advances to a girl in a train, and then murdered another girl in the same train. On the following Monday Walters went to a London Hospital and asked a doctor to admit him for treatment for his 'flashing'. Walters, you will remember, had a record for exhibitionism, though it had always been a passive offence. He had shown no tendency towards sexual assault. It may also be relevant that Walters had committed these offences on trains. Walters says that he 'laid it on thick'

with the doctor because it seemed that he was not going to be treated. He told the doctor a story which was based on the Saturday evening play. He hoped that the doctor might believe his condition was getting worse and admit him. He believes that notes of that conversation somehow got relayed to the police. When we were researching *Rough Justice* we could not discover the truth of this. But there is no law that could have stopped the information being offered to the police, or being passed over to them.

Two other accidents appear to have happened which may have helped to promote Walters as the most likely suspect for the crime. One prime piece of evidence against him was that Miss Auffret picked him out at an identification parade, even though he did not match her original description of the attacker. But before the identification parade, before Walters was even a suspect, Miss Auffret was shown a series of 'mug shots', amongst which was a photograph of Walters. She did not recognise him, even though this was immediately after the attack. But it is possible that his face may have registered on her mind and later convinced her that she had seen him before, and that he therefore had to be the attacker.

The second prime piece of evidence against Walters was the fibre evidence, much of which we discussed in an earlier chapter. The police officer, Detective Sergeant Howard testified in court that a laboratory technician who was handling Miss Auffret's clothes and the clothes Walters was supposed to have been wearing, had used his bare hands to transfer them from plastic bags to paper bags. This is not normal procedure and it could have caused accidental transference of fibres from Walters' clothes to Miss Auffret's.

But from the police point of view, Walters had to be the most logical suspect for the crime. He was placed at the scene of the crime by the victim herself; he had a record for crimes of a sexual nature on trains; and fibres possibly from two items of his clothing had been found on her clothing. In the light of this, it is not surprising that the case against him was submitted to the Director of Public Prosecutions.

In none of the three *Rough Justice* cases was there ever any real doubt that the suspects would be brought to trial and that the most serious charges possible would be brought against them. Only in the Walters case did there seem to be the slightest doubt when the charge of attempted murder was dropped. Such was the evidence that the Director of Public Prosecutions would have

had little to add. There was no doubt that these crimes had been committed, and that the Police had arrested the most logical suspects. The DPP would see there was a case to answer and that the prosecution counsel would have no difficulty in presenting a case for the Crown.

Thus the onus fell on the defence lawyers to find the weaknesses in the case against their client. Since they were all found guilty, and there now appear to be serious doubts about the safety of the verdicts, it might be inferred that the defence lawyers were either lax or incompetent. But in none of the cases in *Rough Justice* was this so.

Russell was defended by an industrious solicitor who appeared to have spent his own money travelling around Deptford rather than cope with the intricacies of accounting for legal aid expenses. All the major points that we reported in 'The Case of the Handful of Hair', the points which seemed to convince so many viewers that Russell was innocent, were discovered by this solicitor and presented to Russell's counsel. Defence counsel in turn put these points forcibly to the jury on several occasions.

It is true that as we explained earlier, the defence counsel was at a considerable disadvantage in having to defend two separate charges, the murder of Jane Bigwood, and the attempted wounding of Francis Peters. Nor was he helped by Russell's general demeanour. Russell had been drinking at least six pints of cider a day, but had not had a drop of alcohol since he had gone into prison. Maybe he was still drying out. He was also convinced that someone 'was out to get him'. There were rumours in Deptford that the police thought he was the man who had attacked several girls on Southern Region trains at about the same time as the murder. This rumour was not supported by any evidence, but they had not unnaturally roused Russell to anger. In court he often looked sullen, and sometimes he muttered to himself.

With the jury so clearly disenchanted, the defence counsel had to do more than simply show that the prosecution case was not strong enough. He had to try to show that someone else might have done the crime. The solicitor had already discovered that Michael Molnar had disappeared just as the police were about to question him. Solicitors have good facilities for sifting through the evidence that is found by the police, but that in the main is composed of exhibits and statements which are to be used in the case against the solicitor's client. If an alternative defence is being prepared – that an accused is innocent because the crime may, at least equally, have been done by someone else, then the

solicitor's powers and facilities are inadequate. Although private detectives may be employed in some cases, it would be impossible on legal aid expenses to employ any force of investigators equivalent to the police. Only a very rich defendant could afford that.

In the Russell case the defence lawyers needed to find Michael Molnar, and evidence about him. When they began to look for him, he was only a couple of miles away from the scene of the murder – in the Camberwell Reception Centre. But he could have been anywhere. The police were already looking for him, not necessarily as a suspect for murder, since Russell had already been arrested and charged, but because he may have been a material witness to certain elements of the case against Russell. The police have greater access to information than a solicitor. For example, Molnar had a criminal record in Bristol, so there might have been quite a lot of information about him on the police national computer and in the police and prison records in the West Country. The police have greater influence in obtaining information from people like doctors – and Molnar was in the care of doctors for many weeks after he left Deptford. Ultimately, when Molnar died, the police had access to his body in the police mortuary in Bromley. By then they knew that Russell's lawyers were interested in Molnar, but they were under no obligation to inform Russell's solicitor. The body might have provided evidence that could have helped the defence case, but again there was no obligation on them to invite the defence to view it or examine it.

In fact, everything that the defence lawyers learned about Molnar came from witnesses the police had interviewed as they built up the case against Russell, or from the police themselves when they were questioned about him in court. Molnar's fingerprints and hair were important to Russell's defence: they were available to the police in the Bromley mortuary three months before Russell was put on trial. But they were not available to the defence. His clothes, which may have included the waistcoat which the witness saw on the murderer, were burned.

Not only do defence lawyers sometimes find their investigative powers inadequate, they never have enough time. The police investigation is usually over by the time the suspect is charged. There is little to do beyond the preparation of the argument. Defence can have a say in the timing of the trial, but judges sometimes refuse to allow adjournments. Usually the defence lawyers must work to a strict timetable. But the police might, on

occasions, have spent years putting the evidence together on a particular crime before charging anyone.

In the McDonagh case the defence solicitor simply did not have time to find Clara Esty – the girl who became the key witness in the *Rough Justice* film of the case. The police had interviewed her. So they were legally bound to pass on her name and address to the defence. The solicitor tried to find her. But she had moved. When the case came to Court she had still not been found.

Defence asked for an adjournment. This was not because they could not find Clara Esty, for they did not know what she had to say. In fact, Michael McDonagh's counsel had gone down with influenza, so defence wanted an adjournment so that the replacement barrister could be fully briefed. The adjournment was refused. Michael McDonagh did not even see his new counsel before the day of the trial. Although the barrister in question did a good job, he was severely hampered by the fact that he was picking up another man's work. He had no opportunity to consult with the solicitor on his own ideas for investigation which might have helped the case.

The defence for Michael McDonagh was also limited in its range by the lack of investigative powers. Although they knew something about the shady background of some of the witnesses, they were not aware of everything. So they could not easily guess at the motives which may have persuaded some of the witnesses to commit perjury. Among those witnesses were two prostitutes, two pimps and one person whose business representative was in gaol at the time for smuggling. In his role as a pimp, Isaac Panton had been known to defend his girl with a knife. It seems that the police knew of this, but Michael McDonagh's counsel did not. Some people in the house had a lot to cover up. There might have been charges against them of living off immoral earnings, soliciting, income tax evasion, falsifying social security statements and several more which it would be defamatory to state in public. Michael McDonagh's defence lawyers did not have the time, nor the powers to reveal the bias of the witnesses before them in court.

In the case of John Walters the defence counsel had few of these problems. But there was one area of evidence which he could not investigate at all. It should have been very useful to him, possibly vital. It is a common problem that defence lawyers cannot get at the scene of the crime early enough. They are usually only summoned after a suspect has been found, or even

charged. The scene of the crime has been searched many times. Hundreds of feet have tramped across the floors, hundreds of new fingerprints have been added to those that were there when the crime was committed, thousands of fibres have floated onto the furniture and the carpets – mainly blue serge ones. So defence has to rely on the scene of the crime as described by the police – on the evidence as collected by the police. They cannot find any other evidence there that will help their case.

But in the Walters' case the scene of the crime had disappeared over the horizon before even the police got to it. What if there had been an abundance of blue denim fibres in the seat opposite Miss Auffret? What if fingerprints had been found of a known sexual attacker who was five feet eight with small eyes and owned a blue denim jacket and jeans and a pair of blue shoes?

Walters' counsel succeeded in showing from evidence supplied by the prosecutions's own witnesses that the transference of fibres from Walters' clothing to Miss Auffret's could have taken place when the laboratory liaison officer took the clothing from the British Rail sergeant. Yet he has been criticised by some people who watched *Rough Justice* for not calling the railwaymen to give their evidence in court. But it was not as simple as that. First of all, the railwaymen were called in evidence by the prosecution. Walters' lawyers must have liked it that way; the statements of the railwaymen clearly showed that John Walters was not the criminal – and the prosecution counsel could not impeach his own witnesses. Later, when the prosecution decided that they would rather have the written statements of the railwaymen read in court instead of having the men in the witness box, why should defence not have agreed? If the men had gone into the witness box, the prosecution might have managed to fudge the issue somehow. But the final outcome was that this vital evidence was read to the jury and appears to have made little impact.

In none of the *Rough Justice* cases was there any major error by defence counsel which could have significantly affected the minds of the jurors. Best possible lines of defence were chosen and competently pursued. If the mistake was not made by the defence, was it made by the judge in his summing up? After the arguments have been put by prosecution and defence, it is the judge's job to explain to the jury exactly what the law is on the case in question. He then goes through all the main points against the defendant, and the main points in the defendant's favour. He may also add some advice to the jury along the way on

how they might assess this evidence. Many convicted men accuse the judge in their case of having poisoned the jury's mind against them. This certainly can not be said of the cases covered by *Rough Justice*. Although it is now only possible to read the transcript of the judge's summing up, so it is not possible to decide if there was an emphasis in it that is not apparent from the words alone, the judges in the cases we covered seemed to be fair in their summaries.

It may be worthwhile, though, to examine the judges' versions of the key points of evidence in the three cases.

In the Russell case we chose the handful of hair as the key clue. It seemed to us and to the police that this hair came from the head of the murderer. Because it did not match Russell's hair, it seemed obvious that the murderer could not be Russell. Of the hair Mr Justice Jones had this to say:

'The doctor also removed from her right hand some hairs. You have been referred to hairs which were clutched, or which were in her hand. I think that was the latest expression used. Let me remind you of exactly what the pathologist said. He said there were 'hairs adhering to the palm of her right hand'. There were there, apparently, some twenty-two hairs. Dr Wilson said four were dark brown, the rest colourless. She said they could be either grey or blond. Mr Cowlig, called on behalf of the defence, says there is a difference. You can tell a blond hair which has a slight colouring in it. Dr Wilson, you remember, would not have that. She described these as either grey or blond. One of the dark hairs had a root on it, and some of the colourless hair had roots on them, but not all. She said you would expect, if the hair had been pulled out in the struggle, the root would come with the hair, but equally she said hair with a root attached can fall out naturally or can be combed out in the ordinary process of combing hair. Obviously, if the hair is cut then you do not get a root on it. Those hairs, she said, could have come from one head or twenty-two heads. Mr Wright (Defence) poured a certain amount of derision on that evidence. To be fair to Dr Wilson, what she was saying, and saying very carefully, was this, was it not: "As a scientist looking at these hairs under a microscope, there is nothing about them which tells me they all came from one head or from twenty-two different heads." The question is: have you any reliable evidence they came from one head, two heads or three heads?'

'The defence say the hairs found adhering to the girl's palm were many of them grey, colourless hairs. They, the defence

argue, must have come from the murderer. They could not have come from the carpet. That has been examined; no hairs were found upon it. They did not come from the carpet. That has been examined; no hairs were found upon it. They did not come from the defendant. The evidence as to that was that samples had been taken, presumably carefully, from the defendant's hair, and these samples were nothing like the hairs found adhering to her hand.'

The above is an extract from fifty-nine pages of summing up, more than twenty-five thousand words, more than four pages of *The Times*.

In the McDonagh case, we called the film 'The Case of the Thin-bladed Knife' because it seemed to us that this was the key clue – who had a knife? If Michael McDonagh had not had a knife he plainly could not be the murderer. This is what Mr Justice Kilner-Brown had to say on the knife:

'It is said that if, as did happen at times, McDonagh was stabbed with a knife, it was not Michael. It is said at one stage that Sheila Eccleston said something about Isaac Panton to Mary Mullen, from which it might be suspected that Mr Isaac Panton might have had a knife. Scrupulously fairly, and with the necessary attention to his duty which Mr Waddington (Defence Counsel) exercised, that had to be explored of the witnesses, and what the witnesses have said is this: Panton said, "I did not have a knife." Jasper Allen said he did not have a knife; and Mr Maguire (Prosecution) observed at one stage, "What has it got to do with them, anyhow?" There is no suggestion here that either of those young men had got it in for Francis McDonagh at all.

'(Mr Agbai, the landlord said) "The bearded man (Michael McDonagh) said as I put him out, 'Where is my knife?'". This, members of the jury is a critical piece of evidence. Is that true? Did Michael McDonagh say to Mr Agbai, "Where is my knife?" If he did, it means he had a knife, and you may think if he did, it also provides a good deal of evidence to support the suggestion that he used it. (Mr Agbai said) "I saw the man with the beard with something in his hand which could have been a knife. It had a wooden handle."

'(Mary Mullen said) that the bearded man had something in his hand. "I think it could be a knife," she says. So there you have got Mr Agbai putting Michael inside the house, Michael with something in his hand, with a wooden handle which could be a screwdriver, could be a knife. Here you have got Mary Mullen

putting Michael inside the house and in fact confronting and facing Francis McDonagh, and Mary Mullen putting something in Michael's hand which she thought could be a knife. She (Mary Mullen) admitted that Sheila had also said at one stage that Isaac Panton had a knife. Maybe he did. But what evidence is there in this case that anybody saw Isaac Panton flashing a knife about at Francis McDonagh?

'What went on earlier inside the house, who was there, who had the knife, and the evidence which I reminded you about, you may think may indicate that Michael was in the house, Michael did have a knife; no one else was seen to have a knife; nobody else was seen to stop, although Michael was not seen to stop if he had the knife and said to Agbai as he went out "Where is my knife?" *[sic]* "Knife or no knife, out you go." The Crown say "From all that evidence you would be driven to the conclusion that it was Michael who did have a knife and Michael who drove it into his brother's chest and killed him." What does Mr Waddington say on behalf of Michael's defence? First, nobody saw the actual stabbing. Second, no weapon has been found. There was no knife on Michael when he was arrested.

'Against that . . . you have to set the evidence of those prosecution witnesses who say he was there, he was involved in the fight, "We saw him. He had something in his hand. He came out and said 'Where's my knife?'" You weigh it all up and if at the end of it you are sure that it was Michael who had the knife and Michael who stabbed it in his brother's chest, then it is your duty to say that the case is made out against him.'

The above is an extract from a forty-four page transcript of some thirteen thousand words.

In the Walters' case, the key issue was identification, in particular the evidence of fibres from Walter's clothing apparently being found on the clothing of Miss Auffret. The judge said:

'The forensic evidence from Elizabeth Muir Wilson, read to you, was that she took possession of exhibits one to three, Miss Auffret's clothing, which were in sealed packets. She examined them and found no fibres on them similar to those on the jacket and slacks, except when she came to the green blouse. She said of the green blouse – that is exhibit one – "I found seven mauve cotton fibres on this item which were similar microscopically and in dye composition to fibres from exhibit six," the defendant's jacket. "I found one green cotton fibre which was similar microscopically to fibres from the slacks. There was insufficient for a dye comparison."

'So, seven fibres similar microscopically, and in the dye, to the jacket, and one similar microscopically to the fibres from the trousers, found on Miss Auffret's blouse.

'I beg your pardon, when I said earlier that there were no fibres found, I had completely misread the passage. On the slacks and the jacket of the defendant there were no fibres found emanating from Miss Auffret's clothing. On Miss Auffret's clothing there were found, firstly, on the green blouse, the fibres that I have indicated. Secondly, on the skirt, there were found eight mauve cotton fibres similar to the jacket. And on exhibit three, Miss Auffret's own check jacket, there were found thirteen mauve cotton fibres similar to the blue cord jacket of the defendant. Five of these fibres were tested for dye composition and were similar to the dye composition of the fibres from the jacket, and two green cotton fibres similar microscopically, and in dye composition, to the fibres from the slacks of the defendant.'

If the above extracts show one thing clearly, it is that the judges concerned scrupulously went over the evidence from both sides to ensure that the jury had the details right. If incorrect verdicts were given in these trials, then it is surely only the fault of the juries involved. But the fact that the above extracts are only very small parts of the whole may also indicate something else.

Juries are expected to listen to cases and then decide. No one else in the court is at such a disadvantage. The lawyers present are adept at taking notes. Their training and experience alerts them to the key points that are worth recording. The judge too, is able to take a good note of what is being said. Witnesses are often stopped so that a judge can get his notes right. In addition there is always the shorthand writer in court. He can be asked to read his shorthand back and, in certain circumstances, he can be asked to transcribe a section during an adjournment. Jurors are not forbidden to take notes. But the task is a daunting one for a layman, so very few ever do.

The Russell trial lasted a fortnight. That of Michael McDonagh lasted just over a week. Walters was in court for five days. The Russell and McDonagh cases in particular are quite complex, the Russell case had forty-six witnesses, the McDonagh case forty-eight. The McDonagh case had 122 exhibits, none of which, the judge commented, were perhaps pertinent to the case. In the Walters case there was a central paradox in the argument – how could the attacker have been wearing a blue/mauve corduroy jacket and green jeans when four witnesses said the attacker had worn blue denims?

Even after a very full briefing on the case it was easy for the *Rough Justice* production team to get confused about who said what of whom and when it was said. It would be hardly surprising if the juries on the actual cases became confused. On the Naylor case mentioned earlier, one of the jurors actually fell asleep.

Jurors are not trained to seek out the truth. Their very ordinariness, the 'common man' attribute they have, is regarded as the safety net in our system of justice. They are urged to use their common sense. If they get a decision wrong, a jury may occasionally find itself rebuked in an aside from the judge. But it is a brave judge indeed who will disagree openly with the decision of a jury – after all is he not interfering with the free decision of twelve good men and true? Is he not showing prejudice? So if a jury get it wrong, there is no punishment, no blame to be attached to their actions. They are not going to be called into account if a subsequent appeal finds the convict innocent.

Indeed, the fact that twelve good men and true have delivered a verdict of 'guilty' is one of the main constraints on the Appeal Court Judges. There is a natural reluctance among these judges, however eminent, to overturn a verdict arrived at in this traditional and in a sense, democratic, manner. This makes the jury's responsibility all the more onerous.

Where then is the pressure on jurors to pay attention to the intricate details of long cases? Who is to check if they have sorted out the wheat from the chaff in the evidence? Some of them may simply be incapable of remembering everything which they have heard during the many days of the trial. Some of them no doubt reach their decision on the appearance of the man in the dock. Others possibly listen carefully to the nuances of what the judge has to say to them, looking for the hints which they believe he is giving them as to the guilt or otherwise of the accused. Some, not being sure of their memory, listen to the more articulate members of the jury and allow him or her to dictate their own view. No doubt there are many jury members to whom these comments do not pertain. But human nature suggests that many will fall into these categories. Particularly when the jury bear collective responsibility, so no one member need stand up to say what he thinks, or to defend their collective decision.

It would not be surprising to discover that the jury who convicted John Walters did not understand the details of the crucial fibre evidence before them. They had, after all, heard two

different versions through five different areas of the trial. And how could they have put the importance of this evidence into context? It was likely that this was their first experience of fibre evidence, since it is not one of those areas that detective stories and television thrillers have made familiar. They had to assimilate not only the details of the evidence, but a quick lecture on the whole science of fibre evidence. No doubt the jury in the Russell case were equally confused when one of the expert witnesses told them that some of the hair was perhaps blond, when another expert told them that it was definitely not blond. Since the accused's hair was patently neither blond, nor grey, how could this matter? But no doubt some spent quite a lot of time thinking about that, because it appeared to matter not only to the experts, but to the judge.

The jury who found Michael McDonagh guilty had four witnesses before them who lied at one time or another, witnesses who had managed to convince the police that they were finally telling the truth. If the police were confused and hoodwinked by these witnesses, what chance did the jury have?

Mr Justice Jones had some particularly instructive words to say to the jury who found Jock Russell guilty:

'How do you tell whether a witness is telling you the truth? Apply to that any test which your experience of the world has told you to apply to this problem. Think whether the witness has any motive for not telling the truth, any reason for trying to mislead you. Judge also of the demeanour of the witness, that is, what you saw of him in the witness box, how he displayed himself there, and I am now referring to every witness in the case. It makes no difference if they were called on behalf of the crown or whether they were called on behalf of the defence, and in particular the defendant himself. You apply exactly the same process of reasoning to every witness. Then, as I say, if you think the witness was a truthful witness, then was he accurate? Think about the standard of his intelligence. Obviously a person who struck you as stupid or of limited intelligence is less to be relied upon, possibly, because of that reason. Think, if it is relevant of the state of the witness at the time of which he is speaking. You must take into account, if it is a matter of observation on the part of the witness, what opportunity that witness had for seeing what he says that he saw, how far his attention was directed to it. You make allowances for the fact that some of us are blessed with good memories, some of us are blessed with poor memories. Make allowances for the very human process of self-persuasion.

'Remember that very few witnesses are all black or all white. Very few witnesses tell lies with every word they utter. I suppose very few witnesses are one hundred per cent accurate even if they are truthful in every word they utter. Even the worst of witnesses is capable of telling the truth.

'By that process you will arrive, as far as you can, at the basic facts of this case. Then ask yourselves what inferences you can draw from those facts. What do I mean by inference? An inference is a conclusion that you consider you must draw from the basic facts. In other words, it is the process you go through when you say: this is true; that is true; therefore it must follow – not it may follow; it must follow – that this also is true. If you are simply saying to yourselves: this is true and that is true: therefore my guess is that this follows – that is simply making a guess and that will not do.'

'Do not become lost in the details of the case. By the very nature of things, counsel and I in my turn will have to go through the details of the evidence. Listen to that and consider those details, certainly, but do not get lost in the details. There comes a moment when you have to stand back and look at the whole picture.'

No doubt juries often exercise common sense, decency and intelligence and arrive at the correct decision in the vast majority of cases. No doubt they are often helped by counsel and judges. But in some trials, where the jury is to try an intricate case with conflicting evidence or detailed scientific evidence, it might be a positive step if the judge were to deliver himself of a lecture like the above before the trial starts, not after the jury have spent many hours wrestling with the evidence before them.

SAFEGUARDING JUSTICE

There is a myth quite common in England that any man convicted of a crime has a right to appeal. It is simply not true. A convicted person can ask for an appeal – but he may not have it heard, indeed the likelihood is that he will not. The Court of Appeal is primarily concerned with the question of whether the trial was conducted according to the rules. If there is a point of law in dispute, or if for example it appears that the jury has been seriously misled by the trial judge, then it will interfere straight away. But if a question of fact is in dispute, or if the convicted man feels that the jury simply got things mixed up, the Appellate Court will rarely allow an appeal.

The best advice to convicted men protesting their innocence has always been to find a point of law in their grounds for appeal. If they can do that they might even get their case to the House of Lords. Moreover, if they can bring a point of law into their petition, their solicitors may be able to get legal aid to investigate the facts of the case further. If they then find new factual evidence they can put it before the Court of Appeal.

By far the largest number of complaints from convicted men and defence solicitors alike concern not points of law, but the factual evidence of the cases where they feel there has been a miscarriage of justice. They rely on one of the accepted criteria for an appeal – that a verdict is 'unsafe and unsatisfactory'. The trouble is that the Appeal Court hardly ever grants an appeal on this basis.

We have been told by Queen's Counsel that the only practical way to get a man out of gaol after a trial where there is a dispute of fact, is to prove that someone else did the crime. 'Reasonable doubt' as a principle no longer obtains once a jury has decided that the accused is guilty.

The Court of Criminal Appeal has never been without its critics. In his book *The A6 Murder* published in 1962, Louis Blom Cooper wrote:

'It is an irony of English criminal law, which is designedly so fair to the accused, that it should suddenly switch off its flow of fairness once the trial has ended. In the civil courts a litigant is entitled to a review by the Court of Appeal of the whole of his case; that court is not limited to technical considerations of the conduct of the trial but is directly concerned with the merits of the case. Why is it that in 1962 English Law, in the matter of appeals from trial courts, shows greater concern and gives more handsome protection to a man's property than to his liberty and his life.'

Twenty years later, this complaint still stands. The only difference is that, with the abolition of capital punishment a man's life is no longer at stake. It means that if a jury comes to a wrong conclusion either because the facts are confusing or because there has not been enough investigation of the facts, an innocent man can be convicted and not allowed to appeal. But on the other hand, if a guilty man is convicted, and there has been a legal mistake in his trial, he will be granted an appeal and may be set free with no fear that he will be tried again for the crime. So we can have the ridiculous situation of an innocent man being in gaol whilst a guilty man goes free – just because of the rules of the Court of Criminal Appeal. It is worth remembering that Jock Russell and the McDonaghs whose cases appeared in *Rough Justice* were not granted appeals.

When the Court of Criminal Appeal was set up in 1907, it was acknowledged that mistakes can happen during trials and that there should be a 'safety net' to catch these mistakes and remedy them. Many criminal lawyers would maintain that the criteria of the Appeal Court are too strict and it is just too difficult for a convicted man to reach the Appellate Court. Some go on to suggest that trial procedure could be modified to reduce the number of alleged miscarriages of justice. If fewer mistakes were made in trials, they argue, the Court of Criminal Appeal could afford to broaden its rules, for it would be dealing with fewer cases.

The reform most commonly put forward would change our entire system of criminal investigation and trial. Its supporters would like the role of prosecution counsel changed to that of 'public prosecutor'. This is an officer of the court who supervises the investigation of the crime; who is responsible for charging the suspected person; and who then pursues those charges before the court in the name of the people. The best example is probably the Procurator Fiscal in Scotland. But the system most

commonly proposed is the French system, where the prosecutor is called the *juge d'instruction.*

The *juge d'instruction* or examining magistrate is the most powerful man in the conduct of any investigation and prosecution of a serious crime in France. There are some five hundred *juges d'instruction,* about a tenth of the total magistracy. They deal with all serious crimes, and also crimes involving juveniles. They may even be called into the investigation and prosecution of other cases if they are considered too complex for the other French courts.

The *juge d'instruction* supervises both the investigation and the prosecution of cases. The French police system, which is in many ways different to the English system, is closely controlled by the courts, but nowhere more controlled than by the office of the *juge d'instruction.* Without his permission, the police may only make *enquetes officieuses* – informal enquiries. This means that they have no power to demand statements, nor to search premises. Once the case has been referred to the *juge d'instruction* however, they can arrest, interrogate, search, or even use informers, tap telephones, or open letters if they have his permission. It is hardly surprising therefore that the police refer most serious cases to the *juge d'instruction* almost immediately. He may appear at the scene of a murder within a few hours of the police being notified of the crime.

Once the *juge d'instruction* is involved, he takes over the entire conduct of the case. The police are responsible to him and must investigate the crime as he sees fit. It is his brief to discover as much as possible about the circumstances and the background of the crime. It is for him to decide whether a suspect is to be prosecuted – and in which court. But he does not only examine the evidence which suggests a suspect is guilty. He must also investigate the evidence which suggests a suspect may be innocent. He can interrogate the suspect – he can even arrange confrontations between persons involved in the events of a crime. His job is to find the truth as far as is possible before the case is handed over to the Public Prosecutor.

There are several advantages in such a system. The most relevant as far as the *Rough Justice* cases are concerned is that all the evidence against the accused has been tested before it comes to court. In effect, all the cross-examination has already been done, and when evidence has been found to be weak, it has been rejected. In addition, there is hardly any way in which surprise evidence can find its way into court. Confusing arguments

between experts about forensic evidence rarely happen in a French court. What is most impressive about the French system is the thoroughness of the examination of evidence.

As a result of this system, most defendants in cases of serious crime are found guilty in France. For example, in 1973 out of 1,350 cases, only fifty men were found not guilty. There is a myth that this is because an accused man must prove himself innocent; that the system does not give him enough time to state his case. This is not so; before the case comes to court in the period when the evidence is being examined, defence lawyers can give extra evidence to the *juge d'instruction* wherever they feel his investigation is incomplete. They can, of course, also contest his judgement in court. It is a fact that there are very few cases in France which provoke accusations of a miscarriage of justice. Although there may be other factors in French society or the judicial process which tend to suppress such accusations, the *juge d'instruction* nonetheless seems to contribute most to the fact that there are relatively few doubtful verdicts.

If the strength of the system is its thoroughness of investigation and the separation of police and prosecutor, the weakness of the system is its slowness. This contributes towards one of France's most serious judicial problems – though we should perhaps look at our own system before we rush to criticise. The *juge d'instruction* has the power to keep any suspected person in custody during an investigation. Since such investigations normally take a year, or even two years, an innocent man might be kept in detention throughout this period of time. The average prison population in France is around thirty-five thousand – and it is estimated that about a third of this number are prisoners being held in detention awaiting trial.

The French think their system creates the best safeguard for anyone accused of a crime. They put the greatest emphasis not on proving the guilt of a suspect, but on finding the truth. They regard our accusatorial system as being too hasty. They believe it is not so much interested in finding out the truth as in discovering the strength of the case against the accused – which may not always be the same thing.

As an illustration of this we might look again at the case of George Naylor. In an earlier chapter we have tried to present the prosecution and defence cases fairly. But there were two small mysteries about the case which were never clarified at the trial. They were not even investigated. They seemed irrelevant to the case against Naylor.

The criminal in this case did two strange things. The evidence suggested that he had broken a transom window and reached down to open the casement window below it. But the casement window-frame was screwed down. So it was assumed that he broke the casement window and climbed in.

The photographs of the window show that the hole in the pane does not extend to the bottom of the frame. The hole is roughly circular. At its lowest point at the bottom it leaves about six inches of glass still protruding from the frame. The police found some scratches on the drop-leaf table just inside the window. This corroborated the evidence that he climbed in through this hole. But there was a small ornament on the window ledge which would surely have been disturbed – even knocked to the floor – by a man climbing through the hole in the window. So why does it seem to be undisturbed?

And there are other questions which remain unanswered. If the intruder broke the window and climbed in through the hole – which is not a particularly big one – why did he not kick out the bottom six inches of glass? This would have made it much easier to climb into the room.

The drop-leaf table beneath the window had a door in its side. Behind that door was a small drawer where the victim kept her savings, some thirty pounds. The thief took this. At George Naylor's trial it was argued that he could have seen her put money into this drawer and therefore knew where to look. But no one seems to have noticed how odd the evidence about the drawer actually was. The loss of the thirty pounds was only discovered a week after the rape when the victim returned from hospital. Photographs taken by the police show that the drawer and door of the table were closed. There was even a chair placed against the door. Who did this? Not the police, nor the victim, for neither knew of the theft of the money until a week later. Therefore it must have been the intruder.

Are we then to believe that he knocked out the transom window, knocked out the casement window, both of which must have made quite a noise, then opened the table door and drawer, took the money out – then closed the drawer and door again? Was he trying to take the money without the victim knowing? He must have been an unusually tidy burglar!

These two small inconsistencies at the scene of the crime were irrelevant to the case against George Naylor, so they were never investigated. A French *juge d'instruction,* however, would have examined them in his broader search for the truth.

This is the system that is often advocated as one way of avoiding the kind of unfortunate case we investigated in *Rough Justice*. Ludovic Kennedy recently wrote in *The Times:*

'We are the odd man out. We do not have, as other countries do, a Ministry of Justice and a state prosecutor who takes all the prosecutions out of the hands of the police. This is thought by English jurists to be a great virtue. In my view it is a great weakness and the primary cause of miscarriages of justice.

'Its weakness is that it permits the police to be both investigators and prosecutors in the same case, so that they have a vested interest in seeing the results of their detective work vindicated; in seeing the accused become the convicted.'

We do not believe that the few miscarriages of justice that surface from time to time in England automatically suggest that the entire system must be changed. Our experience is limited to about a dozen cases, indeed to only five in any great detail. It is not for us to propose reforms, but we might perhaps point out the weaknesses in the English system which we observed in the cases we investigated.

In none of the *Rough Justice* stories did the defence solicitors become involved with the case early enough. When they did, it was too late to find some of the evidence that might have indicated that someone other than their client did the crime. This is not their fault, but rather the result of a system which allows the police alone to investigate until a man is accused. And by that stage most of the evidence is already in the hands of the police. It only percolates through to the defence solicitor weeks or even months later. Forensic evidence in particular is only available to the defence when the police are ready to show it. This is often quite late in a solicitor's investigation – so when the case rests on forensic evidence, his investigation may have to be rushed.

Take a few examples: In the Jock Russell case the solicitors could not get a complete list of the fingerprints found in the flat. They might have been able to match some of them with Molnar's prints which were still available to them after he fled. They would have been particularly interested in fingerprints from the door and the window-ledge, but these were not available, indeed, they were no longer in existence in the flat itself.

In the case of John Walters, the fibre evidence from the girl's clothing could have been very useful to the defence. If they had found evidence of blue denim fibres it would have corroborated the story told by four eye-witnesses that the attacker was wearing

blue denim. But this information was simply not available. The police were not looking for blue denim fibres, because Walters did not own any blue denims. By the time a solicitor got onto the case it was too late to make a clean investigation of the clothing. It had been handled, moved around the laboratory, and fully inspected during the intervening weeks.

In the Naylor case the arrest came a year after the crime. By that time the entire scene of the crime – the victim's flat – had changed. The solicitors were left with the evidence which the police had chosen to take. They could no longer look for further fingerprints, mud, blood or scratches which might have helped their case.

The English legal system which has evolved over the last nine hundred years is firmly based on the idea that a man must be seen to be proven guilty beyond all reasonable doubt. But it means in practice that defence lawyers are forced to fight on the ground that their opponents choose, and in the main, have already defined. The adversarial system may be the best method. But it only starts in the courtroom, it does not exist at the preliminary investigation stage. That is totally controlled by the police.

Whatever the true value of the *juge d'instruction* system, it does at least introduce a distinction between the expertise of finding and collecting evidence, and that of interpreting the evidence. What is more, the police and the *juge d'instruction* have different employers. They work for different Ministers. The *juge d'instruction* is subject to the Minister of Justice, the police come under the Minister of the Interior. So it is unlikely that the anomaly of the two different statements in the Naylor case could have happened in France. The French police could not have suppressed the first statement because the magistrate would have done the interrogation. He in turn could not have suppressed it because the police would have known about it.

Our system does not have officers of the court supervising the taking of evidence. It is only when the evidence is brought into court that it comes under the authority of the judiciary. After a man is convicted, the evidence once more becomes the property of the police, even though an appeal may be lodged immediately. If it was not a part of the case during the trial, evidence might easily be destroyed, even though it might be needed for the appeal, or for a submission to the Home Secretary.

The courtroom is not a place for irrelevant evidence. The burden of proof is on the prosecution. So evidence in court is

there because it relates to the possible guilt of the accused – not because it is a key towards the truth. Other evidence, which apparently has nothing to do with the accused, is not necessarily presented and the defence may never see it.

If the defence have a theory that someone else did the crime, they will appeal in vain for the evidence from the police that might support their theory. If they wish to subpoena such evidence, they must first have a certain level of proof, not merely a theory, and they need to know what they are looking for and where it is to be found. No member of the court in the Naylor trial knew of the existence of the victim's first statement. Only the police knew of it and the victim herself.

Some evidence may not be available simply because it is not collected. If the police identify a good suspect for a crime early in an investigation, they naturally tend to collect evidence relevant to that suspect. Other evidence may be overlooked. There does not even need to be a particular suspect for this kind of oversight to be possible. Even if the police were to collect all the available evidence at the scene of a crime, their interpretation of it would automatically cause them to search for evidence in other, specific areas. If that interpretation were wrong, they would be collecting irrelevant evidence. But more to the point, they would be missing evidence in the area that the correct interpretation would have highlighted. For example, the Deptford police thought that the ownership of the knife was the important clue in the Case of the Handful of Hair. When they found the owner of the knife they accused him. If they had concentrated on the handful of hair, and if they had found Molnar, they might very possibly have found the waistcoat that Mr Nichols saw on the man who jumped from the window. That waistcoat vanished with Molnar.

Our adversarial system is an essential part of what many consider to be the best system of administering justice in the world. Would it then not be wise to consider extending this principle of testing all the evidence by having two separate bodies, the police and the court, working on it before the trial? Perhaps we might add the better elements of the French system to our own by creating an Evidence Office consisting of officers of the court who, if they merely acted as guardians of evidence, could be a useful adjunct to our present system. Such men, with their different backgrounds and training could contribute towards the strength of all the evidence presented in court. They could act as a collection point for all apparently irrelevant evidence. They

might also act as appropriate guardians of prosecution evidence once it has left the particular attention of the police, after the trial.

In an English court of law the jury expect to be told what happened. They hear that someone has been killed. When were they killed, how were they killed, what is the evidence that shows this? They will want to know something about the victim, the environment. The case is presented to them in the manner of an investigation – but the object, the end of that investigation, stands before them in the dock. The accused commands their attention throughout. Evidence is presented only as it relates to the person in the dock. The full truth of the circumstances of the crime may not be revealed.

For example, in one of the cases we investigated, we were told that the victim took drugs and was peripherally involved with a drugs ring. We could not establish the truth of this so many years after the event. We could not examine the victim, we could not find the necessary first-hand witnesses. Yet we felt this might well be true. Nothing of this was mentioned in court because there was nothing concrete to prove that the accused was involved in drugs. The crime itself had all the hallmarks of a contract killing. A drug ring could have been involved. But the jury heard nothing about this because it related to the victim, not the accused. They did not, it seems, have a complete picture of the character of the victim and the environment in which the crime was committed.

But then, it was not their job to determine the whole truth. Their job was to decide whether the man in the dock was guilty or not.

This is a concept which appears to confuse some members of juries. For some years lawyers have argued that juries are far too easily confused. Arguments are put forward that there should be greater restriction on jury members – that the age limit should be raised, that there should even be an intelligence test for juries. Certainly the cases in which we became involved did suggest that if anybody was responsible for a miscarriage of justice, it was the jury.

That may be too easy an excuse. Lord Justice Devlin, said in his summing-up of the trial of Dr Bodkin Adams in 1957 that one of the beauties of the jury system is the unassailability of the jury's verdict. The jury lets the lawyers off the hook. Only if the verdict is plainly perverse – in other words if no twelve reasonable men could have come to that verdict on the

evidence before them – will the Court of Appeal interfere. If the trial has been conducted according to the rules, it does not seem to matter whether or not the jury became confused. We have seen instances in the *Rough Justice* cases where, even excepting any breach of the rules, a jury might well have been confused.

A jury member complained to *The Times* in the aftermath of our programmes. He wrote, 'A jury is mute. It can only arrive at its verdict on the basis of the case for and against as it is developed in the courtroom. It is neither privy to, nor does it have any way to elicit, much additional detail and clarification which, while not presented during the trial, might possibly help it to arrive at a more just conclusion.'

This gentleman appears to have begun with a misconception. He expected to learn everything about the case before him. He suggested that the jury should be given an impartial legal counsellor who might collate all the points needing clarification. Plainly he did not understand that the judge was supposed to be doing just that in his summing-up.

We do not know the cases on which he served as a member of the jury. It seems however, that he for one, went into the jury room to vote without a clear idea of the evidence that had been laid before him. He wanted to know much more. At the very least he required someone, or something to refresh his memory. Although it would not have entirely satisfied him, we can see that in the cases we worked on the jury might have benefited from having transcripts of at least some parts of the evidence. That however is impractical. But perhaps if the courts could at least arrange tape recordings to act as aide-memoires for the jury it might benefit the cause of justice.

The system of trial by jury as we know it goes back to the fifteenth century. It is a democratic, justly revered system. But crimes have increased in complexity over the years, and the investigation of crimes has become far more thorough and scientific. When a forensic scientist is allowed to consult his notes throughout his testimony; when a judge can consult his notes throughout his summing-up; it seems a little hard on the jury to expect them to remember everything. They may of course take notes themselves, but in reality few ever do. Isolating the important points in a case is, after all, a skill that others in the court have acquired over many years.

British justice has reached its high standards by moving slowly only after long consideration. There are probably very few cases

amidst the thousands of trials each year where there is even a suggestion of a miscarriage of justice. So is there a need for change? Even the advocates of a public prosecutor system would admit that changes frequently turn out to have an adverse effect. Is there perhaps another way in which wrongs might be righted?

From the start of the production of *Rough Justice* we have thought that there is. It was always a part of our intention in making the programmes, that the present system of justice would benefit from a safety net of whatever informal nature alongside it. *Rough Justice,* although primarily designed 'to inform, educate and entertain' its audience, also provided the type of new research which any prisoner unjustly convicted cannot undertake for himself. Although the limitations on *Rough Justice* were many, not only because journalists are very limited in what they can discover, but also because television programmes have technical limitations, three cases were presented to the public and the Home Secretary which would not otherwise have been considered.

Every citizen has a right to try to prove that an injustice has been done. But the man in the street generally lacks experience, education and money. But if a group of men, educated in the law and experienced in criminal cases, were given enough money, there would be nothing to stop them re-examining cases. They could do so much more thoroughly than a mere TV programme and they could present their findings and informed opinions to the Home Secretary for consideration. They would have no statutory power. The Home Secretary might choose to ignore their findings, which he would have a perfect right to do. Equally they would be free to publish their report so that the people might show their feelings through the normal democratic means – the ballot box. Such men of course would need integrity and skill and they would have to devote a lot of their time to this work. But many have been found in the past to do similar work, and there are many who would be ready to do it today.

The idea in fact is not a new one, although there has never been such a body in Britain. In America, however, there have been several attempts, one of them particularly successful. This was Erle Stanley Gardner's 'Court of Last Resort'.

It all began in 1947, when Erle Stanley Gardner, an ex-lawyer and the creator of the fictional lawyer Perry Mason, went on a fishing trip with Harry Steeger, the publisher of a crime magazine called *Argosy.* Gardner told him the story of William

Lindley. Lindley was being tried for murder at the time. The victim, a woman, had described her attacker before she died. It was a description that fitted Lindley right down to his bright red hair.

Gardner had already heard that another man with bright red hair had been seen near the scene of the crime. Steeger suggested that he would finance Gardner to investigate the case and then publish the results in his magazine. Gardner never found the red-haired man, but after a great deal of hard work, he found something better. From a close examination of the witnesses' statements he was able to prove conclusively that, at the time the woman was attacked, Lindley had been in a car many miles away with his father. Lindley escaped the electric chair.

The idea of the Court of Last Resort was born. 'The basic idea,' said Gardner, 'was to get men who were specialists in their line, men who had enough national reputation so readers could have confidence in their judgement, men who would be public-spirited enough to donate their services to the cause of justice; because any question of financial reward would immediately taint the whole proceedings with what might be considered a selfish motivation. We also needed men who had achieved such financial success in their chosen professions that they were in no particular need of personal publicity. Moreover, the aggregate combination must be such that it would be virtually impossible for any prisoner to deceive these men as to the true issues of the case.'

Over the twenty years or so of The Court of Last Resort many men played a part in its work. But the leading members were: Raymond Schindler a noted private detective; Dr Le Moyne Snyder an attorney and Doctor of Medicine; Alex Gregory a psychologist and lie detector expert; and Tom Smith, an ex-warden of Washington State Penitentiary. Their usual method was first to read the case, and then travel together to the scene of the crime. There they would re-investigate the case from the very beginning. It was an extremely expensive operation. Soon it was costing far more than all the profits that Steeger could extract from the publication of the stories. Each case was costing about 100,000 dollars. Fortunately for the prisoners who were writing to *Argosy* magazine about their cases, this was the period when Erle Stanley Gardner was writing Perry Mason stories more prolifically than ever before. He was also selling them for dramatisation on television. In the end it was the dollars raised by the Perry Mason television series which were financing the Court of Last Resort.

While Erle Stanley Gardner's organisation was in operation, at least a dozen men were saved from execution. On one occasion the team found a man called Clarence Boggie who had been twice convicted unjustly. They cleared him on both cases.

Gardner himself tried to bring the Court of Last Resort to television in the mid-fifties in an effort to raise money for further investigations. But American television is nothing if not commercial – and that caused problems. Gardner insisted on complete accuracy, using the actual people involved. Not everyone connected with the cases turned out to be 'good value' in entertainment terms on television. The production company involved – and the viewers – did not like the dry serious programmes which emerged. Eventually the whole project foundered, and Gardner fell back on Perry Mason to provide the cash.

The organisation depended so completely on the leadership of Erle Stanley Gardner that it never recovered after his death in 1968. Some of its members are still alive today. They read cases which are still sent to them, but they lack the money and the phenomenal energy of Gardner himself. Those were the factors which made the Court of Last Resort so successful.

America of course, is not England. Some states still have the death penalty, so there is a greater incentive to clear an innocent man who has been unjustly convicted. A life sentence here would normally mean fifteen years, with remission ten; in the United States a man can be given ninety-nine years. The United States does not have an equivalent to our Home Office which is capable of reviewing cases. Although the governor of each state is able to issue a pardon, the administration of the office of governor is entirely political, unlike the office of the Home Secretary in Britain. In some states this makes it considerably more difficult for anyone to take up the case of a man he feels is unjustly convicted than it is in Britain. Yet in other states it is possible to interview a prisoner about his case – a privilege not granted to the ordinary citizen in Britain.

However, Erle Stanley Gardner might have been writing in Britain when he wrote:

'So, for the average, penniless individual who has been wrongly convicted, once the iron doors have clanged shut, he's lost hope of legal redress. He's in prison serving a sentence, and that's that.

'There is a widespread popular belief that a convicted defendant can appeal to a higher court. This is perhaps the most fallicious of all the numerous erroneous popular beliefs about law.'

Perhaps the short term solution to the problem posed by the

Rough Justice series, the numerous other efforts by journalists, and the Justice organisation itself on behalf of prisoners who feel they have been unjustly convicted, is something similar to Erle Stanley Gardner's unofficial Court of Last Resort. The name 'court' is a misnomer, the body would in fact be primarily investigative. And it would have no legal power. But it would be the last resort for a convicted man to turn to when all else has failed. Gardner named his organisation The Court of Last Resort because he saw the judgement of the people as being the ultimate court. He saw his role as a provider of information to the public, who in turn would influence the governor of the state through the ballot box. The electorate does not hold such sway in Britain.

But publicity can achieve something. In June of 1982, when a House of Commons Select Committee considered the *Rough Justice* series, Mr Anthony Brennan, Deputy Under Secretary at the Home Office said that as a result of such publicity the Assistant Secretary's Division would automatically examine recent cases which opened up new lines of enquiry. He later said that he wanted to correct the impression that people who were alleging miscarriages of justice were wasting their time going to the Home Office. Officials would like to see the details sooner rather than later. This, from an office which once took a year to reply to a letter from the Justice organisation!

We have read dozens of letters on the familiar blue-lined prison notepaper from men who claim they have been unjustly convicted. Many make wild accusations, sometimes they demonstrate a basic ignorance not only of the law, but of moral right and wrong. Many are written by a prison 'scribe' because the prisoner whose name appears on the letter is illiterate. We feel that after *Rough Justice* we have a reasonably good idea of the difficulty of sorting out the cases where there might be some substance to the claims. But we have come to believe that there are ways of discovering the truth. Indeed, unless miscarriages of justice are to remain, there must be ways.

If any of the cases in this book have convinced you that an innocent man is currently in prison for a crime which he did not commit, then it is surely worth a moment's reflection. It is bad enough if there is a miscarriage of justice in our legal system. It is worse that a man who is wrongly convicted might have served more than half his sentence before the present machinery of Appeals and petitions has been exhausted. But it is much worse that we have no independent institution, formal or informal, that will reinvestigate a convicted man's case.

The cases of Russell, McDonagh and Walters are now being officially re-investigated because of the *Rough Justice* series. But they are being reinvestigated by the very same bodies – indeed in some cases by the very same men – who collected the original evidence that brought about their convictions. No doubt the prisoners concerned hope that these men will care more for the integrity of British justice than for their own professional reputations.