TRADE UNION ACTION AND THE CRIMINAL LAW: THE CASE OF THE SHREWSBURY PICKETS

By

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Thesis submitted in accordance with the requirements of the University of Liverpool for the degree of Doctor of Philosophy

August 2017

Abstract

The imprisonment of trade unionists in the United Kingdom for events occurring during strikes has been a rare occurrence, particularly over the past three decades when strikes have declined to an all-time low. The trials and convictions of a group of North Wales building workers in 1973-74 for picketing-related offences during the first and only UK national building workers strike raises important issues for all those engaged in challenging the politics and effects of austerity and neo-liberalism. This thesis is an analysis of the case of the 'Shrewsbury 24', using newly-available documents that have been located during the research. It illustrates how the state used the criminal justice system in an attempt to curtail effective picketing by workers during industrial disputes. Draconian prison sentences were handed down to six of the pickets to send a signal to the trade union and labour movement that the government were prepared to use the courts to deter mass picketing. The thesis explores the laws that were used against the pickets and the enormous discretion available to the police and prosecutors in deciding whether and what to charge at any given time. It illuminates the landscape of hidden dangers posed by the criminal law, which can be used arbitrarily against trade unionists and campaigners who organise or participate in direct action. Using a Marxist theoretical approach, including Gramsci's concept of hegemony, this thesis explores the role of the state and of ideology in criminalising trade unionists. The thesis, through an examination of theories of miscarriages of justice, concludes that by locating the convictions of the pickets within a class-based framework the political character of miscarriages of justice is revealed.

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Abbreviations

1875 Act – The Conspiracy and Protection of Property Act 1875
AUEW – Amalgamated Union of Engineering Workers
CACD – Court of Appeal Criminal Division
CCRC – Criminal Cases Review Commission
CBI – Confederation of British Industries
CP – Communist Party
DPP – Director of Public Prosecutions
FCEC – Federation of Civil Engineering Contractors
FOI – Freedom of Information Act 2000
IRD - Information Research Department
IRIS – Industrial Research and Information Service
MI5 – Military Intelligence 5
NFBTE – National Federation of Building Trade Employers
NIRC – National Industrial Relations Court
NJC – National Joint Council for the Building Industry
T&GWU – Transport and General Workers Union
TUC – Trades Union Congress
TULRCA – Trade Union and Labour Relations (Consolidation) Act 1992
UCATT – Union of Construction and Allied Technical Trades
WMCR – West Mercia Complaints Report
WMPR – West Mercia Police Report

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Statutory Instruments

1998 Working Time Regulations 1998 S.I.1998:1833
2012 The Public Record (Transfer to the Public Record Office) (Transitional and Saving Provisions) Order 2012:3028

Acknowledgments

To the late Professor Sam Davies and Ron Noon, my former tutors and friends, for setting me on a route of discovery and their belief that I could do it.

I am indebted to my old friend Laurie Flynn, for entrusting me with his archives and to Harry Chadwick, the Chairperson of the Shrewsbury 24 Campaign, for his support and comradeship.

To all the staff at the National Archives, which I now regard as a second home. They assisted me each time I visited Kew and never tired of my many queries about retained files. The staff at the Working Class Movement Library, Salford for going out of their way to make me feel welcome. Andrew, at Churchill Archives Cambridge, for alerting me to other relevant sources of files. Their help has been invaluable.

To the librarians and staff at the Bodleian, Oxford, the Modern Records Centre, Warwick, the Shropshire archives, the Hull History Centre, City of Westminster Archives Centre and the Marx Memorial Library.

I am indebted to Rachel Morris Adams the in-house solicitor for West Mercia Police for her openness and assistance and for providing me with the police reports concerning the investigation into picketing in Shrewsbury and Telford in 1972.

Thanks to Jim Mowatt, Director of Education of Unite for allowing me to consult the records of the T&GWU at Warwick and to Jim Kennedy, National Political Officer of UCATT, who gave me open access to all the records kept by the union at their Head Office in London.

To Michael Mair, my secondary supervisor, for valuable and reassuring comments about this work. To Professor Gabe Mythen, Dr Paul Jones and Dr David Ellis who always found time to talk to me about the thesis and provide a much-needed confidence boost. To Clare Horton and Lorraine Campbell from the student administration team who were always on hand with help and support over the years.

To my supervisor Professor David Whyte whose enthusiasm and encouragement has guided me through the four years of study. His knowledge and wide understanding of my study has been inspirational. His faith and support gave me the confidence to complete the thesis.

Finally, to all who campaign for social justice

Chapter 1. Introduction

> The trial of the Shrewsbury pickets is the only case I know of where the government has ordered a prosecution in defiance of the advice of senior police and prosecution authorities.[1]

This thesis uses a case study of the trials of North Wales building workers at Shrewsbury Crown Court in 1973-74 as a means of developing a historically grounded understanding of miscarriages of justice. The prosecutions arose from mass picketing in two Shropshire towns, Shrewsbury and Telford, during a national strike that lasted from 26 June to 16 September 1972. More than a year after it had ended six pickets were sent to prison. Three of them were convicted in December 1973 on charges of conspiracy to intimidate, affray and unlawful assembly. In February 1974, at the end of a second trial at Shrewsbury, three further pickets were convicted and imprisoned for unlawful assembly and affray. In total 24 pickets were prosecuted in three separate trials and they became known as the "Shrewsbury 24".[2]

This thesis will analyse the process and the decisions that were made to prosecute these pickets, the conduct of the trials and the sentences that were passed. It will address the principal research question, were the trials and convictions of the Shrewsbury pickets a politically motivated miscarriage of justice? The thesis will show, through the study of contemporaneous documents, that the outcome of the trials was the result of concerted action by building trades employers, Conservative politicians and the state (principally the police, prosecuting authorities and the courts) to halt the trade union tactic of flying pickets[3] in Britain.

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[1] Platts-Mills 2002:532

[2] Various terms have been used to describe groupings of these pickets:
Shrewsbury 24 – the total number charged and tried at Shrewsbury in the three trials in 1973/74. The term was used in 1973 when pickets were first arrested and charged. It is used by the Campaign that was launched in 2006 to overturn their convictions.
Shrewsbury 6 – refers either to the six pickets that were tried for conspiracy at the first trial, October-December 1973 or, subsequently, to the six of the twenty-four pickets that were sent to prison.
Shrewsbury 3 – the pickets imprisoned after the first trial: Des Warren, Eric Tomlinson and John McKinsie Jones. It is also the title of Arnison's 1974 booklet.
Shrewsbury 2 – used by campaigners demanding the release of Warren and Tomlinson after McKinsie Jones was released. They were imprisoned for the longest periods, three years and two years respectively. Tomlinson was released on 25 July 1975 and Warren a year later, on 5 August 1976.

[3] The term "flying pickets" is used to describe the practice of pickets travelling by car and coach to other workplaces to persuade workers to support their strike by either stopping work themselves or by refusing to deliver supplies or collect goods. Since 1980 it has only been lawful to picket your own workplace (Employment Act 1980 s.16, now re-enacted in s.220 of the Trade Union and Labour Relations (Consolidation) Act 1992.)

The release of many Government papers to the National Archives, Kew in 2005 under the Public Records Act 1958 has provided the opportunity for a re-evaluation of this period of trade union history.[4] The thesis has drawn primarily from these and other contemporaneous documents located at libraries throughout the UK. They include papers of participants in the strike and the trials. Some of these documents have only become available in the past decade.

The Shrewsbury trials were notable for several reasons. Firstly, the seriousness of the charges that were brought against trade unionists for events arising during a strike, in particular the use of the law of 'conspiracy to intimidate'. Although strikes and picketing in Great Britain had been commonplace during the twentieth century most prosecutions of trade unionists were for obstruction, assault or criminal damage. Secondly, it was rare for a trade unionist to be imprisoned because of any conflict that occurred during a strike. Thirdly, some of the prison sentences of the six were regarded as draconian, most notably three years for Des Warren.[5]

Significant resources were put into the police investigations and the trials of the North Wales pickets compared with the prosecution of other pickets in 1972. No picket was arrested or cautioned in Shrewsbury or Telford on 6 September 1972, which was the focus of the three trials in 1973-74. The police had been present throughout the day, but no-one was charged until five months later, on 14 February 1973.

This study has great contemporary relevance in Britain. It shows how the criminal law, particularly relating to 'public order', can be used to weaken the effectiveness of protest action. Picketing workplaces may be rare today, a reflection of the current very low levels of strike activity in Britain, but this study is pertinent to other protests that have arisen in recent years e.g. against fracking and other environmental threats, globalisation, anti-racism, nuclear disarmament, animal welfare etc. These protests have faced the same challenges to their activities from the criminal law as the North Wales pickets did 45 years ago.

[4] The series J182, containing court papers of the Shrewsbury trials, were released on 1 January 2005. Other files e.g. DPP2/5185 and DPP2/5159 were released later in that year, 23 May 2005.
[5] Sixteen of the convicted pickets received suspended prison sentences. Only two of the twenty-four were acquitted.

The work for this thesis grew out of research undertaken by the author as a member of a campaign group that was established in 2006 to have the pickets' convictions overturned.[6] The Campaign submitted an application to the Criminal Cases Review Commission (CCRC) in April 2012 on behalf of ten pickets, to seek a referral of their convictions to the Court of Appeal.[7] The CCRC's final decision is still awaited. Research undertaken by the author for the initial application to the CCRC and for additional submissions of evidence between 2012 and 2017, have formed a core part of the thesis. This work therefore stands in the tradition of action-research, which is discussed in chapter 3.

The subject for the thesis fills a gap in the history of an important episode of trade union activity.[8] The case has been covered in two autobiographical works and has been the subject of a moderate volume of documentary coverage over the years. The single contemporaneous account was a pamphlet by Arnison (1974) which was based upon his daily reporting of the trials for the *Morning Star* in 1973. This thesis utilises the newly available information at the National Archives and elsewhere to expand and clarify our understanding of these events. For example, at the time there was confusion about the nature of the Conspiracy and Protection of Property Act 1875. It was considered to be the main law used against the pickets, leading to the lengthy prison sentences. This fuelled demands for the repeal of the Act amongst trade unions.[9] As will be shown, none of the pickets were convicted of an offence under the Act.

The thesis situates this specific episode within the context of theories of the state in capitalist society. A Marxist approach has been adopted to analyse and understand the events. Such an approach recognises the antagonistic relationship between employers

[6] The campaign was set up at a meeting of trade unionists in Liverpool two years after the premature death of Des Warren. Full details are on its website: www.shrewsbury24campaign.org.uk.The writer also has an historical connection to this subject, having been involved in support activity for the pickets in 1973, including attending a march and rally outside Shrewsbury Crown Court on the opening day of the first trial. Whilst researching the Shrewsbury pickets' archive at the Working Class Movement Library, Salford several letters of support written by the author in 1973 and 1974 were discovered. They enclosed donations to the North Wales Charter Defence Committee, a campaign body of rank and file building workers that raised support for the pickets on trial.

[7] The origins and role of the CCRC in England & Wales is discussed in the next chapter.

[8] There have been a number of recent histories of the 1970s (Sandbrook 2011; Turner 2013; Black et al 2016). Most give only passing reference to the strike. Beckett (2010), whilst devoting a whole chapter to the miners' strikes of 1972 and 1974, does not have a single word about the building workers strike and the conspiracy trials.

[9] See the reports about the Shrewsbury pickets in the *Morning Star*, *Socialist Worker* and *Workers' Press* for 1973-1975 where this demand was made repeatedly.

and employed, an unavoidable class conflict that arises from capitalist relations of production. This conflict is particularly acute in the construction industry, where the employer has contracted to undertake a project for a fixed sum and maximises profit by keeping costs as low as possible. In this environment, the worker has to combine and, if necessary, use the weapon of strike action to obtain an acceptable rate of pay, working conditions and other terms of employment.

The thesis adopts an approach to the concept of 'miscarriage of justice' that goes beyond the conviction of the factually innocent. It examines the broader conception of the term suggested by Walker (1999), based on the denial of various rights, but goes beyond it to argue that the trials of the North Wales pickets illustrates the class content of law and the apparatus for upholding laws, the police, prosecution and the courts. The convictions of the Shrewsbury pickets are therefore uniquely classified as a *political* miscarriage of justice.

The thesis presents an analysis of trade unionists who worked in a particular industry, construction. It has several unique characteristics compared with other industries involved in significant strike action in 1972 such as coal mining, engineering and dock work. Those characteristics derive from the nature of the construction process itself whereby, at the end of a building project - whether houses, a bridge, road or office block - the building worker moves to another workplace.

The construction process creates an itinerant workforce, which facilitates casualism and self-employment. It presents greater challenges for trade unions than static workplaces and more stable workforces. An understanding of this unique form of production and employment is important when considering the way that building workers organised the strike and picketing in 1972.

Notwithstanding the availability today of many documents released under the 30-year rule a number of Government documents relating to the trials remain unavailable. Most requests by the author to secure their disclosure under the Freedom of

Information Act 2000 have been met with refusal. The Government has relied upon section 23 of the Act: disclosure would not be in the interests of 'national security'.[10]

The events discussed in this thesis took place more than forty years ago. Many of the participants have died and those that are alive are elderly. Those that could be traced and were willing to discuss the trials had only vague recollections of the events. I concluded that the method to adopt to address the research question was the collection and analysis of primary data from Government archives, trade unions, pickets and contemporaneous publications. Many of the documents had never been available for public scrutiny. This thesis is the first time that they have been studied in detail, thereby adding to the narrative of this period and supporting an alternative approach to the analysis of miscarriages of justice.

Chapter two discusses the meaning of the term, "miscarriage of justice". It reviews the literature about the use of the term, starting with whether it should be limited to cases where a "factually innocent" person has been convicted of a crime. It addresses critiques of that position, primarily those concerned to uphold the right to due process. This is discussed in the context of the legal hurdles that are faced in trying to have a wrongful conviction overturned by the Court of Appeal. The chapter then considers a broader interpretation of a miscarriage of justice that starts with the right to be accorded justice (Walker 1999). In this context a miscarriage includes the disproportionate use of laws, abuse of process and the enforcement of 'inherently unjust' laws. The chapter concludes by discussing the limitations of a purely individualistic rights-based approach and sets out an alternative understanding of miscarriages of justice based upon critical criminology and Marxist approaches to crime.

Chapter three presents the epistemological and theoretical orientations that have informed the research and the interpretation of historical data and testimony. It sets out a Marxist approach to the analysis of the nature and behaviour of the state and its institutions. This informs the conclusions that the thesis presents about the actions of

[10] See the parliamentary debate demanding the release of the papers (at *Hansard* HC Debs. 23 Jan 2014: Column 479)

the police, prosecution and courts in dealing with the pickets and its relationship to the concept of miscarriage of justice.

Chapter four sets out the methods that have been used, identifying the sources of data and the challenges faced in obtaining documents. It relates this to methodological issues in historical research discussed in the previous chapter.

Chapter five provides a short historical survey of the use of the criminal law to inhibit the rights of working people to combine together and take forms of collective action. The chapter situates the Shrewsbury trials within the historical conflict between organised labour and the state. It shows that the actions of the state in the early 1970s fits into a long history of criminalisation of working people who attempt to use their collective power to protect pay and conditions of employment. The chapter concludes by analysing the criminal laws available in 1972 to be used against picketing.

Chapter six places the building workers' strike and the trials in the context of the socio-economic conditions in Britain in the early 1970s. It analyses the attempts of the Conservative Government to control trade union action at a time when the Government was attempting to limit pay increases and cut public spending. The chapter introduces the main features of the strike. This chapter assists with an understanding of why the state used public order laws and imposed lengthy prison sentences on pickets in this period.

The data that has been obtained from documentary sources, interviews and films is presented in chapters seven, eight and nine. They include a narrative of the events between the strike in 1972 and the trials in 1974. This is combined with an analysis of the interplay of particular groups within the state – police officers, civil servants, ministers, lawyers and judiciary – and the actions that they took leading to the convictions of the pickets.

Chapter seven analyses the political pressure to prosecute the pickets that was put upon the police from building employers, Conservative MPs and Government ministers. It examines the reporting of these issues by newspapers in autumn 1972 that fed the frenzy to bring pickets to court.

Chapter eight discusses the process by which the North Wales pickets were charged and tried, starting with an analysis of the police investigations and the reports from West Mercia Constabulary. It analyses the considerations the prosecution took into account in selecting charges against the pickets and the steps that were taken to organise the trials to maximise the prospects for convictions. It concludes by discussing the features of the trials of fourteen pickets at Mold, regarded as a 'dress rehearsal' for the Shrewsbury cases.

Chapter nine is an analysis of the prosecution of the pickets at Shrewsbury Crown Court, principally the first trial of the six 'ringleaders', who were tried for conspiracy. It highlights a number of features of the trial that, it is argued, show the manipulation of the process by the state. The chapter is based upon original documents discovered at the National Archives and at the Working Class Movement Library. The chapter concludes by examining the issues raised by the pickets' appeals in 1974.

The final chapter returns to address the central research question: was the prosecution of the Shrewsbury pickets a political miscarriage of justice? It summarises the findings of the research and shows how this supports a conclusion that the trials and convictions were a miscarriage of justice *sui generis*.

Chapter 2: Defining miscarriages of justice

This chapter discusses the meaning of the term 'miscarriage of justice' through a selective review of the literature addressing this concept. It will examine its usage to inform the concluding chapter of the thesis, which considers whether the Shrewsbury trials can be categorized as a miscarriage of justice.

The chapter begins by exploring the limitations of a guilty versus innocent paradigm, how it is understood in the appeals process and by the Criminal Case Review Commission (CCRC). This is followed by an examination of issues of due process, which is the beginning of a challenge to a simple guilty-innocent approach. This leads on to a consideration of a rights-based framework for miscarriages of justice, focusing on the work of Walker (1999), which allows us to look outside the criminal justice system. Finally, the weaknesses in Walker's framework are discussed and an alternative, class-based approach is advanced as providing a better understanding of miscarriage of justice in capitalist society.

2.1 Innocent or guilty

An initial observation of the literature discussing miscarriages of justice is the widespread use of the term without any accepted definition (Bridges 1994, Elks 2008, Greer 1994, Hill 1983, Jessel 1994, JUSTICE 1989, Mansfield 1993, McConville 1994, Woofinden 1987, Zander 2007). A senior judge, Lord Steyn, when giving judgment in the House of Lords[11] on an appeal against conviction, suggested that it was unnecessary to define it because everyone knew what it meant: "Nowadays we know that the risk of a miscarriage of justice, *a concept requiring no explanation* is ever present"[12] (added emphasis).

Quirk observed that, "As with art or beauty, while most people would believe they would recognise a miscarriage of justice if they saw it, the expression lacks an agreed definition, and can vary in meaning depending on the context in which it is used."

[11] The highest appeal court in England & Wales for criminal cases was the Appellate Committee of the House of Lords. When a judge was appointed to the Committee he was also made a peer i.e. a member of the House of Lords, with speaking and voting rights. The Committee was replaced by the Supreme Court on 1 October 2009 and is now independent of the House of Lords.
[12] *R v Connor & another; R v Mirza* [2004] UKHL 2 at para.4

(2007:759). Nobles & Schiff (1995) have classified those "contexts" as 'systems' that have developed their own separate meaning for the term. They have highlighted two particularly contrasting examples. The media and the public see a miscarriage of justice as the conviction of an innocent person whereas those involved in the criminal justice process - lawyers, judges and legal academics – use it to cover a wider range of circumstances, including when someone has been treated unjustly by that process. Nobles & Schiff explain this difference by applying autopoietic theory: groups develop their own separate meaning of a concept, leading each to speak a different language to the other, despite using the same words and phrases.[13]

A miscarriage of justice could be limited to the public perception that it involves people who were convicted and punished who were factually innocent of the crime. This is espoused by Naughton who argues that a miscarriage of justice is, "… defined simply as the conviction of those believed to be factually innocent of the criminal offences that they were convicted of…" (2013:1). Many of the highly publicised cases have involved murders or robberies.[14] They involve a corpse or some missing property, *prima facie* evidence that a crime had been committed. The miscarriage of justice is the conviction of a person who had not committed the murder or stolen the items. They had nothing to do with it; someone else had done it instead.[15]

Nobles & Schiff (1995:313) argue that such a definition suits the media because, "… conviction provides a rare occasion to tell an 'objective truth'" e.g. that someone unlawfully killed another person. These types of crime underpin the simplicity of innocence or guilt as the framework for a miscarriage of justice. Convictions allow the media to present issues of criminal law in black and white terms.[16] This perception has been reinforced by developments in forensic science e.g. DNA testing, which appears to produce irrefutable scientific evidence of guilt or innocence, in some cases years

[13] There is nothing new or profound about such observations or theorising. Nobles & Schiff refer to the work of the Glasgow Media Group (e.g. Philo 1982) which in turns refers to influences like McLuhan, Goffman and Berger in understanding how meaning is constructed. See also Herman & Chomsky (1994).

[14] Notable convictions involving killings were the 'Irish' cases of the Birmingham Six (Mullin 1990) and the Guildford Four (Kee 1989). They are discussed in more detail below. An example of a robbery case was *R v Mulcahy* [2000] EWCA Crim 106.

[15] It is beyond the scope of this thesis to engage in a discussion of the law relating to accessories to a crime, conspiracy, joint enterprise etc. or defences such as self-defence

[16] This perception is understandable as it makes great literature and cinema (The wrong men: movie miscarriages of justice by Andrew Pulver *Guardian* London, 5 May 2009).

after the offence was committed.[17] It strengthens a belief that the criminal justice process can and does produce a clear result: that the defendant did or did not commit the crime. This is easy for the general public to understand and for newspapers and television to report. Nobles & Schiff (1995:319) point out that this simplicity means that, "Attempts by lawyers and others to stretch the meaning to cover due process unconnected to the safety of a conviction are likely to appear unpersuasive and 'technical'." So, limiting the definition to the conviction of the innocent is politically expedient. It is easier to obtain public acceptance of this restricted meaning than explain complex legal principles involving rights.

If a miscarriage of justice is limited to the conviction of an innocent person, a casual reading of Government statistics might suggest that it is not a significant problem. The table below shows that a large proportion of appeals from the Crown Court were successful. Between 1995 and 2015 approximately 30-40% of appeals against conviction were upheld. Appeals against the length or type of sentence succeeded in 65-75% of cases. But the numbers are very small in the context of the criminal justice system as a whole. In 2015-16 magistrates' courts dealt with approximately 1.5 million cases and the Crown Court with 30,000 cases.[18] In 2015 the Court of Appeal heard just 1,675 appeals i.e. around 5% of cases dealt with by the Crown Court. If appeals against sentencing are excluded the proportion of appeals to Crown Court trials is just 1%.

Many writers on miscarriages of justice accept that no system of criminal justice will be free from error; some innocent people will be convicted (Quirk 2007:759; Naughton 2010:3). They emphasise the need for an effective appeals system to remedy such injustices. O'Connor argues that someone who is successful on a first appeal is not a victim of a miscarriage of justice because, "the normal safeguards have thankfully been sufficient."(1990:616) He limits miscarriages of justice to cases when, "a conviction has to be quashed because of recognition of a reasonable doubt about guilt, at some stage *after* the normal avenues of appeal have passed or been exhausted"

[17] For example, Stefan Kiszko was convicted of the murder of an 11-year-old girl and sentenced to life in prison in 1976. On 17 February 1992, the Court of Appeal concluded that the conviction was unsafe and quashed it (Rose, J. et al 1997). On 12th November 2007 Ronald Castree was convicted of the murder based on DNA evidence (*R v Castree* [2008] EWCA Crim 1866).

[18] *Criminal court statistics quarterly, England and Wales April to June 2016* Ministry of Justice Statistics bulletin 29 September 2016 available at http://bit.ly/2oW6AZ3.

(Ibid. added emphasis). If a person has exhausted those 'normal avenues' the only route back to the UK appeal courts is a referral by the CCRC. [19]

Table 2.1 Court of Appeal (Criminal Division) Results of appeals heard by Full Court, 1995-2015[20]

	Conviction		Sentence		Total			Number of retrials ordered
	Allowed	Dismissed	Allowed	Dismissed	Allowed	Dismissed	**Total**	
1995	253	521	1,222	538	1,475	1,059	2,534	52
1996	250	469	1,379	603	1,629	1,072	2,701	53
1997	236	367	1,468	602	1,704	969	2,673	33
1998	290	403	1,589	609	1,879	1,012	2,891	73
1999	171	380	1,564	614	1,735	994	2,729	70
2000	150	333	1,284	522	1,434	855	2,289	72
2001	135	313	1,101	561	1,236	874	2,110	58
2002	166	319	1,302	500	1,468	819	2,287	50
2003	178	364	1,685	679	1,863	1,043	2,906	45
2004	240	384	1,348	589	1,588	973	2,561	66
2005	228	386	1,534	619	1,762	1,005	2,767	77
2006	181	391	1,391	575	1,572	966	2,538	58
2007	196	327	1,632	619	1,828	946	2,774	83
2008	188	250	1,567	527	1,755	777	2,532	72
2009	164	266	1,372	515	1,536	781	2,317	59
2010	187	309	1,456	625	1,643	934	2,577	56
2011	196	307	1,386	687	1,582	994	2,576	52
2012	151	241	1,381	615	1,532	856	2,388	39
2013	110	236	1,008	527	1,118	763	1,881	40
2014	147	228	1,037	518	1,184	746	1,930	40
2015	125	180	952	418	1,077	598	1,675	60

Source: https://www.gov.uk/government/statistics/civil-justice-statistics-quarterly-january-to-march-2016-and-the-royal-courts-of-justice-2015

A measure of miscarriages of justice using O'Connor's approach would be the number of cases that the CCRC refer to the appeal courts. They are tiny. In 2015/16 the CCRC closed 1,797 cases, of which they referred just 33 to the appeal courts that year.[21] This represented 1.8% of the applications that the CCRC had received. Those CCRC referrals contribute approximately 2% of the appeal cases that the Court of Appeal consider each year.

[19] The origins and role of the CCRC are discussed below.

[20] Figures relate to appellants for 1995 and 1996, and to applications from 1997 onwards

[21] *CCRC Annual Report and Accounts 2015/16* p.290 HMSO. It has the power to consider applications from anyone who has been convicted in either the magistrates or crown courts, though most applications arise from convictions in the latter.

Naughton (2001) argues that O'Connor's definition is too restrictive. Instead, if a person is convicted by a jury he is a victim of a miscarriage of justice even if the conviction is quashed at a first appeal. However, Naughton restricts the meaning by limiting it to cases of convicted persons who are shown to be *factually innocent* of the crime (Naughton 2009, 2009a). He criticises concerns with, "…technical questions about the 'safety' of convictions in law".[22] But this ignores the fact that when an appeal succeeds the court does not declare the appellant to be 'factually innocent' of the crime, simply that the conviction was 'unsafe'.

This distinction has a practical significance for those who make applications for compensation when a criminal conviction has been quashed on appeal. Section 133 of the Criminal Justice Act 1988, headed *Miscarriages of Justice*, begins,

> (1) …. when a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the Secretary of State shall pay compensation for the miscarriage of justice….

The Act does not define 'miscarriage of justice' and the section does not state that an applicant for compensation has to have shown that he was factually innocent. In the case of *R v Secretary of State for Justice ex parte Adams*[23] Lady Hale emphasised that a point of principle lay behind this approach.

> Innocence as such is not a concept known to our criminal justice system. We distinguish between the guilty and the not guilty. A person is only guilty if the state can prove his guilt beyond reasonable doubt. This is, as Viscount Sankey LC so famously put it in *Woolmington v Director of Public Prosecutions* [1935]AC 462, at p 481, the "golden thread" which is always to be seen "throughout the web of the English criminal law". Only then is the state entitled to punish him…He does not have to prove his innocence at his trial and it seems wrong in principle that he should be required to prove his innocence now.[24]

Thus, the Supreme Court decided that an applicant for compensation did not have to prove that he was innocent of the crime for which he had been convicted. This is

[22] Naughton, M. 'Can lawyers put people before law?', *Socialist Lawyer* 2010 June, p.32. One such body that Naughton might have in mind is the prisoner-based MOJUK that proclaims, "MOJUK is not concerned with the 'innocence or guilt' of those in jail. We are concerned only that they have been brought to trial and convicted through 'due process of law'." http://www.mojuk.org.uk/2003/aims.html
[23] [2011] UKSC 18.
[24] ibid. para.116

consistent with the Court of Appeal's statutory duty to quash a conviction if it considers it to be "unsafe", not whether the appellant has proven his innocence. This opens up the meaning of a miscarriage of justice to much wider considerations than whether or not someone is innocent.

There is a further objection to a definition that is limited to the conviction of the innocent. It restricts justice to the *outcome* of a process, which is seeking to establish an objective truth about an event such as a murder or a robbery. It ignores any consideration of the process itself. McCartney et al (2008) reject 'innocence' as the sole criteria for a miscarriage of justice:

> Law students are taught in the first term of their first year that it is for the prosecution to prove a defendant's guilt beyond reasonable doubt. If this has not been done within the bounds of legality and propriety, then a conviction cannot stand. It is dangerous and wrong to create two tiers of appellants: the innocent and those "freed on a technicality". A test of "innocence" will lead to fewer referrals from the CCRC,[25] fewer convictions being overturned; and offers fewer protections for the integrity of the system.

A concern for the "integrity of the system" was emphasised by the CCRC in answer to critics who argued that its focus should be on innocence.

> Some critics of the Commission claim that we are too concerned with the safety, or rather unsafety, of a conviction and not concerned enough with the innocence of the person. This criticism is misguided. The fact is that we have never come across, and cannot conceive of, a situation where we would not refer a case where there was compelling evidence of innocence. If there were such evidence of innocence, it would, necessarily, also be compelling evidence that the conviction was unsafe. But even if compelling evidence of innocence is lacking, a conviction can still be unsafe and if so should be quashed.
> …It is right that the Commission concerns itself with safety, not only because it is the standard applied by the appeal courts, but also because it is a far sterner test of the integrity of the criminal justice system than innocence alone would be.[26]

By widening the term beyond the guilt-innocence dichotomy it can be shown that miscarriages of justice are more commonplace than is suggested by a handful of well-publicised appeals. Before examining this further some of the basic principles that

[25] Criminal Cases Review Commission. It is discussed later in this chapter.
[26] Foreword to the 2008/09 annual report of the CCRC, p.5, by the Chairman, Richard Foster.

govern the criminal justice system in England & Wales[27] need to be set out. Upholding them is at the heart of maintaining the 'integrity of the system'.

2.2 Due process

Most people charged with a criminal offence in England & Wales are tried either in the magistrates' court or in the Crown Court. Magistrates deal with the less serious offences where the maximum penalty is a fine or imprisonment of up to six months.[28] The case can be heard by two or three lay magistrates or by a full time, legally-qualified District Judge. There is no jury. In the Crown Court the case is decided by a jury of twelve people drawn randomly from the local electoral register. The court is presided over by a High Court judge who summarises the evidence at the end and gives guidance to the jury about the law before it considers its verdict.

When a person is brought to court to face criminal charges there are three fundamental principles that shield him from arbitrary action by the state. Firstly, he is entitled to the *presumption of innocence* (Mansfield and Wardle 1994:264). This presumption, "…reflects the relationship which ought to exist between citizen and State when a citizen is suspected of breaching the criminal law…" (Ferguson 2016:132). The corollary of this presumption is the second principle, that the *burden of proof* is on the prosecution: *it* has to prove that the accused is guilty, the defendant does not have to prove his innocence.[29] If the prosecution has not made out its case a defendant can ask the judge to dismiss it without hearing any evidence from him.[30]

The third principle concerns the *standard of proof* to be applied to the totality of the evidence against a defendant. This is illustrated by the direction that Crown Court

[27] The term England & Wales is used throughout this thesis although reference is also made to Britain and to the United Kingdom. The latter is the name of the sovereign state that is governed by the UK Government. Within that state are three separate legal jurisdictions: England & Wales, Scotland and Northern Ireland. Each has its own independent criminal justice system.
[28] In some cases, when a magistrate finds someone guilty that person can be referred to the Crown Court for sentencing if the magistrate believes that the term of imprisonment should be longer than six months.
[29] In *Woolmington v DPP* [1935] AC 462 Lord Sankey observed (at p.482), "No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained." Though as Sanders et al (2010:10) have noted, there are a considerable number of criminal statutes today where the onus is on the defendant to prove that he was not guilty of some element of an offence.
[30] The pickets at the first Shrewsbury trial made just such an application at the close of the prosecution case, on 13 November 1973. It was rejected by Judge Mais.

judges are required to give to a jury before it retires to consider its verdict. The jury must be *sure* that the defendant is guilty, "entertaining no reasonable doubt".[31] If a jury thinks that a defendant is 'probably' guilty it must not convict because 'probably' leaves room for doubt (Quirk 2007:761). This standard of proof is necessarily very high because, if it is satisfied, it allows the state to punish the defendant. This can range from the confiscation of property (fines) through to the deprivation of liberty (imprisonment).[32]

These three principles - the presumption of innocence, the burden of proof upon the prosecution and a standard of proof of 'beyond reasonable doubt' - are central to the concept of *due process*.[33] The provisions of due process are supposed to guarantee a suspect protection from the arbitrary actions of the state, whether by the police, the prosecution or the courts. The principle has been traced back to England's *Magna Carta* of 1215.[34] Others rights associated with due process include the right to independent legal representation, the right to silence[35], the right to know the offence of which you are charged and the evidence upon which it is based,[36] and the right to cross-examine witnesses (Sanders et al 2010:21-28).

Although a defendant starts with the benefit of the presumption of innocence the criminal justice system does not require a court to find him either "guilty" or "innocent" of the charge. Instead the choice is "guilty" or "not guilty". The jury does

[31] *Crown Court Benchbook: Directing the Jury* Judicial Studies Board March 2010 p. 9 This contrasts with the standard of proof in civil cases of "the balance of probabilities".
[32] These punishments would, otherwise, be an infringement of fundamental rights under the European Convention of Human Rights. Fining someone is a deprivation of property (Article 1 of the First Protocol 1952); imprisonment is a deprivation of liberty (Article 5 of the 1950 Convention). This underpinned the rationale for awarding people compensation if they were wrongly convicted.
[33] See generally Wells (2011).
[34] Clause 39 states, "No freeman shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land." It is also embodied in the notion of the 'rule of law' elaborated by Dicey (1915:110): "When we say that the supremacy or the rule of law is a characteristic of the English constitution, we generally include…in the first place, that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary Courts of the land. In this sense the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint."
[35] Though since 1994 courts can draw an adverse inference from a defendant's silence when questioned, if they rely upon a fact at trial that was within their knowledge at the time of police questioning (Criminal Justice and Public Order Act 1994 s.34).
[36] This and other important due process rights are found in the Articles of the European Convention on Human Rights incorporated into the Human Rights Act 1998, in particular Article 6 Right to a Fair Trial.

not give an explanation for its decision. It does not announce any findings of fact that it may have arrived at or how it came to its verdict.[37] If the weight of evidence is not strong enough to persuade a jury that someone is guilty beyond reasonable doubt the jury must find the accused 'not guilty'.[38] But this does not mean that the jury has made a declaration that the accused is innocent.

When the Court of Appeal quashes a conviction, it makes a finding that the original conviction was "unsafe". This is taken from the statutory language setting out the court's powers and duties. [39] The record of the lower court that convicted the person is directed to be altered to state that the outcome of the case was an acquittal.[40]

The importance of the principles of due process widens the meaning of a miscarriage of justice beyond the conviction of the innocent. For Quirk (2007:769) it is a vital safeguard, "Raising the threshold for overturning convictions to consider only innocence would not protect those who, whilst technically guilty, have been convicted following irregularities in the arrest, investigation or trial procedure." This has been emphasised by the Court of Appeal.

> "This Court is not concerned with the guilt or innocence of the appellants; but only with the safety of their convictions. This may, at first sight, appear an unsatisfactory state of affairs, until it is remembered that *the integrity of the criminal process is the most important consideration for courts which have to hear appeals against conviction*. Both the innocent and the guilty are entitled to fair trials. If the trial process is not fair; if it is distorted by deceit or by material breaches of the rules of evidence or procedure, then the liberties of all are threatened. [41] (added emphasis)

Quirk (2007:769) argues that restricting the grounds of appeal to those cases where innocence appears overwhelming would leave unchallenged cases involving serious

[37] The same is true for verdicts in the magistrates' court: the magistrate simply issues a verdict. This is to be contrasted with trials in the civil courts where the judge summarises the case, makes findings of fact and explains, where there is a conflict of evidence, why they prefer the evidence of one witness over another. This enables the parties to know why the judge has decided the case in favour of the Claimant or the Defendant.

[38] In Scotland, a jury can reach a third verdict, "not proven", as well as guilty or not guilty. Critics have argued that it creates an impression that the latter two alternatives are guilt and innocence leaving 'not proven' for cases where the jury is not convinced of guilt beyond reasonable doubt. In 2016 an attempt was made in the Scottish Parliament to scrap this third verdict but it failed (http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10386&mode=pdf.).

[39] Criminal Appeal Act 1968 s.2(1)(a).

[40] Criminal Appeal Act 1968 s.2(3).

[41] *R v Hickey and others* [1997] EWCA Crim 2028

impropriety by the state, ranging from physical coercion of defendants in police custody to the fabrication or suppression of evidence. In the case of an alleged IRA bomber, Nicholas Mullen, the facts suggested that he was clearly "guilty" of very serious offences but the court felt compelled to acquit him because he had been brought before a court in the UK improperly from another country.[42] In another case, also related to the "Troubles" in Ireland, the House of Lords was more explicit in describing the practice of unlawfully and forcefully bringing someone from another country as kidnapping. It could not be condoned:

> It may be said that a guilty accused finding himself in the circumstances predicated is not deserving of much sympathy, but the principle involved goes beyond the scope of such a pragmatic observation and even beyond the rights of those victims who are or may be innocent. It affects the proper administration of justice according to the rule of law and with respect to international law.[43]

Walker (1999:34) argues that due process rights are so important that, "…even a person who has in fact and with intent committed a crime could be said to have suffered a miscarriage of justice if convicted by processes which did not respect basic rights…"[44] He warns (ibid. p.37) that the legitimacy of the criminal justice system is endangered if breaches of those rights are condoned, particularly breaches by the front-line gatherers of evidence (the police), as it would institutionalise a 'noble cause corruption' (Caldero and Crank 2015). Due process breaches would become routine and allow the police to construct cases with evidence that was improperly obtained and unreliable, such as confessions.[45]

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[42] For the facts of Mullen's case see the summary in his appeal: *R. v Mullen* [1999] EWCA Crim 278. See also *R v Early & others* [2002] EWCA Crim 1904 in which several defendants successfully appealed against conviction after they had pleaded guilty based on the information disclosed by the prosecution. Rose LJ stated that if, "prosecution witnesses lie in evidence to the judge, it is to be expected that, if the judge knows of this, or this court subsequently learns of it, an extremely serious view will be taken. It is likely that the prosecution case will be regarded as tainted beyond redemption, however strong the evidence against the defendant may otherwise be." (para. 10)

[43] *R v. Horseferry Road Magistrates Court ex parte Bennett* (No.1) [1993]1 AC 42 at 76G.

[44] Zuckerman (1991) also warned of the dangerous message that the police would receive from the courts if the courts sanctioned malpractice. Spencer (2006:683) has also highlighted that a court may decide, notwithstanding evidence pointing to the guilt of the defendant, that to allow a conviction where the defendant has suffered a serious breach of due process would undermine the safeguards in the Police and Criminal Evidence Act 1984 This principle was highlighted in the debate on the Runciman report: "The moral foundation of the criminal justice system requires that if the prosecution has employed foul means the defendant must go free even though he is plainly guilty." Labour Party's Deputy leader of the Opposition, Lord MacIntosh of Haringey (*HL Deb 26 October 1993 vol 549 cc777-842 at 786).*

[45] See generally Wells (2011). The main basis for the overturning of the convictions of the Birmingham Six, and the establishment of the Runciman Commission, was police misconduct amounting to an abuse of process.

The need to uphold due process rights explains why the terms of reference of the Court of Appeal, when deciding whether to quash a conviction, is not whether the appellant is innocent. Instead the Criminal Appeal Act 1968 tells the court that it,

> (a) shall allow an appeal against conviction if they think that the conviction is unsafe; and
>
> (b) shall dismiss such an appeal in any other case.[46]

There is no statutory definition of "unsafe" and the judgments of the Court of Appeal do not provide a clear and consistent definition of an 'unsafe conviction' to establish its understanding of a miscarriage of justice. One of the first cases in which the Court of Appeal addressed the meaning of "unsafe" was *R v Cooper*, in which Lord Justice Widgery said, [47]

> "…the Court must in the end ask itself a subjective question, whether we are content to let the matter stand as it is, or whether there is not some *lurking doubt* in our minds which makes us wonder whether an injustice has been done. This is a reaction which may not be based strictly on the evidence as such; it is a reaction which can be produced by the *general feel* of the case *as the Court experiences it*." *(emphasis added)*

Therefore, "unsafe" could include a case where the court had a "lurking doubt" based upon its "general feel of the case". After setting this out as the criterion in *Cooper* Widgery concluded that, "…after due consideration, we have decided we do not regard this verdict as safe." But nowhere in the *Cooper* judgement did he indicate the *reasons* or the evidential basis for his conclusion. An unsafe conviction was simply one that the Court of Appeal felt, subjectively, was…unsafe.[48] Despite this seemingly wide latitude for the court, Thornton (1993) suggests that it has been reluctant to overturn convictions due to its unwillingness to accept that mistakes have been made somewhere in the system.

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[46] Section 2 was amended by the Criminal Appeal Act 1995 to simplify the terms of reference to those set out here.

[47] *R v Cooper* [1969] 1 Q.B. 267. The entire judgment is just over 2 pages long. The case involved a claim of mistaken identity whereby Cooper argued that he did not punch the victim in the face. He said that it was an acquaintance, Peter Burke. Widgery noted that the photos of both men showed that, "…the physical resemblance is really quite striking."

[48] The "lurking doubt" test, though criticised by some writers, was endorsed by Lord Brown in *R v Secretary of State for Justice ex parte Adams and others* [2011] UKSC 18. "*On* a fresh evidence appeal the sole question the court asks itself is whether the conviction is unsafe (essentially the lurking doubt test)." para 274.

One of the first CCRC commissioners, Laurie Elks, referred to the "intransigence" of the Court of Appeal in failing to acknowledge the dangers of wrongful convictions in the cases involving the wrongful convictions of IRA suspects (referred to below) and the court's "abject performance" in dealing with them. He saw this as a symptom of the court's innate conservatism and an unwillingness to criticise the criminal justice system, fellow judges, barristers etc. (Elks 2010). If the Court of Appeal adopts a conservative approach, defence lawyers will not advise their clients to lodge an appeal as the prospects of success would be slim. This is one reason why the numbers of appeal cases are not a true measure of the extent of miscarriages of justice.

The shortcomings of the Court of Appeal in identifying and remedying wrongful convictions were highlighted in the debates surrounding the Runciman Commission,[49] and the establishment of the CCRC. The Runciman Commission was set up on the day that the Birmingham Six were freed from prison after successfully appealing their convictions for causing the deaths of 21 people from bomb blasts in Birmingham pubs in November 1974.[50] The case was one of several associated with 'the Troubles' in Ireland[51] where wrongful convictions were overturned on appeal many years later. The Home Secretary had often refused to refer the convictions to the Court of Appeal until political pressure forced him (Elks 2008:14). One of Runciman's main recommendations was to remove this power of referral from the Home Secretary and place it instead with a new body, the CCRC. When the CCRC was set up on 1 January 1997 it became the world's first and only state-funded body to investigate and refer alleged miscarriages of justice.[52]

The CCRC has the statutory power to refer cases of convicted individuals back to the appeal courts.[53] However, the CCRC does not define 'miscarriage of justice', either

[49] Royal Commission on Criminal Justice, Report, Cmnd 2263, London: HMSO, 1993 (RCCJ) – referred to as "Runciman report" after its chairman.
[50] Mullin (1990)
[51] See the summary of such cases in Walker and Starmer (1993:7-8)
[52] There are two separate CCRCs in the United Kingdom, reflecting in part the multi-jurisdictional nature of the legal system. The CCRC discussed in this chapter deals with convictions by courts in England & Wales and in Northern Ireland. The other is the Scottish Criminal Cases Review Commission (SCCRC). It was established four years later by section 25 of the Crime and Punishment (Scotland) Act 1997.
[53] Appeals from a conviction or sentencing in the magistrates' court are heard by way of a full rehearing before a Crown Court judge and two magistrates; appeals against conviction and sentencing in the Crown Court are limited to questions of fact and law, heard by the Court of Appeal (Criminal Division).

on its website or in its literature. It simply states that, "Our principal role is to investigate cases where people believe they have been wrongly convicted of a criminal offence or wrongly sentenced."[54] Thus, for the CCRC a miscarriage of justice is a *wrongful conviction.* This latter term is not defined either; it is used as a synonym for a miscarriage of justice: "Our purpose: is to review possible miscarriages of justice… Our vision: is to give hope and bring justice to those wrongly convicted".[55]

The CCRC's description of a miscarriage of justice is consistent with its limited terms of reference: to investigate applications from convicted individuals and to refer their case to the appeal court if there is a 'real possibility' that the conviction will be quashed. In other words, the CCRC has to ask itself whether the Court of Appeal, using that court's terms of reference and past practice, will quash the conviction. The small number of cases that have been referred since 1997 are therefore not a reliable measure of the number of miscarriages of justice. The decision of the CCRC, whether or not to refer a case, is not the final word on whether someone is a victim of a miscarriage of justice.

Mansfield drew upon his practical experience as a criminal defence lawyer to claim that many people accepted a conviction in magistrates' courts, based on police evidence alone, who should not have been found guilty. He argued that the pressure to do so stemmed from a belief amongst defendants and their solicitors that magistrates tended to believe police evidence more readily than the evidence of the accused (1994:211). Bridges (1994), like Mansfield, highlighted that the omission of any study of the workings of magistrates' courts by the Runciman Commission would perpetuate these miscarriages.

The main hurdle for applicants to the CCRC is its terms of reference, set out in section 13 of the Criminal Appeal Act 1995. This states that a case should not be referred to the appeal court by the CCRC unless:

> 13(1)(a) the Commission consider that there is a **real possibility** that the conviction, verdict, finding or sentence would not be upheld were the reference to be made,
> (b) the Commission so consider—

[54] http://www.ccrc.gov.uk/about-us
[55] CCRC annual report 2010/11

> (i) in the case of a conviction, verdict or finding, **because of an argument, or evidence, not raised in the proceedings** which led to it or on any appeal or application for leave to appeal against it… (emphasis added)

It is this part of the Act that guides the work of the CCRC. This wording is the main reason that the CCRC rejects applications that have got to its second stage.[56] The CCRC must be convinced that, if it refers a case to the appeal court, there is a "real possibility" that the Court of Appeal will quash the conviction. The section also contains two preconditions for the referral of any application: firstly, that the grounds for the appeal are based upon *fresh evidence* i.e. "an argument or evidence, **not** raised in the proceedings" and, secondly, that the applicant had previously appealed against conviction or was refused leave to appeal. The Act does allow the Commission to disregard those two requirements, but only if there are "exceptional circumstances" [s.13(2)].

The Commission therefore must "second guess" the likely response of the Court of Appeal to the evidence in support of the appeal.[57] Will the court agree with the Commission that the evidence to support the appeal is fresh? If not, would the court agree that "exceptional circumstances" merit it hearing an appeal even though the appellant had not appealed previously or was not relying upon "fresh" evidence? Elks (2010:57)

The CCRC has been criticised for its restrictive judgment of what the court would accept as fresh evidence (Nobles & Schiff 2001, 2005; Malone 2009). The CCRC's approach leads it to refuse to investigate many applications in detail because it has concluded that the Court of Appeal would rule the evidence to be inadmissible. Green (2012) points out that the Court of Appeal has not been consistent in its definition of fresh evidence. In one case a person who did not answer police questions or give

[56] The first stage involves rejecting applications that are straight forwardly ineligible e.g. no first appeal has been made, case not involving the jurisdiction of England & Wales, not involving a criminal conviction.

[57] Statutory approval of this 'second guess' approach was given by Lord Bingham in *R v CCRC ex p Pearson* [2000] 1 Cr. App. 141. The CCRC had refused to refer Pearson's case to the Court of Appeal because it did not believe that the appeal court would find that the evidence upon which the appeal was based would be admissible – it had been available at trial and there were no exceptional circumstances for allowing it now.

evidence in his defence at trial was allowed to use evidence at his appeal that he could have provided at the trial.[58]

Despite the Court of Appeal's statements about the importance of the 'integrity of the system' Elks observed that, in his final few years as a Commissioner, the pattern of decisions of the Court of Appeal was to reject cases based upon technical arguments or defective summing up by the trial judge. He identified the tension between the courts, as the institution for determining guilt and the safety of convictions, and a separate body, the CCRC. Elks (2010:49) warned that the judiciary would regard the CCRC as being, "…constitutionally incapable of identifying any meritorious legal point that wise and learned counsel failed to pursue at trial or appeal. This is the sort of approach that can perpetuate miscarriages of justice".

Nobles and Schiff have also highlighted the constitutional incongruity between the CCRC, the Government and the judiciary. The Court of Appeal is responsible for criminal appeals. It is unusual for another body to be advising it that the court ought to look again at a conviction and quash it, especially when the CCRC's work is given impetus by, "a libel jury's verdict, a television documentary, newspaper articles, political campaigns, etc." (2005:189). This uneasy relationship was predicted at the time that idea of the CCRC was being debated. Thornton (1993) argued that appeals should not be left with the Court of Appeal. He suggested that a new body should investigate alleged miscarriages and if it concluded that there had been a wrongful conviction it could quash it or recommend that it be quashed. Thornton advocated more retrials so that any new evidence could be heard by a jury alongside the original evidence. This was supported by Mansfield: "Judges should have nothing to do with them for the reason that the presumption of guilt again comes into play and they cannot be trusted to deal with the facts in a fair manner." (1994:259) [59]

[58] *R v Murphy and Brannan* [2002] EWCA Crim 120 (25th January 2002) Keene LJ observed, "94. It has to be emphasised that the appellants were themselves partly responsible for the outcome both of the original trial and of the 1993 appeal. Brannan declined to give evidence at the trial, put forward a false defence and did not waive privilege for the 1993 hearing. Murphy had the tapes of Christina White's conversation with Greatbanks available and chose not to use them." Despite this the CCRC referred the case and the convictions were quashed due to the totality of all the evidence presented after the original trial, fresh or otherwise.

[59] See O'Connor (1990) for a discussion of the problems in the way that the Court of Appeal deals with cases. Blaxland (2017) has written more recently of the problems in fresh evidence cases.

To sum up these first two sections, the debates about miscarriages of justice have focused upon the way that those suspected of criminal offences are treated by the police and the courts. A conviction should follow only when the court is certain of guilt. The prosecution must guarantee that a suspect is granted fundamental rights to ensure that the trial is fair, otherwise a conviction would be tainted and the legitimacy of the criminal justice system, including its right to punish, would be questioned. An appeals system is an important safeguard against wrongful convictions but in practice the Court of Appeal adopts a very narrow view of the meaning of an 'unsafe' conviction. This informs and limits the work of the CCRC.

The terms 'unsafe' and 'wrongful conviction' rather than 'innocence' do allow broader issues to be taken into account but the debate has not addressed the cause of the shortcomings that have led to miscarriages of justice nor questioned the limited definitions of crime that are dealt with by the courts. The campaigning organisation JUSTICE produced several reports, beginning in 1979 with its first submission to the Royal Commission on Criminal Procedure, *Pre-Trial Criminal Procedure.*[60] Over the next decade further reports[61] were published highlighting weaknesses in the criminal justice system, culminating in "*Miscarriages of Justice*" (Waller 1989). Waller argued that the causes of miscarriages of justice started from the moment of arrest through to the post-appeal stage (1989:3). However, this does not provide a sufficiently broad framework for understanding the nature, extent and the causes of a miscarriage of justice. It is too narrowly focused upon the process leading to a conviction and ignores wider issues associated with "justice". This will now be considered.

2.3 A rights-based framework

The third part of this survey of miscarriages of justice looks beyond the decisions of the Court of Appeal and the CCRC to consider justice more generally. Walker (1999:38) argues that, "justice and failures of justice should primarily be defined with respect to rights." These rights include, "…humane treatment, liberty, privacy and family life and even the very right to existence in those jurisdictions which operate

[60] JUSTICE (Society). (1979). *Pre-trial criminal procedure: police powers and the prosecution process: a report*. London: Justice.
[61] *The Truth and the Courts*, 1980; *Compensation for Wrongful Imprisonment*, 1982; *Witnesses in the Criminal Court*, 1986 and *A Public Defender*, 1987. All available at: http://bit.ly/2v2Ohsl

capital punishment." (ibid. p.32) He then deconstructs 'miscarriage of justice' to establish its meaning:

> A 'miscarriage' means literally a failure to reach an intended destination or goal. A miscarriage of justice is therefore, *mutatis mutandis*, a failure to attain the desired end result of 'justice'… Justice is about distributions – according persons their fair shares and treatment…. (meaning) that the State should treat individuals with equal respect for their rights and for the rights of others. (ibid. p.31)

Thus, justice is concerned with more than achieving the right outcome in a criminal court - convicting the guilty and acquitting the innocent following a fair trial. Walker identifies six categories of a miscarriage of justice based upon the primacy of safeguarding rights. These will be considered to identify those that are directly relevant to the subject of this thesis.

Two of Walker's categories, the first and third, involve the issues discussed above. Category one includes those who have been denied due process rights. The CCRC highlighted examples of such abuse in the cases that led to the Runciman Commission, "… a mixture of false confessions, police misconduct, non-disclosure and issues about the reliability of expert forensic testimony."[62]

In the case of the Birmingham Six the Court of Appeal concluded that the convictions of the men had been based upon perjured evidence from several police officers.[63] This evidence related to the veracity of statements that the police claimed the six had given voluntarily and which the accused claimed had been beaten out of them. The convictions occurred in 1974, ten years before the introduction of the safeguards in the Police and Criminal Evidence Act 1984. The Codes of Conduct issued under the Act have led to a drop in the number of cases that the CCRC refer to the Court of Appeal on the basis of police mistreatment of suspects. But the CCRC has highlighted other forms of police misconduct that form the basis for a referral of a conviction. A common example is the withholding of evidence from defence lawyers by the police and

[62] CCRC Annual Report and Accounts 2015/16 p.11

[63] *R v McIlkenny and others* (1991) 93 Cr. App. R. 287. "So far as the police evidence is concerned, the fresh evidence shows, in the absence of any explanation, that Superintendent Reade, D.S. Morris, D.C. Woodwiss and D.C. Langford were at least guilty of deceiving the court…. the fresh investigation carried out by the Devon & Cornwall Constabulary renders the police evidence at the trial so unreliable, that again we would say that the convictions are both unsafe and unsatisfactory." (317)

prosecution. (This is also of direct relevance to the case of the Shrewsbury 24, though it is mainly the Government that has withheld documents.) When such evidence is finally discovered it often forms the main plank of a successful appeal.[64] In his foreword to the 2015/16 Annual Report the Chair of the CCRC, Richard Foster, observed:

> "In the past twelve months this Commission has continued to see a steady stream of miscarriages. The single most frequent cause continues to be the failure to disclose to the defence information which could have assisted the accused. Sometimes the prosecution team were unaware that they possessed the material or misunderstood its significance. On other occasions, it was deliberately suppressed."[65]

Due process is not limited to the failure of the prosecution to disclose material. It also includes a defendant's lack of effective legal representation to challenge the prosecution. Defence solicitors have been criticised for dealing inadequately with disclosure, both in not demanding all documents from the prosecution and in failing to fully examine the documents that are disclosed; for failing to trace and question potential witnesses; failing to examine the crime scene; failing to obtain independent forensic evidence about items that the prosecution will be relying upon to establish guilt e.g. body fluids, fibres, chemical residue, fingerprints, footprints, handwriting etc.. (Robins 2013)

Merchant observed that, "As controversial and unexpected as it may be, in my experience a very high proportion of wrongful convictions are the fault of poor defence work by lawyers…"[66] The noted criminal defence practitioner, Gareth Pierce, has also argued that, "Lawyers are at the heart of many cases of the wrongly accused and wrongly convicted: wrong, shoddy, lazy representation. It is a recurrent theme. It

[64] For example, diaries of Paula Gilfoyle, who was found hanging in her garage, showing her previous suicidal tendencies, were withheld from the Defence for 17 years. Her husband was convicted of her murder. See May, P. *The Case of Eddie Gilfoyle* undated p.42 available at http://www.eddiegilfoyle.co.uk/

[65] CCRC Annual report and Accounts 2015/2016 p.7 Another example of police misconduct was highlighted during the 2016 inquests into the deaths of 96 Liverpool football supporters. It heard accounts that police statements were rewritten by solicitors to remove any comments that were critical of senior police commanders. Instead the blame was to be placed on the fans, a narrative that endured for over 25 years. (Scraton 2016).

[66] Merchant, Maslen *Poor Defence* in Robins (2012). See also Belloni and Hodgson (2000:147-158) for a discussion of the perceptions that defence lawyers have of their clients.

should haunt us."[67] Thus, although an accused person has an array of due process rights on paper these have no substance unless that person has adequate legal representation to advise and act for them.

Explanations for poor legal representation include the imbalance of resources available to the defence compared with the state.[68] The Crown Prosecution Service and the police have significant resources to investigate allegations of an offence.[69] According to Green (2012:56) the total cost of the investigation into the murder of television presenter Jill Dando exceeded £10million. This represents more than one year's expenditure by the CCRC.[70] The hourly rates that the Legal Services Commission pay to criminal defence lawyers in a publicly funded case are amongst the lowest earned by solicitors in private practice.[71] Lawyers have to work according to a budget and not necessarily according to the demands of the case.[72] This creates pressure to allocate work to unqualified staff who are paid lower salaries than qualified lawyers.[73]

Walker's second category of miscarriages of justice involve, "those who fall foul of laws which are inherently unjust rather than unjustly applied." (1999:34). This is the most contentious of his categories because there is no theoretical basis for, or definition of, an unjust law. Instead, he illustrates the argument with examples. Some of his examples may be agreed with near-universal approval, such as the apartheid laws in South Africa and any other laws that are inherently discriminatory on the grounds of

[67] Gareth Pierce, speaking at the launch of Robins (2012): http://thejusticegap.com/2013/06/no-defence-it-should-haunt-us/
[68] This issue was addressed in an early JUSTICE report, *A public defender*. 1987.
[69] It will be seen in chapter 8 that the police devoted significant resources to the investigation and prosecution of the North Wales pickets.
[70] Barry George was wrongly convicted for her murder and was only freed after a referral by the CCRC. He had spent seven years in prison. No one since has been successfully prosecuted for her killing.
[71] The hourly rate allowed for preparation work in a case in the magistrates' court is £41 for solicitors outside London (http://bit.ly/2vCmr25). The guideline hourly rates for private civil work outside London ranges from £111 to £217 depending upon the seniority of the lawyer (http://bit.ly/2v2KeMR). Although civil litigation guideline rates have not been increased since 2010 the criminal legal aid rates have been cut (*Cuts that hurt: The impact of legal aid cuts in England on access to justice* London: Amnesty International 2016)
[72] Merchant *op cit.*
[73] The pressures faced by publicly funded solicitors to represent people adequately was highlighted by the prosecutions that arose from riots in Britain in 2011 following the fatal shooting of Mark Duggan: https://www.theguardian.com/uk/2011/aug/12/uk-riots-courts-warning .

race. Objections could also be made about the apartheid laws because they were passed by a legislature that was not based upon universal adult suffrage.[74]

It is Walker's other examples that highlight the lack of a theoretical framework for this category. He includes people convicted for failing to pay the poll tax[75] or taxes that went, in part, to finance nuclear weapons. Although, from a liberal democratic standpoint, there are many democratic shortcomings with the Houses of Parliament (e.g. an unelected second chamber, the lack of proportional representation) the legitimacy of the laws that its passes are not comparable with those emanating from legislatures that have little, if any, formal democratic content.[76] The poll tax was part of the Conservative Party's 1987 election manifesto, it won a majority of seats in the House of Commons that year and was able to pass the Local Government Finance Act 1988. Describing it as an inherently unjust law is a political judgment rather than a legal one, just as others might argue that inheritance tax is unjust.

Concepts such as the 'rule of law' and 'the law applies equally to all, regardless of rank' (Dicey 1915) leave unquestioned the nature of those laws (though Thompson regarded the rule of law as, "a cultural achievement of universal significance" 1975:265). Hain (1985:17) pointed out that even Dicey accepted that, "…from the inspection of laws…it is often possible to conjecture...what is the class which holds, or has held, predominant power at a given time."

Walker's third category is where, "…there is no factual justification for the applied treatment or punishment". It covers the conviction of the 'factually innocent'. As

[74] There are limits to that argument, as racially discriminatory laws were passed and sustained in the United States of America when formal electoral equality existed (Du Bois 2014). Universal adult suffrage in the UK was achieved less than 100 years ago when the Representation of the People (Equal Franchise) Act 1928 extended the right to vote to all women over the age of 21 and removed any property qualification, thereby equalizing the position with men. If laws are only just when passed by members of a legislature that all adults can elect it could be argued that many people prosecuted in the UK under pre-1928 laws were victims of a miscarriage of justice but this would seem a pointless exercise. But it does raise this issue: at what point, if at all, does a society stop making apologies for crimes of the past? Robinson (2001) argues that in the case of collective and enduring injustice it does not.

[75] The poll tax replaced a property tax, domestic rates, that was levied by local councils to contribute to local services. There was a relationship between the value of the property and the amount of rates that the householder had to pay. The poll tax (officially, the 'community charge') was a per capita annual payment that all adults had to pay. Those on very low incomes could qualify for a reduced payment or exemption but most adults had to pay the same sum, regardless of wealth or earnings.

[76] This is not to say that the protests against the poll tax etc. were illegitimate or that laws passed by Parliament are not unjust.

discussed above, there are many reasons why such wrongful convictions occur. Those where the conviction has occurred due to egregious behaviour by the prosecuting authorities e.g. Kiszko[77], may be considered the most harmful. Other mistakes can be due to human fallibility e.g. identification evidence of a witness or prosecution oversight of disclosable material that might undermine its case and assist the defence.

Category four is the disproportionate or oppressive application of the law towards people. This covers a range of actions by the police, prosecution and the courts. Box (1983:5) describes such disproportionate use of stop and search powers against ethnic minorities as "differential deployment" and "methodological suspicion". Another example is the use of powers (such as surveillance through CCTV or phone/computer tapping) that were given to investigate serious crime but are used as well to deal with minor offences.[78] This activity may not lead to the conviction of anyone, but Walker argues that it is a denial of justice because it breaches the right to privacy and to equal treatment.

Of more relevance to this thesis is the overcharging of suspects. Walker gives two examples:

(a) charging someone with an offence that is far more serious than the facts merit, and

(b) charging someone with a multiplicity of individual offences arising from the same activity.

A person may be charged with two separate offences for the same action, one more charge serious than the other, as a means of persuading him to plead guilty to the lesser offence.[79] Vogel (2007) has shown how this practice has led many accused people to plead guilty when they had an arguable defence to the charges. The practice is explicitly excluded by the current Crown Prosecution Service Guidance *Drafting the Indictment*:

[77] *R v Kiszko* (unreported) 18 February 1992, CA

[78] See the report in *Walesonline*: 'Councils are using terrorism powers to spy on dog walkers and litter droppers' 27 December 2016: http://www.walesonline.co.uk/news/wales-news/councils-using-terrorism-powers-spy-12373855

[79] The practice was discussed during an evidence gathering session of the Justice Select Committee https://www.publications.parliament.uk/pa/cm200809/cmselect/cmjust/186/186.pdf

> It will never be appropriate to include more counts than are necessary in order to encourage a defendant to plead guilty to a few. Equally *it will never be appropriate to include a more serious count in the indictment in the hope that this will encourage the defendant to plead guilty to a less serious count.* [80] (emphasis added)

But the same Guidance also advises prosecutors,

> It may be necessary to consider whether to include a lesser or alternative count in the indictment. Such consideration will include whether a lesser or alternative count would be likely to attract a plea of guilty and, if so, whether such plea would be acceptable.

Greer, in discussing plea, charge and sentence bargaining, concluded that a guilty plea to some lesser charges, "… will clearly be an injustice since the justification for conviction is entirely hollow in due process terms." (1994:68) A large number of charges can create an impression of considerable criminality. The practice also has an impact upon the jury when a defendant, faced with multiple charges, pleads not guilty to them all. Hain (1985:151) argues that it adds to the disadvantage that a defendant starts with, "Because someone has actually been brought to court, jurors are usually convinced that they have done something wrong."

Another example of the impact of multiple charging was shown during a House of Commons debate whilst two of the convicted Shrewsbury pickets, Warren and Tomlinson, were still in jail. A Conservative MP, Carol Mather, claimed

> What the hon. Gentleman does not realise fully is that, if the conspiracy charge had not been made and the two men had been tried on the 39 out of 42 other counts on which they were arraigned, far greater sentences could have been imposed, and probably would have been, on the grounds of intimidation and assault.[81]

Mather was addressing the sentences passed on the three pickets who were convicted of conspiracy to intimidate. These sentences were much longer than the three months maximum for committing the substantive offence of intimidation.[82] Mather was assuming that if the pickets had not been tried for conspiracy (and the other two

[80] http://www.cps.gov.uk/legal/d_to_g/drafting_the_indictment Paragraph 6.3 of the Code for Crown Prosecutors
[81] HC Deb 25 February 1975 vol 887 cc300-10 at 303.
[82] Section 7 of the Conspiracy and Protection of Property Act 1875.

common law offences of which they were found guilty, affray and unlawful assembly) they would have been found guilty of the other offences on the indictment. As will be discussed in Chapters 5 and 9, the position was the complete opposite: those three common law offences were chosen by the prosecution because it was easier to get a conviction than with the statutory offences.

The issue of the disproportionate and oppressive use of the law also occurs when certain actions are deemed criminal that others do not consider to be unlawful. This is particularly appropriate to public order offences, which involve complex issues of interpretation of a set of facts (the gathering of people in a public place) measured against the ingredients of the particular law. Hain has argued that police powers,

> …are so elastic as to be capable of being stretched to envelope almost every eventuality. Phrases like 'unlawful assembly', 'breach of the peace', 'shouting insulting slogans', 'obstruction', are incapable of technical definition. (1985:246)

Greer (1994:61) observed that, "The central issue in many criminal trials may not be the identification of the true miscreant, but whether certain conduct, the occurrence of which may not even be in dispute, ought to be regarded as criminal." This can involve a political judgment wrapped up as a legal one. For example, the right to demonstrate allows a large group of people to gather together and march. This may seem intimidatory to someone who disagrees with the cause being promoted by the marchers. Whose rights should be upheld, the right to protest or the right not to feel intimidated? The same issue arises during strikes when a demonstration by strikers and their supporters takes the form of a mass picket in front of a workplace.

A final aspect of disproportionality to note is excessive sentencing relative to the seriousness of the offence. This has arisen with common law offences that do not have a prescribed sentence.[83]

[83] In this rights-based framework an injustice can also occur when the punishment is considered to be inadequate. The Criminal Justice Act 1988 ss.35-36 allows the Attorney General to refer certain Crown Court convictions to the Court of Appeal where the sentence was unduly lenient. See: https://www.gov.uk/government/statistical-data-sets/outcome-of-unduly-lenient-sentence-referrals

Walker's fifth category covers victims of crime and those whose rights have been infringed, "…whenever the rights of others are not effectively or proportionately protected or vindicated by State action against wrongdoers". (1999:33) The Runciman report defined a miscarriage of justice as, "…an innocent person being convicted *or a guilty defendant being acquitted*."[84] The victim of the 'guilty defendant' has suffered a miscarriage of justice because no-one has been made accountable for the crime that has caused harm to them. It includes cases where the police fail to uphold the law e.g. failing to protect ethnic minorities from racist attacks by right wing thugs; failure to prosecute because of an incompetent investigation or a decision that is tainted with prejudice. The failure to properly investigate, charge and prosecute the killers of Stephen Lawrence is an exemplar.[85] The important feature of these examples is that the victims have been denied justice due to police and prosecution errors, sometimes bordering on corruption.[86]

Walker's rights-based approach has taken the debate away from the narrow framework of the criminal justice system, issues of evidence and procedure. A miscarriage of justice isn't simply the conviction of the innocent or of those denied due process rights. It includes other forms of prosecution abuse to achieve a conviction, oppressive punishment and the denial of adequate legal representation. A focus upon the procedures and the outcome of prosecutions in the criminal courts ignores the need to uphold rights more generally. The discussion of the oppressive application of the law also questions the content of laws and the activities that are labelled as crimes (and those that are not).

Quirk has argued that different interpretations, "demonstrates the requirement for different terms for miscarriages of justice in legal and public discourse." (2007:766). The lack of education and debate about the principles of justice, the nature of law and the role of courts in society means that Quirk's 'requirement' for different terms is likely to reinforce misunderstandings when the two worlds, legal and public, intersect.

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[84] Runciman 1993:1.

[85] See *The Stephen Lawrence Inquiry: Report of an Inquiry* by Sir William Macpherson February 1999 (Cm 4262-I, HMSO London February 1999)

[86] This was emphasised by Ann Whelan, the mother of one of the Bridgewater Four, who pointed out that the police corruption that led to the wrongful conviction of her son meant that the real killer evaded capture, causing a miscarriage of justice for Carl Bridgewater's parents.

A debate would highlight that the differences that underpin contrary definitions of a miscarriage of justice are political, not legal. This will now be considered.

2.4 A class-based approach to crime and miscarriages of justice

The value of Walker's approach has been to take the debate about miscarriages of justice beyond the law and the courts. He asks questions about the nature of laws, how they are enforced or not enforced and the punishments that are meted out. This puts the meaning of 'justice' at the centre of his inquiry. For Walker, "Justice is about distributions – according persons their fair shares and treatment…" (1999:31). What he does not address is the reason for the unequal shares and treatment that exists in capitalist society and how this inequality informs the laws and criminal justice system. In other words, he does not consider the question of power. Instead his focus is upon the need to defend abstract, fundamental individual human rights. In this final section, a brief summary of an alternative approach is set out that goes beyond Walker, critical criminology. It will be argued that this provides a clearer understanding of miscarriages of justice and why they remain endemic to capitalist society.

The weakness of approaches like Walker was highlighted by Hillyard and Tombs who observed that, "…by its focus on the individual, the structural determinants which lead to harmful events – such as poverty, social deprivation and the growing inequalities between rich and poor – can be ignored." (2004:18) Walker does not consider the social origins and nature of rights and is dismissive of any suggestion of collective rights (they "must be discarded" 1999:32) whereas critical criminology starts its analysis by examining those 'structural determinants'.

Chambliss (1975:165) also situates discussion of crime within the socio-economic relations of class society, "…criminal behaviour is…the inevitable expression of class conflict resulting from the inherently exploitative nature of economic relations...crime is not something some people do and others don't. Crime is a matter of who can pin the label on whom, and underlying this socio-political process is the structure of social relations determined by the political economy."

Humphries & Greenberg start with the opposing class interests within capitalist society and the conflict that arises from the characteristics of capitalist production, "…an exploiting class will attempt to preserve exploitative class relations. Criminalization in one tactic among many that an exploiting class will attempt to use in doing this. Exploiting classes will thus define as illegal, and try to punish, actions that threaten its interests." (1993:467).

Although laws are meant to have a universal application they are not applied to everyone.[87] Walker referred to the disproportionate use of the law as including cases when laws are only used against one section of society. A commonly cited example is the resources put into the prosecution of social security benefits claimants for alleged fraud compared with the lack of action against tax avoidance and evasion.[88] There has not been any criminal sanctions, using the law of deception, against banks and other financial institutions for mis-selling products such as PPI insurance, endowment mortgages and personal pensions.[89]

As will be discussed in chapter 7-9 the state has enormous discretion in whether to prosecute for any offence. This was welcomed by Lord Leveson in his inquiry into misconduct by the police and the press. He quoted approvingly a statement of the former Labour Attorney General, Hartley Shawcross, that, "It has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject of prosecution." (Leveson 2012:1491) Leveson explained that there was not only an 'evidential test' i.e. whether there was evidence that someone had actually committed an offence, but also a 'public interest test'. It is this so-called test that is used to reject criminal proceedings in a number of cases but, like the term 'national security', is never defined. Such 'tests' were used to justify the decision not to prosecute companies and their directors involved in industrial-scale

[87] As discussed in chapter 5, the language of nineteenth century parliamentary Acts was more partisan.
[88] For example, 'Welfare fraud is a drop in the ocean compared to tax avoidance' James Ball *The Guardian* 3 February 2013 at http://bit.ly/2ugCl1v
[89] Tombs, S. (2016) 'Corporate theft and fraud: business as usual' at http://bit.ly/2f5dKL7

bribery e.g. Al Yamani and Rolls Royce[90] or money-laundering e.g. HSBC.[91] Instead prosecutions were either discontinued or a 'deferred prosecution agreement' was made that would avoid the publicity of a trial or prison sentences.

It would be a mistake to dismiss all laws as instruments of the dominant class to maintain its rule. Box (1983:3) acknowledges that, "'Conventional' crimes do have victims whose suffering is real…A radical criminology which appears to deny this will be seen as callous and rightly rejected." Likewise, Chambliss (1975:166) acknowledges that there are laws that exist to prevent one section of capital from cheating another, "…the laws also apply universally, and therefore apply to the ruling class as well. Thus, when they break these laws they are committing criminal acts. Again, the enforcement practices obviate the effectiveness of the laws, and guarantee that the ruling class will rarely feel the sting of the laws, but their violation remains a fact with which we must reckon."

At the same time laws have been won by the working class that were opposed by sections of capital, from the right to vote and join a trade union to various employment rights that provide minimum standards at work. Box (1983:8) regards them as, "…symbolic victories which the dominant class grants to inferior interest groups, basically to keep them quiet…" Box argues that many such laws are undermined because they, "…need never be efficiently or systematically enforced" (*ibid.*) because the state controls the machinery (police, inspection bodies, courts and tribunals) that investigates and upholds them.

The laws relating to health and safety at work are a clear example of the mismatch between the law on paper and the law in practice. Death and serious injury in workplaces was particularly high in the decades leading up to the 1970s before the passing of the Health & Safety at Work Act 1974. Although there was a fall in both categories since then, enforcement, through inspection and prosecution, has declined significantly (Tombs and Whyte 2010). Serious accidents and work-related diseases

[90] See 'Blair called for Bae inquiry to be halted' David Leigh and Rob Evans *The Guardian* 22 December 2007 at http://bit.ly/2vf0jyC and 'Rolls Royce apologises in court after settling bribery case' Holly Watt, David Pegg and Rob Evans *The Guardian* 17 January 2017 at http://bit.ly/2jwo132

[91] See 'HSBC pays record $1.9bn fine to settle US money-laundering accusations' Jill Treanor and Dominic Rushe The Guardian 11 December 2012 at http://bit.ly/2kob6hF See also Tombs and Whyte 2015.

persist unnecessarily due to a disregard of health and safety laws by employers.[92] Walker would cite this as an example of his fifth category of a miscarriage of justice: where victims of harm do not get justice.

Thus, the rights of working people are not sufficiently guaranteed because they are routinely broken and are not punished through effective penalties. A clear example of the disparity in the enforcement of law is provided by the inquiry covered in this thesis. The 42 charges that the twenty-four Shrewsbury pickets faced included five alleging specific acts of violence against non-strikers. None of the pickets were tried for these offences and therefore none of them were proved to have caused injury to a non-striker.

One of the building sites that they picketed on 6 September 1972 was The Mount, in the centre of Shrewsbury. It was alleged that Carpenter and Tomlinson assaulted Ian Fletcher at the site. Six months after the strike ended a labourer, Anthony Pugh, fell approximately 13 feet to the ground from a scaffold that was inadequately fastened on the Mount site. The court report noted that, "Several requests, including one on the morning of 16 March, had been made by Mr Pugh for additional scaffolding equipment…"[93] The employers argued that the responsibility for complying with the scaffolding regulations lay not with them but with Mr Pugh and the bricklayer for whom he was working. [94] The appeal court rejected this and upheld the conviction and fine. The employers had caused a serious injury to a worker through their negligence but were merely fined, not imprisoned.

The experience of working people highlights a further issue about the labelling of activities as crimes. Many of the rights of working people discussed above are not enshrined in the criminal law but in civil law. Therefore, the enforcement of them is not carried out by the police and the prosecuting authorities but relies upon the

[92] See the most recent figures from the HSE: http://press.hse.gov.uk/2017/hse-releases-annual-workplace-fatality-figures/?ebul=gd-cons&cr=01/jul-17 . Too often attention is focussed upon the number of fatalities caused by accidents, which has shown a downward trend since 1974, though Sutherland (1998) has shown, through a study of the construction industry, that official figures have been historically misleading. Work-related diseases have killed far more. The industrial disease mesothelioma, contracted through past exposure to asbestos, killed 2,542 in Great Britain in 2015 compared to 2,519 in 2014.

[93] *Maurice Graham Limited v Brunswick* [1974] K.I.R. 158-167

[94] This was a commonplace argument of building employers to avoid liability for workplace injuries and was why the unions campaigned during the 1972 strike to abolish such working practices. See Chapter 6 for a discussion of the system known as "the lump".

initiative of the wronged employee who must bring an action in the county court or the Employment Tribunal. For example, if a worker believes that his employer has not paid him the amount due under the employment contract it is not a question of theft by the employer but of breach of contract. If someone is injured at work due to failings on the part of the employer the remedy is an award of compensation by the civil court.[95] Criminal prosecutions of employers for causing injury to employees through accidents at work are rare (Tombs & Whyte 2010).

As we have seen above, most debates about miscarriages of justice have centred upon cases that involve what Quinney (1978) describes as 'crimes of accommodation', principally murders and robberies. These do not challenge the dominant class or the inequalities that exist but are presented as the archetypal crime from which everyone needs protection. Box argues that the state, through its presentation of crime, mystifies it and restricts definitions of crime to those reported in annual surveys and statistical reports. (1983:12-15) The representation of crime is dominated by personal crimes of murder, theft, sexual offences etc. Television crime dramas bolster this narrow picture (Box 1983:17).[96] It reinforces a perception that crime is essentially behaviour committed by the lower classes (usually against the lower classes).[97] According to Box this avoids any focus upon the more serious harms caused to society generally,

> Definitions of serious crime are essentially ideological constructs. They do not refer to those behaviours which objectively and *avoidably* cause us the most harm, injury and suffering. Instead they refer to only a sub-section of these behaviours, a sub-section which is more likely to be committed by young, poorly-educated males…" (Box 1983:13)

[95] An employer is legally required to have insurance to meet such claims but there is no effective monitoring to ensure that they have it, unlike compulsory motor insurance The UK's widespread surveillance systems have led to the abolition of car tax discs because roadside cameras can check the number plate. The computers hold records of tax, motor insurance and MOT certificates. Attempts have been made to require limited companies to provide details of their employers' liability insurance policy with their annual returns, but these have been resisted by employers.

[96] Rare exceptions include *Class Action* (1991) (http://www.imdb.com/title/tt0101590/) Director Michael Apted, *Silkwood* (1983) http://www.imdb.com/title/tt0086312/ Director Mike Nichols. A more realist presentation is found in the work of Ken Loach e.g. *The Navigators* (2001) http://www.imdb.com/title/tt0279977/

[97] This is not to say that only the working class commit murders, robberies etc. According to Chambliss all classes commit these types of crime but, "It is in the enforcement of the law that the lower classes are subject to the effects of ruling class domination over the legal system, and which results in the appearance of a concentration of criminal acts among the lower classes in the official records." (Chambliss 1975:166)

This leads Dorling and Tombs (2008:7) to conclude that, "...in reality there is nothing intrinsic to any particular event or incident which makes it a crime... crime has no ontological reality…". There are a range of harmful activities that are carried on by the powerful that are not criminalised at all. Quinney and Wildeman (1977:7) refer to the observation of Tony Platt:[98]

> In accepting the state and legal definition of crime, the scope of analysis has been constrained to exclude behaviour which is not legally defined as "crime" (for example, imperialism, exploitation, racism, and sexism) as well as behaviour which is not typically prosecuted (for example, tax evasion, price-fixing, consumer fraud, government corruption, police homicides, etc.).

This is the focus of writers like Box, Hillyard, Pearce, Tombs and Whyte who highlight the behaviour of corporations, governments and other powerful institutions. For them, the greater miscarriage of justice is the deployment of the resources of the state to criminalise the activities of the working class and leave unpunished the greater crimes of the powerful.

Finally, we must address the issue of the criminalisation of acts of resistance to capitalist exploitation as this is at the heart of the building workers' strike, indeed any strike. Humphries and Greenberg (1993:467) argue that the working class,

> …may be compelled to rely on extra-legal or illegal methods of control, such as strikes and industrial sabotage. The exploiting class will in turn attempt to frustrate these attempts through its own control measures, ranging from firings to injunctions and criminal prohibitions.

Chambliss (1975:151) has also emphasised the coercive function of law to contain and repress working class opposition to capitalist domination, "As those conflicts are manifest in rebellions and riots among the proletariat, the state, acting in the interests of the owners of the means of production will pass laws designed to control, through the application of state sanctioned force, those acts of the proletariat which threaten the interests of the bourgeoisie. In this way, then, acts come to be defined as criminal."

[98] Prospects for a radical criminology in the United States *Crime and Social Justice: A Journal of Radical Criminology*, 1(Spring-Summer 1974), p.2.

In any strike, there is a conflict between the interests of the workers and those of the employer. Each side will use all means at its disposal to impose its will. The strength of the working class lies in acting collectively in refusing to work. Any of its number – strike-breakers – that continue to work weakens that collective action.[99] Two opposing views of justice, of rights, are in contention: the rights of the majority that demand that all workers respect a decision to strike, and the rights of the individuals that want to work and break the strike. Geras argues that Marx saw this as a question of principle: "It is Marx's belief, certainly, that where there are classes and class struggle, disinterested or impartial consideration of the interests of everyone is merely an ideological illusion, and he aligns himself unambiguously with one set of interests, the proletariat's, against those of its exploiters." (1984:66)

This survey of the ideas of critical criminology provides an explanation for the six categories of a miscarriage of justice that Walker's framework lacks. It does not accept the existing definition of crime and the rules and mystifications of the criminal justice system that enforces them. They are the product of a class society that acts coercively over the majority, especially when it threatens the interests of the ruling class and covers-up the greater crimes of the minority. For Quinney and Wildeman injustice is therefore endemic and will not begin to be eradicated until we have, "…a world freed from the dehumanizing conditions and contradictions of capitalism, freed from the brutality of class oppression, hierarchy and domination" (1977:172).

Conclusion

To summarise the argument that has been set out above: A definition of miscarriages of justice that restricts it to the conviction of an innocent person or the denial of due process rights ignores the content of laws. Miscarriages of justice can only be understood by questioning the meaning of justice rather than limit it to the existing laws and procedures followed in the criminal courts. This questioning has to begin by considering the nature of capitalist society.

[99] See the discussion in Chapter 5 of the 1867 Royal Commission on Trade Unions.

The unequal relations between classes produces conflict; the legal system has been developed by the state to contain and, if necessary, to suppress that conflict to maintain the interests of capital. From the point of view of the working-class injustice occurs when laws are applied to them, but not to the dominant class, to maintain the inequality and power relationships that are systemic to capitalism. The next chapter develops these themes as they are central to the theoretical approach that has been adopted in this thesis, in particular how the state uses law and ideology as essential tools for explaining and maintaining the unequal relationships in society. Law is an important component for justifying the relationship between the powerful and the powerless, with its democratic universality and its reduction of relationships and responsibilities to the level of the individual rather than of society as a whole.

Chapter 3. Epistemological and Theoretical Orientations

This chapter discusses the methodological approach that has been adopted in this thesis to analyse the documents and other data that have been obtained to address the research question: were the trials and convictions of the Shrewsbury pickets a politically motivated miscarriage of justice?

The chapter begins by highlighting the problems and peculiarities of conducting historical research to construct a case study of a particular form of miscarriage of justice. This is followed by a discussion of the methodological issues posed by such research. It identifies various limitations in conducting research into the activities of branches of the state including the police, the Government and prosecuting authorities. Considerations are given to the issue of bias in social science research.

The third section sets out the theoretical orientation of this thesis and why a Marxist approach has been adopted. This develops the discussion in the final section of chapter 2 that considered how critical criminology can provide a coherent framework for understanding miscarriages of justice in its widest sense. It sets the background for chapter 4, which will address some of the practical issues raised by research into the behaviours of state institutions. It provides details of the sources of documents and other data; how they were identified and obtained.

3.1 Issues in historical research

This thesis involves historical research into events more than forty years ago, in particular the actions of the state in prosecuting a group of building workers in 1973-74. Such historical research raises a number of methodological challenges. The research is not about current attitudes towards the criminal justice system, which could use quantitative or qualitative interviews with a variety of carefully chosen subjects. Instead it identifies and gathers as much documentation as possible about an historical period. It analyses the content and validity of those sources by cross-referencing them with other sources before they are used to address the research question. Assessing the relevance of any data that is discovered is determined by the methodology employed.

It would be mistaken to see the raw material of an historian as simply "the facts" contained in original documents and contemporaneous accounts. O'Leary (2010:224) suggests that, "…historical analysis has a quite defined purpose of establishing facts and drawing conclusions about the past." This is a very limiting definition. As Carr (1964) observed, following Brecht[100], it may be a fact that Hannibal crossed the Alps, but he obviously did not make the journey alone. Who helped him on the crossing, why did they go with him and what significance did it have? There may not be many "facts" recorded that help us to answer fully all those questions.

Carr (1964:13) warned against an approach that suggested that all the facts were out there and simply needed to be tracked down:

> "Our picture has been preselected and predetermined for us, not so much by accident as by people who were consciously or unconsciously imbued with a particular view and thought the facts which supported that view worth preserving.

The intrinsic problem with any historical document is that it is a partial account. Its author has recorded what they considered to be worth recording. Another person at the same time may have recorded other "facts" if they had had the resources and the inclination to record something. A study of historical sources shows that records are kept primarily by the propertied classes. Thompson's classic history of the origins of the English working class drew heavily from court documents and church records rather than anything recorded by a labouring poor that was largely illiterate (Thompson 1968).

The Shrewsbury pickets and other striking building workers created few written records of their activities. For example, there were no minutes taken of the meetings of the North Wales Action Committee that took place during the strike in 1972.[101] Apart from a few news reports in left-wing newspapers (the *Morning Star, Socialist Worker, Workers Press*), any accounts of the strike by pickets and their supporters were not written until a year after it ended. If the state had not embarked upon the Shrewsbury trials it is unlikely that any detailed written record of the strike would

[100] See his poem, *A Worker Reads History*, written in 1935 (https://allpoetry.com/A-Worker-Reads-History).
[101] See evidence of Alan Abrahams in the trial transcript, p.875, Shrewsbury Archives, WCML.

have been made e.g. Warren's two pamphlets and subsequent book, Arnison's contemporary account of the first Shrewsbury trial, and the references to the strike and trials in Tomlinson's autobiography. Even when accounts of working class political action have been produced they are not always published.[102]

An example of the contrast between the lack of working class accounts of strikes and political struggle and that of their opponents was highlighted during the search for documents of the period covered by this thesis. The Conservative Party, fresh from its defeat in the General Election of February 1974, studied the causes in preparation for the next time that it would be in government. Two policy groups illustrated the Conservative's strategic thinking: the Authority of Government Working Group 1975-76[103] and the Nationalised Industries Policy Group.[104] Their discussions included the lessons of the Party's electoral defeat and the role of trade union action in causing it.

The trade unions did not conduct similar reviews after their successes or defeats. No account of the building workers strike was written by the trade unions involved.[105] This was not an exception. The Transport & General Workers' Union did not write an account of the experiences of dockworkers' opposition to containerisation and the case of the Pentonville Five.[106] The Amalgamated Union of Engineering Workers (AUEW) did not produce an analysis of the factory occupations in 1972.[107] Most remarkably, the National Union of Mineworkers did not publish or encourage the writing of any accounts of the strikes in 1972, 1974 or 1984/85.[108]

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[102] The distinguished director, Ken Loach, was commissioned to make a documentary about the steel workers' strike of 1980. It was not broadcast because it was considered to be too political: http://www.timeout.com/film/features/show-feature/3416/Ken_Loach_interview.html

[103] Minutes and reports available in the Conservative Party Archives, Bodleian Library, University of Oxford ref CRD 4/13 and with the papers of Margaret Thatcher at the Churchill Archives Centre, University of Cambridge, THCR 2/6/1/29.

[104] This group published a report by Nicholas Ridley MP, 8 July 1977, which was to be the blueprint for the Conservative Government's confrontation with the coalminers in 1984-85.

[105] There were important lessons to be learned by the building trades unions. The 1972 strike raised issues about the difficulties in recruiting and organising building workers on construction sites and the tactics to be used during strikes, including flying pickets. The picketing may have been a vital tactic in winning the strike but it also led to the prosecution of 24 building workers. The jailing of trade unionists for taking part in an industrial dispute was an issue of immense practical importance to trade unionists. Wood (1979) gave only a brief account in his history of UCATT. (See Worple 1981 for a discussion of the exclusion of a study of history from trade union education.)

[106] See Chapter six and Darlington and Lyddon 2001:141-177

[107] Ibid. pp.95-134

[108] Goodman (1985: viii) noted that the NUM would not assist him in his book. An exception was a lengthy interview in *New Left Review* with Scargill (1975) about the 1972 strike, when he was a

Even when a record has been made of an event it may not have been preserved. A typed transcript of the first trial of pickets at Shrewsbury Crown Court, between 3rd October and 19th December 1973, was discovered not to be the full record of the trial. A transcript of an appeal hearing in 1974 showed that the trial transcript was partial.[109] Shorthand writers had been present throughout the first trial but their notes were not transcribed afterwards automatically. Their shorthand notes were not retained. The only parts that were transcribed and survive were those that counsel requested for the appeals. Important parts were omitted including the evidence of the main police investigator, Superintendent Glover, and other important witnesses, the Defence application to have two regional television companies committed for contempt of court, and the fracas at the end of the trial when two jurors stormed out after the judge passed a custodial sentence. Some parts of the trial were not recorded on the instructions of Judge Mais[110] e.g. the summing up to the jury by the six defence barristers for the pickets. The implications of these 'gaps' in historical data will be considered later in this chapter.

There is another category of "gaps" in our knowledge. It is when documents exist but cannot be obtained. In some cases, it is due to the time limits before a document is released, such as those set out in the Public Records Act 1958 covering records sent to the National Archives, Kew.[111] This limit has shortened over time from the original 50 years in the 1958 Act to 30[112] and now to 20 years.[113] Each time a new year's batch is released historians begin the process of reappraising accounts that were written before the documents were released.[114]

Yorkshire area official. Other accounts of the miners' strikes include Allen 1981; Beynon 1985; Callinicos and Simons 1984; Coulter et al 1984; Crick 1985; Pitt 1979; Wilsher et al. 1985.

[109] See discussion between Lord Justice James and counsel at the appeal hearing, *R v Jones & others* 21 February 1974, copy in writer's papers.

[110] *R v Jones and others*, 13 December 1973, p.82. John Platts-Mills annotated copy, Shrewsbury Archives, WCML, Salford.

[111] At the start of the research the Government was only required to deposit documents at Kew thirty years after they were created, the "thirty-year Rule". Documents obtained for this thesis were released between 2005-2006. Section 3(4) of the Act has since been amended to reduce the period to twenty years from 1 January 2013.

[112] Public Records Act 1967

[113] The Public Record (Transfer to the Public Record Office) (Transitional and Saving Provisions) Order 2012

[114] The Freedom of Information Act 2000 has had an impact upon access to Government documents before they are transferred to Kew. The FOI is considered later.

Another important reason that documents cannot be accessed is that they are in the hands of the powerful. Tombs and Whyte (2003a:33) have observed that the obstacles facing research into private corporations apply equally to, "… the corridors of the civil service and other parts of state and government, at both national and local levels". Although evidence can be garnered from the periphery, "…it should be apparent that the inner sanctum is likely to be even more tightly sealed from outside scrutiny when the aim of the outside researcher is to investigate actual or possible illegality." (ibid) As will be discussed later, a significant part of the activity of the Shrewsbury 24 Campaign was to secure the release of Government documents that the Campaign claimed had been withheld from public scrutiny.

There are also barriers to obtaining access to papers that are not "public" i.e. those that belong to political parties, lawyers and other private individuals. A researcher does not have any right to inspect them and access can depend upon developing a relationship of trust with the holder.

Thus far, it has been noted that in researching an historical episode such as the 1972 strike and subsequent trials, there is not a sole source from which all the "facts" about the event can be obtained. The other note of caution sounded by Carr (1964:11) in ascertaining historical "facts" is that pieces of recorded information are, "imbued with a particular view". This is particularly true of newspaper reports and other secondary data where Carr noted that, "…every journalist knows today that the most effective way to influence opinion is by the selection and arrangement of the appropriate facts".

The contemporaneous accounts of the building workers strike and the trials are important sources of historical data but the picture that is represented in those reports is partial. Carr's caveats discussed above offer two explanations for this partiality. Firstly, the author of the document makes a choice about the facts that they consider to be worth recording. The second is that these accounts give an interpretation that reflects the biases of the author (Herman and Chomsky 1994).[115] A document's credibility has to be tested by examining the context in which it was written and by

[115] The work of Beharrell & Philo (1978), Philo et al (1982) and the Glasgow Media Group generally has shown how television programmes promote a one-sided view of the relationship between employer and employee, the nature of trade unions and of strikes.

whom, and by cross-referencing it with other documents to assess the account that it contains. For example, the alleged injuries to one building worker, Growcott, during the picketing on 6 September 1972, were highlighted at the first Shrewsbury trial and reported by newspapers and other writers in the years since. Those claims have been tested against other documents, including witness statements of treating doctors and the trial transcript, which suggest that many reports were wildly inaccurate. This is discussed in Chapter 9.

3.2 Methodological issues

Carr's warnings about the content of historical data also applies to the way that it is interpreted. He argued that, just as there is no neutral recording of history, so there is no neutral interpretation of documents and other data:

> It used to be said that facts speak for themselves. This is, of course, untrue. The facts, speak only when the historian calls on them: it is he who decides to which facts to give the door, and in what order or context…… (A) fact is like a sack - it won't stand up till you've put something in it...The belief in a hard core of historical facts existing independently of the interpretation of the historian is a preposterous fallacy, but one that is very hard to eradicate." (Carr 1964:11)

The philosophical fallacy of some historians, that there is an independent body of "facts" that simply need to be discovered and then presented, is mirrored in sociology:

> "…following Weber, I argue that researchers should be committed primarily to the pursuit of *knowledge*, and therefore should be as neutral as they can towards other values and interests in their work, in an attempt to maximise the chances of producing *sound knowledge* of the social world." (Hammersley 2000:12 – emphasis added).

Turner (2005:43-44) shared this vision of a sociology unimpaired by any attachment to the subject of investigation. "To be a scientist, it is necessary to suspend biases and beliefs in order to understand how the world actually works, whereas to be an advocate it is to not let science get in the way of biases and beliefs about how the world should work."

The notion that there is "sound knowledge", free from values and interests, is rejected by Jupp, who argued that:

> The way in which the research is designed, and the categories which are chosen to give a framework to the collection of observations and to their subsequent analysis, are predominantly in the hands of the social scientist. They are influenced by the issues he or she is addressing and the theoretical ideas brought to bear on such issues. (2012:33)

The very selection of the research question is not a neutral choice and therefore the hands of the social scientist are not as free as Jupp implies. A researcher needs resources to conduct an investigation and gain access to the data necessary to answer the research question. Invariably, it means that the researcher must have an income to pursue the work i.e. they must be paid to do it, whether in the form of a specific grant/bursary or as an employee of an organisation that has bid successfully for research funds.

According to Horowitz social scientific research is sponsored predominantly by the powerful: the state, large corporations and other private interests. He observed that:

> Given the complex nature of social science activities and their increasing costs – both for human and for machine labor – the government becomes the most widespread buyer. Government policy-makers get the first yield also because they claim a maximum need. Private pressure groups representing corporate interests are the next highest buyer of social science services…The sources of funds for research tend to be exclusively concentrated in the upper class." (quoted in Nicolaus 1972:51).

The control of research funding ties the hands of the researcher. Jupp highlighted the dominance of the Home Office as a purchaser of research activity involving crime. It has a significant budget to allow researchers to investigate crime and criminal justice policy but, "…whether in-house or external, commissioned or otherwise, the guiding principle is that research should be policy-related." (2012:20-21) In other words, the money goes to those that will research the areas that the funder determines.

The narrow link between university research agendas and the needs of private capital has been discussed by Tombs & Whyte (2003a:17-22). We are warned that he who pays the piper calls the tune and that it, "…is therefore crucial to make a distinction between research that is conducted generally within the boundaries of acceptability and feasibility, and research that is conducted under highly prescriptive conditions." (ibid.p.30) Those conditions, where research is increasingly limited to the requirements of a narrow range of funders, makes the, "… idea of research conducted

within the context of universities as neutral, value-free and divorced from the partisan imperatives of economic forces", just, "intellectual nonsense." (idid.p.16)

The control of funding limits the opportunities for those that want to research issues that do not fit in with the policy needs of the largest sponsoring bodies. The research question and framework is set by the funder. It determines what is to be studied and the limitations of the research. Chevalier and Buckles (2013) have shown that the subjects of inquiry are examined from the outside, and reports are written about those subjects for government departments and other bodies that have control over the subjects' lives. It is much more difficult to fund research from the perspective of the powerless to address needs that they define.

The origins of this thesis lie in the author's position as the researcher of the Shrewsbury 24 Campaign. Its members believe that the prosecution and convictions of the pickets was a miscarriage of justice. Several features of the trials founded this belief: firstly, the absence of any arrests or cautions on the day of the picketing in 1972; secondly, the five month gap between the end of the strike and the arrests; thirdly, the nature of the charges used against the pickets, in particular that of conspiracy to intimidate laid against the six so-called ringleaders at the first Shrewsbury trial; fourthly, the severity of the prison sentences imposed upon the pickets, especially the three years' imprisonment for Des Warren. His treatment in prison contributed to his premature death from Parkinson's disease in 2004 (Warren 1982:204).[116] (His death re-awakened interest in the pickets' case; the campaign to clear the names of all 24 pickets was established shortly afterwards.)

In 2007 the Campaign decided to submit an application to the CCRC on behalf of the pickets to persuade it to refer the cases to the Court of Appeal. Several drafts of a supporting submission were prepared by the Campaign's lawyer but they were inadequate. When I studied the terms of reference of the CCRC it revealed that the pickets were required to obtain *fresh evidence*. In 2009 the Campaign, of which I was the Treasurer, asked me to take on the additional role of Researcher and obtain that evidence. The Campaign is a voluntary body and had no funds to pay a researcher or even any expenses associated with it. I carried out the work unpaid. The aims of the

[116] This illness is discussed throughout his son's memoir, Warren (2006).

research were a common interest that I shared with fellow campaign members: to gather evidence to overturn the pickets' convictions.

As my enquiries deepened I identified issues about the case that were not directly relevant to the evidence that had to be submitted to the CCRC. I wanted to explore these wider issues, including the role of the state and the concept of miscarriages of justice, using the pickets' trials as a case study. This was the genesis of this thesis. It is therefore linked organically, in a Gramscian sense (Tombs & Whyte 2003a), to the intellectual inquiry towards the struggle for legal justice by the Shrewsbury pickets. The research comes from *within* the trade union movement. It aims to develop an understanding of how various parts of the state came together to roll back the growing organisation and power of a section of the labour force, building workers.

That this research originates from the needs of a campaign to obtain information about a set of criminal trials may suggest that it sits within the traditions of Participatory Action Research (PAR). It shares some of its characteristics. PAR argues for a research that is *with* people and not *on* people, the results of which are emancipatory (Baldwin 2012:477). The research for this thesis is within that tradition by conducting research for and as part of a campaign to address concerns identified by them in order to arrive at solutions.

Friere is often cited as an inspiration for this approach in his writings on education,

> "Authentic education is not carried out by A *for* B or by A *about* B, but rather by A *with* B, mediated by the world – a world which impresses and challenges both parties, giving rise to views or opinions about it." (1972:66).

The term "participation" can have a dual meaning. The first is that the subjects of the research are also part of the research team, defining the issues, gathering evidence and analysing the results. The second use of the term is one that emphasises the dialectical relationship between the researcher and the researched, which recognises that the former ultimately controls the research question and the conclusions drawn from the study but is part of and works with the originators of the research. As Brook and Darlington (2013:236) argue, "…(it) requires the forging of an organic connection between both parties. This is principally achieved through the researcher actively

participating in the agents' struggle, which in turn empowers them to make politico-scholarly interventions from within…" (see also, Gramsci 1971:330).

Active participation in "the agents' struggle", identifying with it and championing its demands, raises the criticism that the research conducted by such an organic sociologist is invalid due to the inevitable bias of the researcher. Hammersley (2000:64) observed that, "If the researcher takes the point of view of the powerful, there are unlikely to be accusations of bias…However, if the point of view of subordinates is adopted, the sociologist will probably be accused of bias whatever the situation."

Brook and Darlington addressed this when discussing committed research into the sociology of work: "…a common criticism is that a politicization of sociology will undermine intellectual rigour and its accompanying reputation for impartiality and objectivity" (2013:237). They advocate the need for reflexivity where, "…the researcher not only acknowledges their situated position but critically explores their social and political impact on the social subject of the research." It requires, "…the researcher to be as transparent about the process and their role as possible" (*ibid.*). The standpoint of the writer has been made abundantly clear in this thesis in contrast to, "…the paradox of traditional policy research's assumed impartiality and objectivity, while being inherently partisan due to pursuing objectives set by often powerful clients from government and business" (*ibid.*).

Whilst the research for this thesis has a relationship with a group of trade unionists and is addressing specific concerns that they have (the need to overturn the convictions of 1973-74) it also has a more general purpose: to locate these events within a Marxist theory of class domination in capitalist society. This is where PAR has its limitations for this research. This thesis requires a theoretical framework for understanding the actions of the various actors in these events: the pickets, employers, police, civil servants, Conservative Party members, MPs and officials, lawyers and judges. Such an approach does not arise from the research but is brought to it by the researcher. As Healy (2001:97) argues, to suggest otherwise is either to leave the research rudderless or to deceive the subjects into believing that the direction of the research and the

conclusions drawn have all arisen from their own reflexivity. This leads us to the consideration of the theoretical approach that has been adopted.

3.3 Class and class conflict

A Marxist framework has been adopted to inform the approach taken in this thesis. It provides the most coherent understanding of the conflict represented in the building workers' strike and the reaction afterwards by the employers and the state. This approach is one which, as part of a radical tradition of social scientific inquiry, does not look at law and so-called criminal behaviour in isolation but, as Jupp argues, raises, "…questions about the relationship between crime and criminal justice, on the one hand, and the state, social structure and historical transitions on the other" (2006:13).

As has been discussed in the chapter 2, a Marxist analysis of the meaning of crime starts with the socio-economic relationships of capitalist society. This needs to be developed by considering the role played by various arms of the state, such as the police, the prosecution and the courts, in enforcing laws. It will be argued that these bodies represent part of a state apparatus that ensures the continued exercise of power by the dominant class over subordinate classes.

Marx categorised societies according to the way in which production of the means of subsistence takes place (the mode of production) and the relationship of people to that process of production (the relations of production). Thompson (1979:17-18) emphasised the, "…centrality of the mode of production (and attendant relations of power and ownership) to any materialist understanding of history." The common feature of such societies was that they contained mutually antagonistic classes, which Marx and Engels summarised in the opening line of the Communist Manifesto, "The history of all hitherto existing society is the history of class struggles." (Marx 1973:67)

Capitalist society is divided into two principle classes, those that own and control the means of production and those who are propertyless and possess nothing but their ability to sell their labour power. Marx (1969a) summarised their respective positions as where

> ….we find on the market a set of buyers, possessed of land, machinery, raw material, and the means of subsistence….and on the other hand, a set of sellers who have nothing to sell except their labouring power, their working arms and brains... That the one set buys continually in order to make a profit and enrich themselves, while the other set continually sells in order to earn their livelihood.

The mode of capitalist production is the manufacture of commodities for sale in the market. Under capitalism workers do not own the product of their labour nor control the process of production. The relationship of capitalist and worker is purely a monetary one. The latter receives payment for the work, which is less than the value produced by that labour; the capitalist retains the surplus, which is the source of profit (Marx 1968).

For Marx (1976:645) the working day is divided into two parts: the first part is the necessary labour that workers perform to produce sufficient value to reproduce themselves. In money terms, it is the wages sufficient to buy food, shelter, clothing etc. for the worker and their family (the latter being necessary to ensure that new generations of labour are produced to replace the ageing, unproductive workers). The second part of the working day is surplus labour i.e. the value created by workers that they do not receive as additional wages but instead is appropriated by the capitalist. In other word, profit is the product of the surplus value created by the worker.

In his speech, *Value, Price and Profit*, Marx stressed that there is no law that fixes this division between necessary and surplus labour or the value that is appropriated by capital.

> As to *profits*, there exists no law which determines their *minimum*… the *maximum of profit* corresponds to such a prolongation of the working day as is compatible with the physical forces of the labourer...It is evident that between the two limits of the *maximum rate of profit* an immense scale of variations is possible. The fixation of its actual degree is only settled by the continuous struggle between capital and labour, the capitalist constantly tending to reduce wages to their physical minimum, and to extend the working day to its physical maximum, while the working man constantly presses in the opposite direction. The matter resolves itself into a question of the respective powers of the combatants. (Marx 1969a:28)

Thus, conflict is a structural feature of capitalist relations of production. Marx examined this in his analysis of absolute and relative surplus value in *Capital*

(1976:643-654): the capitalist and worker struggle over the division of surplus value created by labour. The capitalist tries to maximise the amount of surplus value by lengthening the working day to increase the overall value created by the worker. Where the working day cannot be extended the capitalist has to shorten the period of necessary labour (and thereby increase the period that is surplus labour) by either increasing labour productivity or the intensity of work.

These basic features of capitalist economic relations are present in the construction industry from beginning to end. The raw materials to make timber, bricks, glass and metal are owned by private capital. It has to use labour power to extract and process those materials into forms that can be used by builders. The latter employs architects to design and manual workers to construct buildings with those manufactured items. The value that each of these groups of workers adds during their working day exceeds the amount that they receive in wages. In the production and construction process there is a clash between the interests of the employer in maximising profit and the interests of the worker whose labour produces the value from which profit is taken.

3.3.1 Class struggle, class consciousness and hegemony

The 'continuous struggle between capital and labour' that Marx described in *Value, Price and Profit* was manifested openly in the national building workers' strike of 1972. The four main trade unions involved in the strike demanded a substantial pay increase based upon a shorter working week (£30 for 35 hours) and improved working conditions (a cost to the employer) (Wood 1979). When workers take part in a strike their propertylessness is brought into sharp focus. To survive they must use any savings they have and rely upon support from fellow workers to buy food and other essentials whilst the strike progresses. Likewise, employers have to deplete their capital to live. The 'respective powers of the combatants' are tested (Marx1969a).

This feature of strikes was recognised by the Royal Commission on Trade Unions in 1869 (see section *5.1.4* below). The strength of any group of workers during a strike depends upon their ability to put pressure upon the employer to concede to their demands. The greatest pressure on an employer occurs when all production stops. The capital that has been invested in the production process is not being used to reproduce itself and to make a surplus that the capitalist takes as profit for subsistence and

accumulation. The power of building workers thus lay in ensuring that the maximum number of them stopped work. This necessitated recruiting as many of them as possible into trade unions and acting collectively through strike action.

A Marxist approach sees strikes as the struggle between competing class interests. Such conflict is inevitable as a result of inherent contradictions in the mode of production and the relations of production. Marx saw this as a constant process even though it may not be manifested openly at all times: the classes, "…stood in constant opposition to one another, carried on an uninterrupted, now hidden, now open fight…" (1969:98).

Fine and Harris (1979:132), in discussing the role of the state as an instrument to preserve capitalist social relations, highlight several features of the capitalist mode of production analysed by Marx that lead to crises. There is a tendency for the rate of profit to fall as a result of increased capital investment and overproduction of commodities (discussed in *Capital* Volume 3 Part III). Competition amongst capitalists leads to takeovers and mergers, increasing the concentration and centralisation of capital.[117] These processes affect not only the working class, through wage cuts and unemployment, but also sections of the capitalist class that face bankruptcy. Fine and Harris argue that the policies that are adopted by the state to allow a restructuring of capital can accentuate crises,

> …the capitalist state, responsible for the reproduction of capitalist relations, is forced to permit and even at times precipitate crises. For crises are not only disastrous for sections of the bourgeoisie and, of course, the working class; they are also the preconditions for renewed capitalist accumulation (although they never guarantee that renewal) and the capitalist state cannot provide these preconditions in any way which avoids crises. (1979:133)

One of the main tools used by the state to transfer surplus value from labour to capital is a wages policy. According to Fine and Harris (1979:143), "The state presents these policies as attempts to reduce inflation with the implication that all classes will benefit

[117] For an example of how this process destroyed an entire UK industry see Koerner (2012), an account of the death of the British motorcycle.

alike from its reduction. In fact wages policies are primarily concerned with redistribution both between labour and capital and between capitals…"

The conflict that arises between classes as a result of these economic processes has to be *contained* and it also has to be *explained*. Marxists have identified the state and ideology as two components of a superstructure that address these needs for capital to ensure that its domination is maintained. Marx (1975:425) described the superstructure as arising from and reflecting the class relations found in the economic base of society. The superstructure in capitalist societies includes the state and it is this institution that contains the conflict between classes.

The debate about the characteristics of that state preoccupied Marxists for over a decade in the 1970s and 1980s. Many are discussed in Holloway and Picciotto (1978), Fine & Harris (1979) and Jessop (1982). The debates addressed various crude interpretations of phrases in the *Communist Manifesto* such as, "The Executive of the Modern State is but a committee for managing the common affairs of the whole bourgeoisie" (Marx1973:69) and in Engels (1972:18) who argued that the state, ultimately, "…is nothing but a machine for the oppression of one class by another." Those statements could not address the complex forms and role played by the state in the 150 years since they were written.[118]

For Marx, the function of the state, ultimately, is to maintain the domination of capitalist class rule rather than act as a neutral arbiter between classes. Miliband (1973) identifies a series of elites that work together to maintain social order as evidence of the class nature of the state, though at times they may appear to be in conflict with each other. These elites include bankers and industrialists, the civil service, the army and police, the judiciary and political parties.

This has been criticised by Poulantzas who disputes that the essential class nature of the state is found by identifying a collection of elites. He distinguishes the capitalist class from the members of the state apparatus (the bureaucracy). Whereas Miliband tries to draw the social connections between the two, often linked by blood and

[118] It should be remembered that the *Communist Manifesto* was a 'call to arms' for the impending revolutions of 1848 and not a deeply theoretical work.

marriage, to validate his argument about the class character of the state, Poulantzas (1972) emphasises the objective role of the state bureaucracy

> This means that if the *function* of the State in a determinate social formation and the *interests* of the dominant class in this formation *coincide*, it is by reason of the system itself: the direct participation of members of the ruling class in the State apparatus is not the *cause* but the *effect*, and moreover a chance and contingent one, of this objective coincidence. (ibid: p.245)

Poulantzas further argues that in capitalist society the interests of the ruling class are often best preserved precisely when they do not occupy positions within the state apparatus. How does this guarantee that the state upholds their position? Because, "although the members of the State apparatus belong, by their class origin, to different classes, they function according to a specific internal unity. Their class origin… recedes into the background in relation to that which unifies them – their *class position*:" (ibid:246)

Hain addressed this point when discussing claims by Attorneys General that they were not subjected to political interference: "The problem is that they do not see most of the pressure to which they succumb, for they are part of what amounts to a state consensus." (1985:81). Hain argued against a mechanical Marxist approach to explain the way in which a ruling class maintains its class interests, "In short, there is no evidence of some central conspiracy acting on behalf of the ruling class….". (*ibid.* p.19) A ruling class does not meet in a committee to devise an overarching plan of domination. Instead the people that populate the institutions of the state – the civil servants, the police, the judiciary, the army, etc. – operate within a consensus that accepts that the process of capital accumulation and domination is maintained. This does not mean that the capitalist class has a unitary viewpoint; there are competing interests amongst various sections of capital.[119] The state has to mediate those differences but within a framework that ensures continued domination over the working class.

[119] This divergence of interests was clearly demonstrated during the 2016 referendum on the UK's continued membership of the European Union and the subsequent debates about withdrawal.

In this context Hain (1985:289) made an observation about the judges and the courts that is directly relevant to this thesis,

> Political trials highlight the fact that the judiciary does have an 'independent' role – but not the kind of independence popularly supposed and officially projected...the judiciary is not merely independent of popular democratic accountability, it also has its *own political interests* to pursue.

Hain is right to say that there is no 'popular democratic accountability'[120] but he does not explain what those 'own political interests' are and how they might conflict, if at all, with the fundamental interests of capital. What Hain confuses is the judiciary's appearance of independence with the role that the judiciary plays in mediating between the classes when conflict is expressed in legal terms. Ewing (2007) has shown that the landmark legal judgments in the twentieth century involving trade unions confirm that the courts, ultimately, side with the interest of capital over labour, undermining the right of unions to exist or to act effectively. A notable example was the case of *Taff Vale Railway Company v ASRS*. It was decided twenty-five years after the passing of the Conspiracy and Protection of Property Act 1875, which appeared to have settled the issue of trade union immunity from prosecution for organising a strike. The House of Lords decided in 1901 that a trade union could be sued by an employer for losses incurred through a strike organised by that union (Clegg 1964).

It would be wrong to suggest that the state in capitalist society is simply an instrument for the domination of the capitalist class over subordinate classes. This implies that there is a unified dominant class with a singular interest and that it exercises direct control over the state to that end. Fine and Harris (1979) stress that although capitalists have an objective collective interest in preserving capitalist property relations against the working class there are still inherent conflicts amongst capitalists. This prevents the capitalist class from exercising or developing a unity through the process of

[120] Hain does not explain how the judiciary would be made 'democratically accountable'. Any plans would face fundamental objections from traditional constitutional theorists who argue that the judiciary must remain independent of popular pressure (aka mob rule). See the discussion over the litigation about the procedure for the UK Government to trigger Article 50 to leave the EU. *R (on the application of Miller) v Secretary of State for Exiting the European Union* [2016] EWHC 2768 (Admin) and [2017] UKSC 5.

production and exchange i.e. through the market, as this is characterised by competition amongst themselves.

> …Marx's analysis of the Factory Acts shows that in such a case an 'intervention' in the interests of capital as a whole is necessarily undertaken by the state because economic competition prevented the bourgeoisie as a class from adopting it 'spontaneously' (if any one capitalist introduced shorter hours he would be defeated in competition even though it may be in his interest for all to have a restriction of hours). Similarly whereas the formation of the general rate of profit is a market process through which the bourgeoisie shares out surplus value like brothers, crises cause the bourgeoisie to fight each other like 'a band of thieves' so that market processes cannot smoothly effect economic unity through competition. In such a situation if the state intervenes at an economic level…it is forced to act on behalf of the whole bourgeoisie against the immediate interests of some of its fractions (against, for example, the representatives of small capital). In that sense it is acting as the unifying force of the bourgeoisie. (Fine and Harris 1979:97)

They cite approvingly the analysis of Poulantzas that, "…as a political force the bourgeoisie is not a unity which then acts through the state; instead, its unity is itself formed through the state" (ibid. p.96).

Jessop also highlighted Poulantzas' insights in emphasising the state's unifying role for the capitalist class and additionally its relative autonomy from the different, competing fractions of that class and other classes.

> …the economic fractioning of the bourgeoisie can be overcome only through a state which displays its own internal (class) unity and institutional autonomy vis-à-vis the dominant class fractions…Poulantzas insists that the capitalist state must be understood as an institutional ensemble which has a major function in organising hegemony within the power bloc as well as in the mobilisation of active consent vis-à-vis the dominated classes and thus society as a whole. (Jessop 1982:155)

That autonomy from all fractions allows the state to, "…present itself as securing the general interest against all particular interests…the state can overrule the dominant classes and fractions when they promote their particular interests" (1985 :68). In this way the state can take decisions e.g. over industrial, fiscal or monetary policies, that may adversely affect one or other fraction of capital but will, ultimately, "secure the political class interests of the power bloc," i.e. the interests of capital as a whole.

The writings of Gramsci provide valuable theoretical insights into the way that the dominant class is able to gain acceptance of the unequal relationships between the classes i.e. how class conflict is *explained*. He developed a theory of hegemony and emphasised the ideological weapons that a ruling class uses to exercise control that are to be distinguished from the physical weapons (army, police, prisons etc.) that are deployed when a frontal assault is made upon the dominant class. Ideas about the way that society is organised and the way that it functions do not have an independent existence from the classes that make up society. Those ideas are formed by a person's experience and that includes the explanations they receive about their existence. Gramsci (1971) described the process of constructing meaning through control of education, newspapers, books etc. as the exercise of an ideological hegemony over the population, a narrative that provides a context and an explanation of people's daily lives. Tombs and Whyte (2003a:10) summarise Gramsci's position as when, "(The) members of a historical bloc expect their ideas, their understanding of the world, their specification of historical possibilities to become the general common sense so that subordinate classes will, to a considerable extent, formulate their interests within the categories of the dominant ideology."

The ability of the historical bloc to create this common-sense view of the world derives from its, "…dominance over mainstream social institutions, including those involving education, communication, mental and physical health, political organization, the means of production…and apparatuses of repression." (ibid.) Fine and Harris also argue that the state plays a central role in promoting ideas and explanations (narratives) that secure political support for its policies.

> The state's economic intervention in crises is also accompanied by intervention in ideological and political struggle… The expulsion of living labour in the restructuring of productive capital and redistribution toward capital are processes which carry the threat of stimulating working class militancy at all levels…The state itself, therefore, is instrumental in mounting this ideological and political counter-offensive which is necessitated by the essentially economic requirements of capital in crises. (Fine and Harris 1979:135)

An example of the importance for the state in controlling its narrative about trade unions was a memo from within the Information Research Department (IRD) of the Foreign Office. The memo's author identified three people involved with news and

current affairs at the BBC, "all have…benefited from informal access to the FCO Research machine, and we have been able to steer them and place some material to our advantage…"[121]

This analysis of ideology and hegemony informs the interpretation that has been made of contemporaneous documents and the particular decisions that were taken by individuals at the time of the trials. It will be argued that the trials of the pickets were not a series of unconnected events and decisions but an example of the exercise of power by a ruling class through the various elements of the superstructure of capitalist society, including sections of the state - the Government, civil service, judiciary – the Conservative Party and media. The process does not involve conspiratorial meetings where the various actors plot the outcome at each stage. Instead these individuals act in their own ways as a result of their roles and position within the state apparatus. They share a 'world view' that accepts the broad aims and values of the capitalist class. The approach has been summarised by Jupp (2006:13):

> The institutions of criminal justice and the personnel who populate them do not operate in a vacuum. They are a fundamental part of society, its structure and the way in which social order is maintained. Therefore, to separate crime and systems of criminal justice from the wider social structure and the interests and conflicts which are a part of it would involve missing crucial dimensions of the generation of crime and of the operation of the criminal justice system in relation to such crime.
>
> It seeks explanations of crime, not in causal terms, but in terms of the economic and class relations in society at any given point in history; it seeks to understand the functioning of the criminal justice system in terms of the role of the state in maintaining social order, and the relationship of the state to economic and class interests; and, perhaps most fundamentally, it seeks to address questions about the nature of crime and about what, at any given time, is treated as criminal, and why.

Conclusion

To summarise, this chapter has set out the methodological issues raised in conducting research both about an historical episode and the actions of the state. It has set out the approach that will be taken in interpreting the data about the trials. It emphasises both

[121] "Ad Hoc Contacts" Memo from NH Marshall to Mr. McMinnies and Mr. Tucker 18 November 1971, (TNA FCO95/1270). See also the discussion of *Red under the Bed* in chapter 9.6.

the gaps that exist in that data (and the reasons for this) and the partiality of the authors when creating their accounts.

Use has been made of Gramsci's concept of hegemony to situate the narrative that the state promoted to explain the nature of the conflict between capital and labour. The domination of the means of communication by the state (television, radio, schools) and by individual capitalists (newspaper proprietors, book and magazine publishers) allows capital to create a view of industrial relations and class conflict that stigmatises militant trade unionism as subversive. This ideological outlook informed the writers of many of the documents that recorded the events of the period examined for this thesis.

This chapter, developing themes from chapter 2, has elaborated a Marxist approach that will be used to analyse the actions of the criminal justice system in the prosecution of the pickets. This places class at the centre of an analysis of the institutions of the state, which will contribute to an understanding of miscarriages of justice and the conclusions of this thesis.

The next chapter sets out the research methods that were used to gather and examine the evidence that has been collected to address the research question. It provides examples of some of the practical difficulties encountered in researching the behaviours of the state.

Chapter 4. Research Methods

This chapter sets out the sources of data that were identified and obtained to address the research question in this thesis. It highlights the difficulties that were encountered in obtaining data, illustrating some of the methodological challenges identified in the previous chapter.

4.1 Oral evidence

Before discussing documentary evidence, a brief explanation needs to be set out dealing with the considerations given to the use of oral evidence for this study.

The use of data from interviews with participants to write a history of a particular episode or period in time has been described as oral autobiography by White (1981) He identified several shortcomings, echoing the warnings of Carr discussed in Chapter 3. Firstly, the interviewee hides or ignores faults or attempts to justify them, leaving the account with, "immanent biases and distortions" (1981:35-36). White's second caveat about data obtained through interviews is that, "…it can tell us little beyond the world in which the individual…actually lived." This is linked to his third observation, that, "…individual experience can tell us little about the forces which shape our lives" (*ibid.)*.

An initial table of 'principle actors' involved in the strike, picketing and trials was drawn up. It was discovered that many of them had died including the leading North Wales picket, Des Warren,[122] the Attorney General, Sir Peter Rawlinson, the Home Secretary, Robert Carr and the chief prosecutor, Sir Maurice Drake QC. I was left with a short list of people whose existence was down to the randomness of their age and health.

The events discussed in this thesis occurred forty-five years ago. The passage of time not only took its natural toll on the participants, it also affected the survivors' ability to recall the events of the early 1970s in which they had been involved. The issue of the reliability of memory and the data that an interviewee provides has been keenly

[122] The oldest surviving picket was born in 1928. The youngest, and an active member of the Campaign, was born in 1948.

debated amongst historians (Thomson 2012; Tumblety 2013). Thomson highlighted two counterposing perspectives:

> …the subjectivity of memory provided clues not only about the meanings of historical experience, but also about the relationships between past and present, between memory and personal identity, and between individual and collective memory.
> …the Popular Memory Group concluded that this radical potential was often undermined by superficial understandings of the connections in oral testimony between individual and social memory and between past and present, and by the unequal relationships between professional historians and other participants in oral history projects. (Thomson 2012:81-82).

Some of the convicted pickets had been traumatised by the trial and by the ensuing difficulties in obtaining work afterwards due to blacklisting.[123] Many had not been asked about the events since their trials in 1973-74. Whilst the surviving pickets that I spoke with were friendly and supportive of my work they were unable to provide information that would assist with an understanding of the events of 1972-74.

One category of people that could have provided new information was the twelve jurors in the first trial at Shrewsbury. There was considerable controversy about comments allegedly made to them by the court usher, which may have improperly influenced their verdicts.[124] However, obtaining information from jurors is prohibited by section 8(1) of the Contempt of Court Act 1981 which states that:

> …it is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury during their deliberations in any legal proceedings.

There are other restrictions preventing a discussion of the trials, such as the Official Secrets Act (1911 and 1989). This applies to civil servants and the police. The solicitors and barristers involved have a professional duty of confidentiality to their clients that restricts the information that they can divulge.

[123] See Hollingsworth and Norton-Taylor 1988; Smith and Chamberlain 2015.
[124] See chapter 9.

The surviving pickets that I traced continued to maintain that they were the victims of a miscarriage of justice, having said so from the first pleas of 'not guilty'. I concluded that the discussions with them did not add sufficient insights that could address the research question. They recounted as best they could their experience of the strike and trials, but their recollections were contradictory. The purpose of the research was not to present a personal oral history of the strike, combining different accounts. It was to go beyond that to explore how and why the prosecution of the North Wales pickets occurred.

4.2 Documentary sources

This thesis is based upon documents and other data, which can be divided into two types:

(a) primary - documents produced by those involved with the strike, with the arrests, prosecutions and trials; and

(b) secondary - documents produced by people commenting on the events at the time – primarily journalists - and shortly afterwards in letters, articles and internal government communications.

Public records, like those in the National Archives, Kew are, as Silverman has stressed, a potential but often neglected goldmine for sociologists, "…revealing how public and private agencies account for, and legitimate, their activities." (1993:68) Ventresca and Mohr (2001:3) describe files as, "…the embodiments of sedimented, accumulated talk… These texts enable researchers to view the ebb and flow of organizational life, the interpretations, the assumptions, the actions taken and deferred from a range of differing points of view as events unfold across organizational space and time."

O'Leary (2010:225) highlights three challenges facing a researcher when examining primary historical documents i.e. those created at the time:

(1) Ensuring the authenticity and credibility of the resources;
(2) Gathering enough data for an account to be considered complete; and
(3) Finding trends and patterns among what might be disparate and contradictory evidence.

But whereas O'Leary suggests that, "Working with existing texts allows researchers to be neutral…" (2010:229), Silverman rightly warns that a study of the records made by public officials may not tell the whole picture, "Like all documents, files are produced in particular circumstances for particular audiences. Files never speak for themselves." (1993:61) Instead they are, "…artfully constructed with a view to how they may be read" (1993:63). Ventresca and Mohr (2001:4) likewise observed that:

> Recognition of the inherently political and residual features of archival material is thus a central methodological concern, the basis for significant decisions about design and analysis. The skilfulness of scholars' abilities to master this ambiguity is a distinguishing feature of exemplary research in this tradition.

When researching contemporary history there is a multiplicity of sources and accounts located at geographically dispersed facilities. The closer the period of investigation gets to the present day the more data that can be discovered. There are many online databases that provide access to material. Historical sources can be traced on the internet. Electronic catalogues and indexes of material can be searched in seconds at a desk anywhere in the world regardless of the location of those documents.

There are also more advanced forms for *recording* history beyond written mediums. These include photographs, tape recordings, radio and television programmes and, increasingly, digital material. This can pose a logistical challenge in attempting to cut through the mass of information available to discover the essence of the object of the inquiry. Ventresca and Mohr (2001) recognised this challenge and gave the following practical advice:

> In historiographic investigations, the researcher reads through large amounts of archival information (often from unstandardized sources) in a disciplined fashion as a way to gain insights, make discoveries and generate informed judgments about the character of historical events and processes. This method relies upon intensive note-taking and a carefully managed pattern of strategic reading." (p.15)

The first documents that were considered were the existing books about the strike and trials. Two accounts were written at the time, Arnison (1974) and Flynn (1973, 1975). Two pickets wrote about their experiences later on: Warren (1977, 1980, 1982)[125] and Tomlinson (2003). Several works about the 1970's included a section on the strike and trials: Clutterbuck (1980), Hain (1985), Darlington and Lyddon (2001) and Sandbrook (2010), as did the autobiography of one of the leading defence counsel, John Platts-Mills QC (2001). This literature was used to sketch a chronology of events and to identify the main people involved. The subsequent discovery of original documents (see below) revealed weaknesses and errors in a number of these accounts.

Platts-Mills (2003:532) made several unsubstantiated claims.[126] He wrote that Warren and Tomlinson "were the only two of the twenty-four who had experience in trade union matters" (2001:533). Warren certainly qualified whereas in the years preceding the strike Tomlinson worked primarily as an entertainer in working men's clubs. He did a variety of daytime jobs including labouring, but he was not a trade union activist and at times he was not a member of a union. He had served an apprenticeship to become a plasterer but had stopped work in that trade when he was twenty-three, due to asthma.[127] In 1972 Tomlinson was employed as a safety worker on a McAlpine site, building the Wrexham by-pass. At his trial, he said that he was not a union member when the strike started. His co-worker and co-defendant, John Llywarch, had recruited him and other men into the T&GWU at the end of July 1972.[128] Tomlinson's political affiliations also differed from Warren. He was a former active member of the far-right National Front (NF)[129] (Tomlinson 2003:84-7), whereas Warren was an active member of the Communist Party.[130]

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[125] On his release from prison Warren wrote a short pamphlet in 1977, *Shrewsbury: Whose conspiracy? The need for an inquiry* which was expanded and updated in 1980. It formed the basis for his longer work, *The Key to My Cell*, (1982) which contains his recollections of the events and his imprisonment.
[126] He wrote that the police advised against prosecutions because, "it was not possible to identify wrongdoers". The West Mercia Constabulary Report, 1972 suggested prosecuting for an array of offences but had reservations about a conspiracy charge (p.36, copy in author's possession). He claimed 31 pickets were arrested of whom 24 were prosecuted. Only six were arrested but a total of 32 pickets were tried, at Mold and Shrewsbury.
[127] Trial transcript p.1015 WCML, Salford
[128] Ibid. p.1017
[129] Tomlinson stood as a candidate for the NF in the Arundel Ward in the Liverpool City Council election in 1969 (*Liverpool Daily Post* 9 May 1969). For details of the National Front see Walker (1977).
[130] According to Warren, at the time of the strike Tomlinson, "…had left the National Front but still put forward their racial views. Tomlinson saw a Jew behind every pillar…He was not active in the union until the 1972 dispute, which he had disagreed with from the outset…He and I were caught up in

A more recent book about these events is Ayre et al (2008). Unfortunately, it did not assist the research. It focuses on the experience of building workers in the North East of England during and after the strike and not from the subject area, North Wales. Its coverage of the prosecution of the pickets' concentrates on the activities of the North Wales Defence Committee after the strike. There are very few references to the documents or quotes from individuals that are used in the book. It was published in 2008 but makes no mention of the Government files at the National Archives. This is a significant omission as those files contain documents that are fundamental to an understanding of the events.

Clutterbuck (1980) devoted a chapter of his book on political violence in Britain to the building workers' strike. He claimed that his account was based upon interviews with pickets, non-strikers, police and others as well as newspaper reports. He did not reference any sources of information and made a number of factual errors. For example, he claimed that a building worker lost the sight of an eye as a result of an assault by pickets on the Brookside site on 6th September 1972. As will be discussed later, this was inaccurate. When discussing the eighteen pickets tried in the second and third trials at Shrewsbury Clutterbuck wrote (1980:89), "None of these eighteen received anything other than suspended sentences, so none of them went to prison." Three of the eighteen did go to prison, following their convictions for affray and unlawful assembly. They were jailed for six months and four months respectively on each charge.

4.2.1 Searching for the evidence

The research started with the small number of published works about the strike and trials. This enabled a skeleton timeline to be drawn up and a list of some of the important persons and government departments involved. Searches were then carried out at various libraries and records offices throughout the UK that revealed a wealth of original, primary documentation. This was crucial in setting out a narrative of the events. As the documents were collected from the various archives they were put into

a situation where we were forced to fight together" (1982:108-9). After Tomlinson was released from prison he was blacklisted and picked up his career as a club compere and entertainer before becoming an actor.

chronological order to establish the sequence of events, though recognising that an event occurring after another has not necessarily been caused by the earlier event.

The solicitor that acted for many pickets at the Mold and Shrewsbury trials in 1973-74 was still in practice. In 2007 he had been instructed to act for the Campaign in making applications to the CCRC. He provided small sections of the transcript of the first Shrewsbury trial, October-December 1973. Contact was then made with Laurie Flynn, whom I had known for over forty years. He had worked as a journalist and reported the Shrewsbury trials for *Socialist Worker* and for *Construction News*. He wrote two pamphlets about the case in 1974. After meeting with him he provided twenty ring-binders of documents. These included his collection of contemporaneous notes and papers, newspaper and journal articles relating to the trial, sections of the first Shrewsbury trial transcript, the opening speech of prosecuting counsel Maurice Drake QC, the summing up by Judge Mais, and many defence and prosecution witness statements.

I then undertook research at the National Archives, Kew. I discovered that many documents created during the period of the trials had been retained by the Government on the grounds of national security. This became a focus of the Shrewsbury 24 Campaign. In January 2012, a meeting was held in Parliament with John McDonnell MP to discuss obtaining the documents. Two Early Day Motions were published in the House of Commons, sponsored by supportive MPs. The Campaign decided to make disclosure a public issue and on 27th June 2012 it initiated a Downing Street e-petition,[131] followed by a paper petition. The combined total exceeded 100,000 signatures and it was presented to 10 Downing Street on 16 December 2013.

The petition was taken up by David Anderson MP,[132] who secured a three-hour debate in the House of Commons on 23 January 2014 about the Shrewsbury pickets' case and

[131] https://petition.parliament.uk/archived/petitions/35394 Petitions can be started on the website by any UK citizen. If it gets 10,000 signatures the Government will issue a response and if it gets more than 100,000 it is referred to the House of Commons Backbench Business Committee to decide whether the subject merits a parliamentary debate.

[132] At a press conference that the Campaign held at Parliament in 2012 Anderson informed me that his sister had nursed Warren in the final period of his illness. After this meeting Anderson became a prominent supporter of the Campaign.

the demand for disclosure of documents. MPs then voted 120 to 3 for their release.[133] The Government spokesperson, Simon Hughes MP agreed to meet with me and Anderson at the Home Office on 16th July 2014. Hughes agreed to help with the tracing of the documents that I had requested. Stephen Jones, Head of Freedom of Information & Justice Devolution was tasked to search through all the files that were currently withheld by the Ministry of Justice covering 1971-75 and to send me a list of the file references. I received 2,382 references from which I identified 51 that appeared to be relevant. In answer to my request for the 51 files I was told that they were retained and I would have to make an FOI request. I made a formal request for six and was refused under section 23 of the Act. My request for a review of that decision was also turned down.

After the General Election in June 2015 a further attempt was made to obtain the documents. I met Labour's shadow Home Secretary, Andy Burnham MP, in Parliament on 24th November 2015 and he agreed to organise another debate, in Westminster Hall. I prepared a briefing for Burnham which included core documents that I had obtained during my research throughout the country in the past three years. The debate was held on 9th December 2015. Burnham led it with the support of fellow Labour MPs Steve Rotherham and David Anderson. Mike Penning MP, the Minister of State for Justice and for Policing, replied for the Government. He agreed to meet with Burnham and myself.

The meeting took place on 15 December 2015 and Penning arranged that I meet with Simon Marsh, Head of Knowledge and Information Management at the Home Office. At my meeting with Marsh two days later I gave him a list of all the documents that I had identified. One of the most important was the police reports that were enclosed with a letter dated 18th December 1972 from the Chief Constable of West Mercia to the Director of Public Prosecutions.[134] The letter stated that two reports were enclosed, one from West Mercia and the other from Gwynedd police. They dealt with the police investigations into the North Wales pickets. Neither report was with the original letter in the file at the National Archives.

[133] https://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140123/debtext/140123-0002.htm#14012382000001
[134] TNA DPP2/5159

On 21st March 2016, I received a detailed response from Penning. It stated that no files relating to the Shrewsbury trials had been discovered though some files that may have been relevant had been destroyed by accident or as a matter of routine under the Public Records Act 1958.

In November 2016, West Mercia Police wrote to the CCRC to inform it that they had discovered documents relating to the trials. I made a request for them under the Freedom of Information Act 2000 and as a result I was invited to meet police representatives at their headquarters in Telford. At the meeting on 13 March 2017 they explained that the documents had been discovered amongst items that were being transferred to a museum. I could look at them and make copies. They sent me digital copies of the larger documents.

These newly discovered police documents included a copy of the 1972 West Mercia Police report and several appendices. In addition, there was a document that I had been unaware of: a 1973 report by Chief Superintendent Hodges into complaints from several building contractors about the police's alleged failure to control and arrest the pickets on 6 September 1972. These reports contained crucial information about the police response to the picketing on the day, which had never been revealed before. It also provided an insight into the police analysis of the picketing and their views of the politics of the strike.

4.2.2 Archives and libraries

The Modern Records Centre, University of Warwick was visited to view the records of the National Federation of Building Trades Employers (NFBTE). It was necessary to discover the extent of the NFBTE's lobbying of the Government and the part it played in the decision to prosecute the pickets. The Warwick archives contain internal correspondence between the NFBTE head office and its regional secretaries, and a dossier that was compiled and passed to the Home Secretary, Robert Carr in October 1972, *Violence and Intimidation* (NFBTE 1972). The dossier is discussed in detail in Chapter 7.

The papers of Warren's barrister, John Platts-Mills QC, are held in Hull. I discovered on my visit that they had not been catalogued sufficiently to allow them to be reviewed in full. However, amongst the small number of papers that could be read was a letter showing that he had deposited his copy of the transcript of the first Shrewsbury trial at the Working Class Movement Library (WCML) in Salford. When this was visited it was discovered that he made extensive notes on his copy of the transcripts. The WCML also has papers of another barrister, Anthony Rumblelow, who represented Tomlinson at Shrewsbury Crown Court and the Court of Appeal. These documents were a significant find for verification purposes.

The trials were reported in several newspapers, which gave differing accounts according to their standpoints. They included the local newspapers, the *Shropshire Star* and the *Shrewsbury Chronicle,* which are held at the Shropshire Archives. The coverage of these local papers was particularly important as they were likely to have been read by the jurors who were drawn from the area in which these papers circulated. Labour movement papers including the *Morning Star* and *Socialist Worker* were available at the Marx Memorial library and the Modern Records Centre, Warwick.

It was noted in the previous chapter that Carr (1964) had warned of the partiality of 'historical facts'. The national daily papers and the regional press were hostile to the building workers' strike and the pickets. Their accounts must be treated with caution. Although the newspapers contain a large quantity of "facts" the Glasgow Media Group has shown that the power of the press lies in its ability not simply to report but also to omit facts that do not suit its own outlook (Philo 1982). During the first Shrewsbury trial Platts-Mills attempted to focus upon the nature of the lump,[135] the illegalities of tax evasions and a disregard of health and safety law that it encouraged. This perspective was ignored by the main newspaper reports of the case. Instead they focussed upon the prosecution's evidence at court, that non-strikers were put in fear by the arrival of large numbers of pickets at their building sites.

[135] The Lump was an employment practice whereby a contractor paid a worker a lump sum to do a particular job. The worker was responsible for paying tax and national insurance from the lump sum but evasion was rife. Building workers that worked on the lump were difficult to recruit into a trade unions because, "their interest was only in cash, quick easy cash." (Arnison 1974:24-25). This is also discussed in Chapters 6 and 9.

Further insights into the process leading to the trials were discovered from unexpected sources including lesser known memoirs of participants. These included a self-published autobiography of Alex Rennie (2009), the Deputy Chief Constable of West Mercia in 1972, and a memoir by Albert Prest, a North West UCATT official during the strike.[136] Work on a book about the strike and trials was started by Frida Knight, who interviewed Warren and a number of other pickets and strikers. Drafts of many sections were discovered in two archives.[137]

The main source of Government documents is the National Archives, Kew. The challenges in identifying and copying relevant documents is dealt with in Appendix D. The available documents showed the process that led to the bringing of charges against the pickets. The files at Kew contained letters from backbench Conservative MPs, newspaper articles and internal memos addressing the issue of picketing and the need for the Government to take tougher action against trade unionists. This was supplemented by documents in the Conservative Party archive at the Bodleian Library, University of Oxford.

There are considerable resources available online that were read and considered. Digital copies of most UK national newspapers were searched for the period 1972-1974 to examine their coverage of the strike and trials. The main provider is http://www.gale.com/primary-sources/historical-newspapers.

Hansard online provides free access to all debates in the House of Commons http://hansard.millbanksystems.com/commons/ and House of Lords http://hansard.millbanksystems.com/lords/. The latter was accessed for the discussions about the Conspiracy and Protection of Property Bill 1875 and the repeal of previous legislation restricting trade union activity. Both sites were searched between 1971-76 for debates about picketing and about the Shrewsbury trials.

The following repositories were visited to find documentary evidence (see Appendix D for practical information about researching at these institutions):

[136] The typed manuscript is at the Modern Records Centre, Warwick MSS.78/UC/6/1

[137] WCML, Salford Shrewsbury pickets' archives and the Modern Records Centre, Warwick. The reference in the latter's catalogue is simply, "Papers of Frida Knight re Shrewsbury pickets, 1954-1976".

Name of institution	Principle documents of interest	Date visited
1. Modern Records Centre, University of Warwick	Archives of the NFBTE and T&GWU	17 March 2010, 1 March 2017
2. The National Archives, Kew	Government and court documents 1970-76.	8-9 March 2012; 19 October 2012; 24 May 2013; 24-25 October 2013; 28-29 March 2014; 30 May 2015 and 8-9 December 2016.
3. Trades Union Congress Library Collections, London Metropolitan University	TUC archives	14 March 2013
4. Hull History Centre, Worship Street, Hull HU2 8BG	Papers of John Platts-Mills QC (JPM)	9th October 2013
5. Working Class Movement Library, 51 Crescent, Salford M5 4WX	Extensive archive of papers relating to the trials, including papers of Platts-Mills and Rumblelow	8th March and 7th November 2013 16 March 2017
6. Shropshire Archives, Castle Gates, Shrewsbury SY1 2AQ	*Shropshire Star* newspaper archives	30 August and 5 September 2013,
7. UCATT Head Office 177 Abbeville Rd, London SW4 9RL	Union archives	4th March 2013
8. British Film Institute, 21 Stephen Street, London W1T 1LN	Viewing of *The Red under the Bed* and *Let the Prisoner Speak*	25 September 2013 and 3 November 2015
9. Churchill Archives Centre, Churchill College, University of Cambridge	Papers of Sir Peter Rawlinson, Lord, Hailsham, Michael Woolf and other Conservatives	9-10 March 2015; 21-22 September 2015.
10. City of Westminster Archives Centre, 10 St Ann's Street, London SW1P 2DE	Archives of the Federation of Civil Engineering Contractors (FCEC)	29 May 2015
11. The Bodleian Library, University of Oxford	Minutes of meetings of 1922 Committee of Conservative MPs 1972-74	10 June 2015
12. Marx Memorial Library	Holds copies of the *Morning Star* and a range of left-wing books, pamphlets and documents	4 November 2015

13. The British Library	Contains an archive of *Socialist Leader* with reports of the conspiracy trial of dockworkers, April 1951	3 November 2015
14. West Mercia Police	Police reports and witness statements	13 March 2017 23 May 2017

Hansard online provides free access to all debates in the House of Commons http://hansard.millbanksystems.com/commons/ and House of Lords http://hansard.millbanksystems.com/lords/. The latter was accessed for the discussions about the Conspiracy and Protection of Property Bill 1875 and the repeal of previous legislation restricting trade union activity. Both sites were searched between 1971-76 for debates about picketing and about the Shrewsbury trials.

4.2.3 Other documentary sources

4.2.3.1 Individual collections

Original documents were provided by various individuals who were contacted to support the pickets' application to the CCRC. Apart from those already mentioned the following were obtained:

4.2.3.1.1 Des Warren

Warren's personal papers were kept by his youngest son, Andy, who had signed an application to the CCRC on behalf of his late father. He gave me all the papers, which included Des' statement to the court, bail notice, hundreds of supportive letters from trade unions and trade unionists in Britain and abroad, journals and newspapers between 1972 and 2002, correspondence with MPs whilst he was in prison, correspondence with various solicitors about his prosecution and his civil claim against the Home Office for the medical mistreatment he received whilst in prison.

4.2.3.1.2 Ricky Tomlinson

He provided a black plastic bin bag of documents. It was mainly correspondence with his first wife, Marlene, whilst he was in prison. He informed me that he had not retained anything else over the years as he had moved many times (as he described in his 2003 autobiography).

4.2.3.1.3 Peter Kilfoyle MP

As Labour MP for Liverpool, Walton between 1991-2010 he was persuaded by the Campaign to lobby the Labour Government to release the documents about the trials. He provided his original file of correspondence with the Lord Chancellor, Jack Straw.

4.2.3.1.4 Bill Jones

Jones lived in Kirkby and was a building worker who had been active in North West England during the strike. He was a member of the North Wales Defence Committee that organised support for the pickets when they were charged and then imprisoned. His daughter Carolyn, the Director of the Institute of Employment Rights, gave me access to her father's papers.

4.2.3.1.5 John McKinsie Jones

McKinsie Jones was one of the 'Shrewsbury Three' who were imprisoned at the first trial, on 19 December 1973. He served six months of a nine-month sentence. He gave me copies of his file of papers, which he had obtained from his junior counsel at the trial, Geoffrey Kilfoil.

4.2.3.1.6 Anonymous

Some material was provided in confidence. It included cine film that had been taken by a Merseyside building contractor. The holder of the film told me that he had been employed by the contractor who had taken film of pickets during the strike so that he could identify and blacklist them when it was over. The film was taken to the Manchester Metropolitan University Media Centre to be transferred onto a DVD where it was viewed and a copy then donated to the North West Film Archive.

4.2.3.2 Plays and Films

4.2.3.2.1 United We Stand

Some information was obtained unexpectedly. A theatre company, Townsend Productions, approached the Campaign for our agreement and assistance in producing

a play about the pickets' case.[138] The play, *United We Stand*, toured the UK between 2014-2015, visiting dozens of small towns as well as the main cities. Campaign members attended many performances to promote the pickets' case and a variety of people spoke with us about their knowledge of the strike and trials. At the performance in Shrewsbury relatives of a local contractor told me that there had been meetings of builders in her house that were organising an anti-picket force.

4.2.3.2.2 Free the Six

This amateur documentary made in 1975 by two student filmmakers at the BFI, Michael Rosen and Jeff Perks, was discovered from a UCATT member. It is a remarkable contemporaneous account of the building industry and the 1972 building industry dispute.

4.2.3.2.3 Arise Ye Workers

This was an amateur film of the 1972 dockworkers strike. It was shown at a meeting in 2013 in the dockers' club in Liverpool, *The Casa*. I was provided with a copy by the organisers.

4.2.3.3 Chance encounters

Another contact came while petitioning in the centre of Liverpool. A delivery driver told me that he delivered to a shoe repair shop in Shrewsbury whose owner was the son of the jury foreman at the first Shrewsbury trial. This man was traced and interviewed. Considerable care had to be taken with the information that he provided. He was only 5 at the time of the trials and his father, who died prematurely in 1994, first mentioned it when his son was 14 (when he recognised Tomlinson on the new Channel 4 soap opera, *Brookside*).

Another chance encounter was with an active member of the civil service trade union, PCS. He had read an article about the Campaign in his union's journal. He had worked as a court usher in the Shrewsbury area in the 1970s and provided information about

[138] http://www.townsendproductions.org.uk/productions/united-we-stand. An earlier play had been performed in the 1970's by the Banner Theatre Company (Rogers 1992:22-23), which they adapted.

the functioning of the courts, the allocation of cases and the relationship of an usher to the jury and the judge.

On another occasion, I was handed 24 photographs taken by a *Morning Star* photographer showing Des Warren and his family on his release from jail in 1976. They showed that Warren had suffered a dramatic weight loss whilst incarcerated. The person who gave them to me had bought them for a £1 in a sale when the *Morning Star* moved premises. This was fortunate as they would have been discarded and lost forever.

4.3 The FOI and missing documents

The Freedom of Information Act 2000[139] gives a right to request public documents, including those that are less than twenty years old. However, the Act gives holders of information several defences against full disclosure. Section 12 is headed, "Exemption where cost of compliance exceeds appropriate limit." This allows a public authority to refuse a request for information, "if the authority estimates that the cost of complying with the request would exceed the appropriate limit." Research by Bourke et al (2012) has shown that the 'cost' defence is used in many cases to reject a request for documents. The effectiveness of the Act is also limited by the Data Protection Act 1998 which holders of disclosable documents rely upon to redact names and other personal data. This limits the information that can be gleaned from the document.[140]

In the period leading up to the introduction of the Freedom of Information Act 2000 it was claimed that Government departments shredded huge quantities of documents to prevent disclosure.[141] This was the fate of several documents that were relevant to the pickets' case and to this thesis. The Home Office minister Mike Penning MP, in answer to a request I made to the Home Office for documents, stated[142]

> e. Attorney General's Office identified two files relating to the case – Shrewsbury Pickets trial (Building Workers Strike 1972), which was

[139] Paradoxically, the Prime Minister responsible for its introduction, Tony Blair, described the Act as a major political error: http://bit.ly/2xr1Tf8 .
[140] The Home Office redacted the names of officials from a document that I had requested setting out details of the F4 Division. This has prevented me from identifying the civil servants from F4 that may have been involved with the trials. See Chapter 8, where F4 Division is considered further.
[141] Bourke et al. 2012
[142] Letter 21 March 2016

> destroyed on 9th May 2000, and a FOI request case file - which was destroyed on 26th January 2011….
>
> h. …Home Office also looked at the closed and retained files you identified as being of potential interest. One of these is now open at the National Archives, three appear to have been inadvertently destroyed in 2003.

Some requests under the FOI Act have been successful in securing the release of several files connected to the Shrewsbury trials, most notably a file dealing with an Anglia TV programme, *The Red Under the Bed.* This file has revealed that many related documents exist, but a blanket ban has been placed upon them because they were created by or involve the security services. [143]

Finally, it should be noted that another gap in our knowledge about the Shrewsbury trials is any record of the informal discussions that may have taken place between the various individuals that contributed to the decision-making process.[144] Those secret exchanges have died with the participants.

When the various sources of data had been read, the central research question - was the prosecution and conviction of the Shrewsbury pickets a politically motivated miscarriage of justice - was broken down into a number of specific sub-questions. These were used to assess the relevance of the documents that were identified and analysed, as well as to draw out relevant information that might support, or refute, the main thrust of this thesis, that there was Government interference in bringing these prosecutions to protect the interests of their supporters in the construction industry.

The following questions arose from the preliminary study of the strike in 1972 and the subsequent events:

- why was there such a long gap between the end of the strike (16 September 1972) and the arrest of pickets (14 February 1973)

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[143] Freedom of Information Act 2000 s.23. As early as 1975 a Labour MP, Norman Atkinson, asked the Home Secretary, Roy Jenkins, whether notes that passed between previous Attorney-Generals, Home Secretaries and Directors of Public Prosecutions about the case had been destroyed. (HC Deb 06 February 1975 vol 885 cc1549-50) Jenkins refused to inquire into it.

[144] These processes within the state are discussed by Hain (1985:13-16). An example is the discussions between the DPP, Attorney General's office and West Mercia police about a planned BBC Panorama programme about the trials. Phone calls occurred but written records of them do not exist.

- who directed the police to carry out an investigation into the picketing by North Wales building workers when there had been no arrests or cautions on 6 September 1972? What evidence was there that the employers and the Conservatives had any input?

- why was this investigation and prosecution carried out when comparable incidents of mass picketing in the UK was not dealt with in the same way?

- who made the decision to prosecute the pickets?

- who selected the specific charges that were laid against the pickets?

- why did only six of thirty-two pickets face a charge of conspiracy to Intimidate?

- why were eight separate trials held at Mold and at Shrewsbury Crown Courts.

- why were three of the pickets given such lengthy prison sentences.

These questions reflected the unique treatment of the North Wales pickets by the state compared not only with other picketing building workers, but also all the other groups of workers – coalminers, dockworkers, engineers – that had picketed in large numbers during strikes in 1972. The recent discovery of contemporaneous documents adds weight to the argument that the Shrewsbury 24 were victims of a miscarriage of justice not only in the formal terms of the criminal justice system but also through the exercise of political power by the state to weaken the power of organised labour.

Conclusion

This chapter has explained the sources of information that were obtained for this thesis and the gaps that still exist in our understanding of the trials. The research question is addressed by constructing an account of the prosecution of the pickets by reference to primary documentary sources. The use of oral testimony was considered but it was concluded that the surviving participants did not contribute any sufficiently analytical insights, for the reasons set out above.

Before the analysis of the data is presented it is necessary to situate the Shrewsbury trials within the historical development of legal restrictions on working-class organisation and activity. This provides an insight into the use of the law against the pickets and the options available to the prosecution in 1972-73.

Chapter 5. Trade unions: a history of legal restrictions

The prosecution and imprisonment of the Shrewsbury pickets was not exceptional. There have been many instances throughout history when the collective actions of working people have been subjected to the criminal law. It has preoccupied Parliament and the courts for over seven centuries. This chapter will show that the law, both statutory and common law,[145] has been used as a means to regulate the relationship between master and servant, employer and employee throughout this time at the expense of the subordinate class. The chapter has two sections. The first is an historical survey of the development of laws against combinations of working people. The second section is a snapshot of the main criminal laws applicable to trade union activity at the time of the building workers strike in 1972.

5.1 Six centuries of legal restraint

The Ordinance of Labourers 1349 was one of the first laws in English history to control working relationships on a national basis. The preamble to the Ordinance explained its origins by noting that, "…a great part of the people, and especially of workmen and servants late died of the pestilence." This was a reference to the Black Death, a plague that reduced the working population massively (Putnam, 1930:1).

This 'pestilence' created a problem requiring a national rather than local solutions. Hedges and Winterbottom considered it as the first time that the state adopted a national industrial policy when, "…it provided Edward III with a unique opportunity for launching his schemes for state interference with trade and industry." (1930:4) Previously, any regulation of wages and conditions was based on local custom or guild regulations. That system had broken down by the mid-fourteenth century and, according to Hill, "…led the feudal ruling class…to strengthen the central state power, in order to…control the movements of the labour force by *national* regulation, since the local organs of feudal power no longer sufficed." (1976:121)

[145] The common law is the body of law of England & Wales that has evolved through centuries of judicial decision-making. It is often known as judge-made law because its origins are found in the decisions of the courts dating from the Norman Conquest of 1066. It is distinct from statute law, which includes Acts of Parliament, statutory instruments and (pre-Brexit) European Union Directives.

The social structure of England in the mid-fourteenth century was divided into several classes. The majority of the population lived and worked on the land and were required by custom, backed up by military coercion, to provide payment to landowners through direct labour, rent in kind or money (Hilton 1976a:30). This relationship was disrupted by the severe labour shortage caused by the plague. Wages rose as employers competed amongst themselves to employ labour. The Ordinance noted that, "…many seeing the necessity of masters, and great scarcity of servants, *will not serve unless they may receive excessive wages*." (emphasis added) The Ordinance compelled any able-bodied adult up to 60 years of age who had no other means of subsistence to work for whomsoever required their services. The rate of pay was to be fixed by law and not by negotiation between the employer and the employed. The wage would not exceed pre-Black Death rates:

> …he shall be bounden to serve him which so shall require him; and take only the wages, livery, meed, or salary, which were accustomed to be given in the places where he oweth to serve…

The penalty for refusing to work on these terms was imprisonment. The same penalty applied for leaving the services of a master before the agreed term of employment had expired.

The Ordinance was replaced two years later by the more extensive Statute of Labourers 1351. It applied to wider sections of society including artificers and other labourers such as carpenters, masons, tilers and plasterers. Justices were to sit four times a year to set wage rates and settle disputes. Research by Putnam (1908:142-144) revealed that many court records of prosecutions were destroyed in the Peasants' Revolt of 1381. She concluded that "…it is impossible to doubt that during this first decade (1351-1361) the wages and price clauses were thoroughly enforced." (p.221) and that, "…for a period of twenty-six years and in a population of about two millions and a half, nearly 9,000 cases, involving from two to five or six individuals each, represent a considerable amount of litigation." (p.173)

The Statute addressed the shortage of agricultural labour but did not restrict people employed in other occupations. Janssen (2006:1707-1710) has shown how wages of construction workers rose significantly during the century following the black death

as masters were prepared to pay higher wages to draw people away from agricultural work. These skilled workers organised themselves to maintain their higher incomes. It led to occasional laws such as those against 'confederacies' of masons in 1425 (3HenryVI c.1) and against 'conspiracies' of victuallers and artificers in 1548 (2&3 Edward VI c.15). Orth noted that, "All the names were bad. Conspiracy, perhaps the worst of all, was predominantly used to describe the common-law crime that was coming to be recognized when a group agreed to injure an individual, but combination was bad enough" (1991:5) This was an early example of the fear that collective organisation and action by the labouring classes instilled into the governing class. It has remained a constant theme.[146]

At the beginning of the reign of Elizabeth I in 1558 parliamentary regulation of conditions of employment grew significantly. Eight Bills were introduced between 7th February and 25th April 1559 regulating apprenticeships and wages and for measures to draw artificers into towns (Woodward 1980:34-35). This reflected growing changes in the English economy and society (debated in Hilton 1976). According to Dobb, "This social polarisation in the village (and similarly in the urban handicrafts) prepared the way for production by wage-labour and hence for bourgeois relations of production." (1976:167) This was the origins of a class of propertyless wage labourers.

5.1.1 Statute of Artificers 1563

The disparate number of laws that had accumulated dealing with wages, terms of employment and the prohibition on combinations were replaced by a consolidation act, the Statute of Artificers 1563. It remained in force for the next two centuries and brought together and extended the previous legislation regulating relations between employer and employed (Simon 1954:196). The purpose of the Statute remained the same as earlier ones: to provide stability in the supply of labour and the price to be paid for it (Woodward 1980:42). But it differed in decreeing that wages were to be set locally, by Justices, and not centrally (Orth 1991:4). The evidence for the effectiveness of the Statute is thin (Hedges and Winterbottom 1930:6-7) as there are no significant records of prosecutions.

[146] See the speeches of Robert Carr, Peter Rawlinson and others discussed in chapter 7 about the intimidatory effect of large numbers of striking workers outside a workplace.

The position had clearly changed by the eighteenth century as a significant number of statutes were passed to restrict combinations of wage earners for the purpose of increasing wages or moving to an employer that offered better terms. They included:

- Journeymen Tailors, London Act 1720 – the penalty for violating the Act was two months imprisonment.
- Woollen Manufactures Act 1725 – aimed at weavers.
- Regulation of Servants and Apprentices Act 1746 – punished any misdemeanour by a workman through imprisonment or deduction from wages.
- Frauds by Workmen Act 1748 – workmen had to complete the work allocated to them before taking employment with another master
- Frauds by Workmen Act 1777 – penalised the withdrawal of labour.

The economic strength of many workers such as masons, printers, weavers and tailors, derived from the skills that they learned under the supervision of an experienced worker during a seven-year apprenticeship. The state had tolerated combinations of craftsmen into guilds to ensure the quality of the work. The skills were passed down from one generation to the next and those that possessed it could, by combining together, control the entry of new apprentices into the trade. (See the Report of the Royal Commission on Trade Unions, 1869.)

The laws against combinations of workers introduced during the eighteenth century were designed to restrict their power at a time when Britain was at the start of, "…the most fundamental transformation of human life in the history of the world recorded in written documents." (Hobsbawm 1968:1) This was the Industrial Revolution, which marked the change of Britain from a predominantly rural to an urban, manufacturing society. Hobsbawm (1968) and Thompson (1968) have described the movement of large numbers of people by physical and economic force to look for employment in towns and cities. A new class of industrial workers was being formed that could only survive by selling its labour power in exchange for money. This class was completely separated from the land and had no independent means of support. Combining together was to become an inevitable consequence of its economic position.

Marx showed how the changed relations of production between the classes under capitalism compared with feudalism changed the workers' consciousness of their position towards work and the product of their labour. Under feudalism the worker carried out necessary labour and owned the product of that labour for consumption or

exchange. In addition, the worker had to provide value for the feudal lord either through forced labour on the lord's land, goods or money rent (Fine and Harris 1979:110). Under capitalism the worker does not own the product of labour but instead receives wages, thereby alienating him from his work. An important difference was that the appearance of compulsion to perform unpaid labour for a lord was gone. Under capitalism a worker was 'free' to work for whomsoever they wished and the rate of pay was a matter of bargaining between master and servant. Whilst capitalism led to the alienation of workers from their labour, over which they had no control or ownership, it opened up a revolutionary expansion of the forces of production through the division of labour and the appliance of machinery to manufacturing (*ibid* p.113).

5.1.2 Combination Acts

The Combination Acts of 1799 and 1800 were designed to prevent the merging of organised labour with the political radicalism of this period. In the quarter of a century leading up to the Acts three events occurred that shook the British state. The American Revolution of 1776 overthrew British colonial rule; the French Revolution of 1789 overthrew monarchy; and the ideas thrown up by these two events inspired the leaders of the United Irishmen in their ill-fated rebellion against British rule in Ireland in 1798 (Elliott 1990).[147]

The Combination Act of 1799 was quickly replaced by the Act of 1800. The latter stated its purpose as, "…to prevent unlawful combinations of workmen." These combinations were considered to be, "contracts, covenants and agreements" between groups of working men to act collectively. The Act declared the following purposes to be illegal:

- Obtaining an advance in wages
- Lessening or altering the usual hours or none of working
- Decreasing the quality of work
- Preventing or hindering any person from employing whomsoever they shall think proper to employ, or
- Controlling or anyway affecting any manufacturer, trade or business in the conduct or management of their concern.

[147] The opening paragraph of the declaration of the United Irishmen began, "In the present great era of reform, when unjust Governments are falling in every quarter of Europe…"

The final part of the Act restated its purpose as, "…for the more effectual suppression of all combinations…" The mere coming together of working people was not unlawful, it was the agreement to carry out certain acts that was illegal. This explains why many trade bodies continued to flourish both before and after the passage of the Acts. The 1800 Act provided a means for the state, in the form of two Justices of the Peace, to summons men to be questioned. This surveillance was designed to keep in check the radicalism that had arisen in England in the wake of the French revolution. (Thompson 1968:551)

The punishments for committing an offence was similar to those under earlier legislation. On conviction, a man could face up to three months in prison or two months in a House of Correction. Similar punishments were set for any workman who combined for the purpose of persuading other workers not to work for a master, whether by persuasion, giving them money, solicitation or intimidation. Anyone who attended a union meeting, encouraged others to attend or collected union contributions would face the same terms of imprisonment (Orth 1981).

Thompson (1968:550) has argued that the Combination Acts did not qualitatively strengthen the legal straitjacket around trade unions: "There was, in fact, sufficient legislation before the 1790s to make almost any conceivable trade union activity liable to prosecution – as conspiracies in common law, for breach of contract, for leaving work unfinished, or under Statute law for covering separate industries."

Thompson's analysis is borne out by the prosecution of nineteen printers at *The Times* newspaper in 1810 for giving two weeks' notice to terminate their employment contract when the company would not increase their wages. The wording of the 1800 Act explicitly allowed for the prosecution of a combination of any number of men who sought to increase wages. Orth (1991:36-37) noted that their prosecution,

> …could have been brought before two justices of the peace under the Combination Act (1800), but like *Salter* it was brought instead before a common-law court as an illegal conspiracy. The maximum sentence under the act would have been three months.[148]

[148] As will be shown later in this chapter the prosecutors of the Shrewsbury pickets adopted the same approach. They ignored the statutory offence of intimidation and used a common law offence, conspiracy to intimidate. The latter allowed for much longer sentences.

The judge held that whilst it was lawful for one person to refuse to work unless his wages were increased it was an unlawful conspiracy for two or more to agree to take the same action. The *Times* printers received sentences ranging from nine months to two years imprisonment instead of three months if they had been prosecuted under the Combination Act. The *Times* printers' case showed how the common law was always available to the courts despite specific statutes that Parliament had passed to restrict trade union activity.

The courts applied to trade unions the common law offence of *restraint of trade*. It had been developed in the case of *Mitchel v Reynolds*[149] in 1711, which concerned the lawfulness of an agreement by a baker not to continue the trade after selling his business to another baker. The court decided that, as a matter of public policy,[150] any agreement in restraint of trade was unlawful. Trade union activity, by its very nature, was now judged to be just such a restraint of trade because it prevented an employer from freely negotiating terms with individual workers. If two or more people combined together it restricted the ability of an employer to hire whomever he chose. (Orth 1991:25-42). One man could refuse to work for an employer if the terms were not agreeable but two or more men could not make an agreement for the same purpose.

5.1.3 Master and Servant Acts

The Combination Acts may have made trade union *activity* unlawful but they could not regulate a labour market that was being transformed by the huge shifts of population from countryside to town. To address this the government resorted to the same prescriptive approach towards wages as the Acts of 1349 and 1563. Several Master and Servants Acts were introduced during the nineteenth century, notably in 1823 and 1867, that required local Justices of the Peace to set the rate of pay and to adjudicate when disputes arose. The Acts also marked a shift in the legal analysis of the relationship between employer and employee, with the appearance of references to a "contract".

[149] (1711) 1 P Wms 181

[150] The term, "public policy", like "public interest", is used by judges without any definition or explanation. It is a political judgment but one that courts use peremptorily.

The penalty for a worker who refused to abide by the contractual terms set by the Act was criminal: imprisonment for up to three months. For the employer, it was civil: an action for damages by the worker for unpaid wages. Simon (1954:194-5) records that the Acts were used regularly by employers. In the years 1858-1875 there were thousands of prosecutions, including 10,000 in Staffordshire from 1858-67.

5.1.4 Royal Commission 1867

A Royal Commission to inquire into combinations of employees and of employers was established on 12 February 1867, shortly after the election of the Conservative Government. One of its first acts had been to bring in the Reform Act 1867.[151] This extended the property qualification to vote, enfranchising skilled workmen.

The Royal Commission's terms of reference included trade associations but it was trade unions that were the real focus of its inquiry.[152] It concluded that trade associations were defensive, a response to the power of a trade union, particularly when a strike occurred. The union could draw upon the resources of its national membership to sustain a group of strikers in one district, compelling the employer to seek support in similar fashion from other employers. The Commission noted that employers had two means to counter a strike:

1. A lock out of union members so that they were unable to earn wages and pay a levy to the union to support the striking members. No doubt the hardship would also encourage those union members to cajole their striking colleagues to return to work.
2. A levy of members of the trade association to assist a factory subjected to a strike.

The Commission saw trade unions as having two main purposes. Firstly, they acted as benefit societies providing a type of insurance for members when they fell sick or died. Some even provided pension benefits on retirement (Ibid. p.xiv). This type of activity was commended, especially at a time when the only available welfare support was received by entering a workhouse.

[151] Representation of the People Act 1867 (30 & 31 Vict. c. 102)
[152] The majority report devoted just two paragraphs to employers' organisations compared with 26 paragraphs to trade unions. (Great Britain,1869:xii-xvii)

The second objective of a trade union was to secure the best terms and conditions of employment for its members. It achieved this, firstly, by restricting the supply of labour available to an employer. The number of apprenticeships were controlled to repress, "competition among the workmen themselves" (p.xv). The second means was to strike. The Commission recognised that the power of a union rested in its ability to ensure that all workers acted collectively. Therein lay the heart of the challenge for a trade union: ensuring that everyone was a member and followed its agreed policy.

The craft unions were best placed to achieve that goal. The nature of their members' work, compared with unskilled manual workers, meant that an employer was less able to replace striking workers. The Commission noted that in the decades leading up to its inquiry a number of unions were able to use their well-organised position to protect their members' terms and conditions without a strike because, "its organisation is so powerful as, in most cases, to obtain the concession demanded without recourse to a strike." (p.xv)

The Commission's report also highlighted the strength of trade union solidarity. The Manchester Brickmakers' Union had a policy that only its members could manufacture bricks within a 120-square mile area of the city. The union was supported in this aim by members of the Manchester Bricklayers' Union who would not lay any bricks that were not made in that district. (pp. xv-xvi)

Notwithstanding the potential power that union solidarity could wield the Commission concluded that trade unions had established a framework of industrial relations that contrasted favourably with the "outrages" committed by unorganised workers in the early decades of the nineteenth century.

The majority of the Royal Commission concluded that working people should have the right to combine. They acknowledged that a combination of working people had more power than an individual: "It cannot be doubted that a demand backed by the resolution of a large body of workmen to decline work if the demand be not acceded to, comes with more force than that of an isolated workman." But they went on to argue that, in this particular context, "…as between the employer and the workman, there is in general this advantage on the side of the employer, that he can more easily

wait – i.e., can hold out longer than the workman…(who)...must starve unless he either accept the terms offered, or is able speedily to find work elsewhere." (p.xx) Employers had an, "…undue advantage which the command of a large capital is supposed to give them..." (p.xiv)

Although the Commission proposed that trade unions should be recognised as legal entities it rejected any compulsion on a worker to join one. The majority report also recommended that employers be allowed to recruit replacement workmen if union members refused to work on the employer's terms (p.xx). The Commission concluded that, "ultimately and permanently the rate of wages must be governed by the law of demand and supply of labour" (p.xxi).

The minority report was more comprehensive and noted that the craft unions that had grown in recent decades were not only a permanent feature of industry but also a moderating power for good. They argued that this was, "…not the spasmodic growth of a temporary movement, but the progress of a stable institution." (p.xxxiii). They recommended that the model unions (so-called because they were each based upon a model set of rules) should be given legal protection because they played a valuable social role in protecting their members by the provision of various benefits in times of unemployment, sickness, old age and death.

The recommendations of the Royal Commission were embodied into two acts of parliament in 1871. Abrahams (1968:26) argued that the Trade Union Act 1871 swept away all previous statutes that made combinations illegal but the common law remained. The Act tried to overcome this by introducing a statutory "immunity" for trade unions that was supposed to protect them against legal claims arising from activities that the common law regarded as a restraint of trade (Wedderburn 1965). In practice, as shall be shown later, the courts periodically circumvented any such immunities by applying the common law in other ways to weaken trade union action.

The other Act that implemented the recommendations of the Royal Commission was the Criminal Law Amendment Act 1871. It replaced several previous Acts with a general law "relating to violence, threats and molestation." It was designed to restrict strike action and picketing.

5.1.5 Conspiracy and Protection of Property Act 1875

The Trade Union Act did not alter the common law position, that if a trade union's activities represented a restraint of trade, and restraint of trade was contrary to common law, any combination of two or more people for trade union purposes could still be held to be a conspiracy to restrain trade. It was this gap that was filled by the Conspiracy and Protection of Property Act 1875. Section three, headed, 'Amendment of law as to conspiracy in trade disputes' stated that,

> An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.[153]

The 1875 Act also clarified the law on intimidation during an industrial dispute, in particular the tactic of picketing:

> *Penalty for intimidation or annoyance by violence or otherwise.*
>
> s. 7 Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority,
>
> Uses violence to or intimidates such other person or his wife or children, or injures his property; or,
>
> Persistently follows such other person about from place to place; or,
>
> Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or,
>
> Watches or besets the house or other place where such, other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or,
>
> Follows such other person with two or more other persons in a disorderly manner in or through any street or road,
>
> shall, on conviction thereof by a court of summary jurisdiction, or on indictment as herein-after mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour. Attending at or near the house

[153] This clause gave trade unions legal protection against claims that strike action was an unlawful restraint of trade. Hence it was a mistake to call for the repeal of the 1875 Act when the Shrewsbury pickets were jailed, especially when none of the 24 pickets were convicted of an offence under the Act.

> or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

By the end of the nineteenth century trade unions were legally recognised and could not be prosecuted as a conspiracy provided that the activities of its members were lawful. The relationship of employer and employee was regarded as two parties entering into a contract; disputes were to be determined in the civil courts as a private law matter. Notwithstanding this, attempts were made by employers to circumvent the immunities conferred by section 3 of the 1875 Act. The most famous was *Taff Vale Railway Company v. Amalgamated Society of Railway Servants*.[154] The House of Lords decided that a civil claim for damages in tort could be pursued by an employer against a trade union for lost profits arising from the breach of the employment contract that a strike entails. Ewing (2007) has shown that although the effects of this judgment were overturned by the Trades Disputes Act 1906 there were many other instances during the twentieth century when the courts have applied the common law creatively to weaken the power of trade unions.

To summarise this section, the position up to the start of the 1970s was that the ability of working people to combine and use their collective strength to maintain and improve their position had been restricted by various laws for centuries. The criminal law had been used to fix wages and outlaw combinations. Although this prohibition was lifted, activities such as 'intimidation' of non-strikers remained a criminal offence.

Legislation during the past one hundred and fifty years to protect trade unions from legal action reflected the growing power and numbers of an urban working class that had secured the right to vote. But the elasticity of the common law continued to present opportunities to employers to find ways to circumvent that protection. This leads us to the second section of this chapter, which considers the laws that could be used against trade union activity at the start of the 1970s. It shows the wide range of offences that

[154] [1901] UKHL 1. *Rookes v Barnard* [1964] UKHL 1 was another significant case.

could be applied to strikes and picketing, many of which had not been considered by those involved at the time.[155]

5.2 The North Wales pickets and the law

In Chapter 2 it was noted that the police and the prosecuting authorities have enormous discretion in dealing with alleged crimes. Rubin (1973:57), writing in the aftermath of the strikes in 1972, argued that, "…the police enjoy widespread legal powers inherent in the criminal law to restrain certain kinds of behaviour which may occur during picketing…These powers of the police may, in effect, circumvent completely whatever statutory rights exist which permit picketing." The point was repeated in the polices' weekly magazine, *Police Review*. It began by noting that there was no power of arrest for a breach of section 7 of the 1875 Act,

> …but it should be borne in mind that power of arrest exists for a wide range of offences affecting public order, e.g. breach of the peace, conduct likely to cause such breach, affray, criminal damage, assault occasioning actual bodily harm, obstructing the highway, etc.[156]

In the case of *Piddington v Bates*[157] a picket was convicted of obstruction. He had been arrested because a police officer believed that there might be a breach of the peace if more than two pickets were present at the back gate of premises. The third picket, Piddington, refused to leave, arguing that there was no statutory limit on the number of people who could stand on a picket line. Although Piddington was correct the court held that this did not overrule a police officer's power to act if he 'reasonably believed' that a breach of the peace was imminent.

The leading prosecutor of the North Wales pickets, Maurice Drake QC, produced a written Opinion[158] for the Director of Public Prosecutions in which he advised that a number of offences had been committed by the pickets:

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[155] The Metropolitan Police relied upon a 14th century law, designed to deal with soldiers returning from European wars, when it had summonses issued in 1973 against a number of pickets at the St. Thomas Hospital building site for acts, "that blemished the peace". (*Building Workers' Brief* August 1973 pp.11-12, TNA LAB10/3510.) This offence was only triable summarily and on conviction a picket could be 'bound over to keep the peace'. This was a quick, effective way to stop someone picketing.
[156] 12 October 1973 p.1435
[157] [1960] 3 All ER 660, though the decision was later described as "aberrant" by Lord Bingham *R. (Laporte) v Chief Constable of Gloucestershire Constabulary* [2006] UKHL 55 para.47.
[158] Opinion of Maurice Drake, 21 February 1973 (TNA DPP2/5159)

- intimidation, s.7 Conspiracy and Protection of Property Act 1875
- conspiracy to intimidate
- affray
- threatening, abusive or insulting words or behaviour, s.5 Public Order Act 1936
- various assaults and damage or threats to damage property.

The nature of each of these offences and others are now considered.

5.2.1 Intimidation - s.7 Conspiracy and Protection of Property Act 1875

All the pickets tried at Shrewsbury and Mold Crown Courts were charged with this offence. Some pickets were charged with multiple counts including 11 for Warren, 9 for Tomlinson and 6 for McKinsie Jones. The wording has been set out in the previous section. The maximum penalty was fixed at 3 months imprisonment or a fine of £20.[159] It was triable in the magistrates' court but a defendant could elect to be tried by a jury in the Crown Court. A Home Office memo noted that no-one tried for the offence in recent years had opted for a jury trial in the crown court:

> There are not many prosecutions under the 1875 Act; the number of prosecutions (all summary) in the last four years are:
>
> | | |
> |---|---|
> | 1966 | 7 |
> | 1967 | 6 |
> | 1968 | 3 |
> | 1969 | 1[160] |

All the pickets tried for intimidation at Mold Crown Court in June and July 1973 were found not guilty. Drake subsequently decided not to try any of the Shrewsbury 24 with this offence later in the year, even though most of them were charged with more than one count.

The 1875 Act has been repealed; section 7 is now section 241 of the Trade Union and Labour Relations (Consolidation) Act 1992.

5.2.2 Conspiracy to intimidate

[159] £20 in 1875 is worth £2,118 in 2016 prices (and £222 in 1973 prices).
[160] Memo "Picketing" DHJ Hilary to Mr Wright 13 November 1970 (TNA HO322/407). "Summary" prosecutions is a reference to trials in the magistrates' court. This indicates that none of the accused who were tried under section 7 in those four years, 1966-1969, elected to be tried by a jury in the Crown Court. This contrasts with the North Wales pickets accused of the offence in 1973. They all elected to be tried at the Crown Court.

This was the most important charge and only six pickets, so-called 'ringleaders', were tried for it. It was widely believed that this offence was contained in the 1875 Act[161] and during protests against the trials trade unionists demanded its repeal (Arnison 1974:81).[162] This was understandable because the Act begins with the word "Conspiracy and Protection…".

Conspiracy was an old common law offence and was an agreement by two or more persons to commit an unlawful act or to commit a lawful act by unlawful means (Smith 2002:295).[163] The offence could have been used even if the 1875 Act did not exist. [164] Ironically, the use of conspiracy in the title of the Act was a reference to section 3. As shown earlier, it provided immunity for trade unions; they could *not* be indicted for a criminal conspiracy by combining together to act 'in contemplation or furtherance of a trade dispute'.[165]

Drake chose to try six of the pickets for conspiracy because the evidence that any of them had actually intimidated a non-striker was weak. In his written Opinion to the DPP advising that a charge of "Conspiracy to intimidate" be considered he highlighted the flexibility of the offence:

> There is little or no evidence of any event agreement: but in respect of the 6 apparent ringleaders we think there is sufficient evidence to justify the

[161] A pamphlet by the main construction union, UCATT mistakenly claimed, "In the Shrewsbury case, however, the statutory crime of conspiracy under the Act involves intimidation, violence or damage to individual's property…" The 1875 Act did not create any statutory crime of conspiracy.

[162] At the TUC Congress, September 1974 an AUEW amendment to a resolution on picketing from UCATT stated, "Congress calls on the Labour Government to repeal the 1875 Conspiracy and Protection of Property Act which was the legal instrument used in these iniquitous trials." (Copy extract from TUC agenda in TNA LAB10/3510) A report in *Tribune,* 23 August 1974, stated, "It was this little-used piece of legislation that the Tory Government used to imprison the Shrewsbury building workers." Goodman (1974:3) also mistakenly stated that most charges against the six were under the 1875 Act. A Labour MP, Andrew Bennett, asked the Home Secretary if he would introduce legislation to repeal the 1875 Act. (HC Deb 28 March 1974 vol 871 cc614-5). These objections to the 1875 Act overlooked the pickets' convictions for unlawful assembly and affray which, like conspiracy, were also common law offences and would also have survived any repeal of the 1875 Act.

[163] See Spicer (1981) for a discussion of the origins of conspiracy law and its later use against trade unionists.

[164] The TUC made this clear in a letter to the secretaries of all affiliated trade unions, 9 May 1974 (copy in UCATT archives): "In fact the charges were an element of the common law and did not derive from that Act and the repeal of the 1875 Act would not end the possibility of future charges of conspiracy." See also the article by John L. Williams in *Tribune,* 3 January 1975.

[165] Officials in the Department of Employment exchanged papers about the UCATT and AUEW resolutions and confirmed that the 1875 Act was not relevant to the jailing of the pickets and, if repealed, would weaken the rights of trade unions by removing immunity in section 3 to a charge of conspiracy to breach a contract of employment i.e. striking. (TNA LAB10/3743)

> *inference* of such agreement so as to support charges of conspiracy.[166] (added emphasis)

The West Mercia Constabulary report (1972:28) into the events on 6th September 1972 suggested that any conspiracy was devised at a strike meeting in Chester on 30 August 1972. The meeting had agreed to mobilise as many strikers as possible to travel to Shrewsbury on 6th September to picket building sites there. But Judge Mais pointed out that, in law, a conspiracy did not require such a meeting: "...for conspiracy they never have to meet and they never have to know each other." (Platts-Mills 2002:537) Instead, a conspiracy could be *inferred from the conduct* of the pickets when they were walking across the building sites in Shrewsbury on that day. Arnison (1974:55) reported that Drake had argued that in law a conspiracy does not require a meeting or spoken agreement but can simply be a nod or a wink. Platts-Mills agreed that this was a correct statement of law (2002:537).

On that basis, it is arguable that amongst the 250 pickets at Shrewsbury that day many of them not only nodded and winked at each other but also spoke together with the common purpose of persuading those still working to support the strike. In other words, the charge of conspiracy could have been laid against dozens of the North Wales pickets, not just the six that were tried for it. It could have applied to many trade unionists involved with picketing during the miners', dockworkers, engineering workers and building workers' strikes in 1972.

Apart from the vagueness of a charge of conspiracy, lawyers for the Shrewsbury pickets (and for defendants in earlier conspiracy trials) argued that it was wrong to bring a charge of conspiracy when it was also alleged that they had carried out the actual offence. Drake addressed this in his written Opinion,

> …we think that the conspiracy goes beyond the sum of the individual acts of intimidation, and that there is evidence upon which a jury could infer and find that these 6 ringleaders had embarked upon a deliberate plan of campaign to intimidate non-striking building workers.[167]

[166] Opinion, 21 February 1973 para. 2(b) TNA DPP2/5159
[167] *Offences disclosed by the evidence* Ibid. para. 2(b).

Drake's approach illustrates Walker's examples of inherently unjust laws and the oppressive application of the law discussed in Chapter 2. Parliament had specified that a particular behaviour, intimidation of workers during an industrial dispute, was unlawful. It set down the maximum penalty. Drake circumvented this by using the common law to charge an offence, conspiracy, that could be proved with a lower evidential threshold (an inference), but where the punishment was unlimited.

The Law Commission debated the practice of charging both conspiracy and the substantive offence. It concluded that it should still be permitted,[168]

> The basic justification for this is that, if it is not permissible, there are certain situations where persons who should be convicted may easily escape. In the first place the prosecution may be uncertain at the start of a trial on a charge of committing a substantive offence that the evidence will in the end establish that charge. It may be that, because vital evidence is ruled inadmissible, or because a witness fails to convince the jury, there is insufficient evidence to establish the commission of the offence, although there is strong evidence to establish a conspiracy to commit it. Conversely, the evidence required to establish a conspiracy may fall down, although there is evidence to establish the commission of the substantive offence against one of the defendants.[169]

This is a confusing statement. It refers to, "persons who should be convicted". This ignores the principles of due process, starting with the presumption of innocence. If the prosecution cannot prove that an offence has been committed on the basis of traditional principles of proof and evidence, it cannot expect a court to convict someone. The Law Commission's comment appears to be a legal extension of 'noble cause corruption' (Caldero and Crank 2015).

The common law offence of conspiracy was abolished by section 5 of the Criminal Law Act 1977 and placed on a statutory basis. But the meaning of conspiracy remains unchanged i.e. an agreement to do an unlawful act or a lawful act by unlawful means. It can still be applied to a statutory offence that may arise in a picketing context e.g.

[168] The Law Commission is an advisory body that recommends to Parliament codification and changes to the law. It produced two working papers and a report covering the law of conspiracy: Working Paper No.50 Inchoate Offences Conspiracy, Attempt and Incitement 5 June 1973 HMSO (TNA BC2/50); Working Paper No.63 Codification of Criminal Law – Conspiracies to effect a public mischief and to commit a civil wrong 18 April 1975 HMSO; Report on Conspiracy and Criminal Law reform 17 March 1976 Law Com. No. 76 HMSO)

[169] Working Paper No.50 p.36

conspiracy to intimidate contrary to s.241 of TULRCA 1992 (or conspiracy to cause an affray).

5.2.3 Affray

Most of the Shrewsbury pickets were charged and tried for affray. In the 100 years before 1972 there was no reported case that affray had been charged against trade unionists involved in an industrial dispute. In the case of *R v Summers & others*[170] in May 1972, the judgment noted, "Affray is a common law misdemeanour which, after a long period of desuetude, has not only been brought back into regular use, but greatly expanded in scope by judicial decision."[171] It defined the offence,

> Its elements are (1) fighting by one or more persons: or a display of force by one or more persons without actual violence; (2) in such a manner that reasonable people might be frightened or intimidated.

Drake advised that, "the evidence shows that there was one continuous affray over a period of several hours extending over the 7 building sites in the Shrewsbury area".[172] As will be discussed in Chapter 9, the three leading pickets found guilty of affray, Warren, Tomlinson and McKinsie Jones, appealed successfully against their conviction. Drake recognised the weakness of the wide-ranging wording he had used against them and rephrased the charge of affray against the remaining eighteen pickets to restrict it to one building site, not all seven.

Common law affray was abolished by the Public Order Act 1986 and replaced with a statutory offence. Section 3(1) states that, "A person is guilty of affray if he uses or threatens unlawful violence towards another and his conduct is such as would cause a person of reasonable firmness present at the time to fear for his personal safety."

5.2.4 Unlawful assembly

All the pickets tried at Shrewsbury were charged with at least one count of unlawful assembly shortly before the first trial. It was a common law offence and defined in the

[170] (1972) 56 Cr. App. R. 604
[171] Ibid. p.609
[172] Unlawful picketing at Shrewsbury: Opinion – 21 February 1973 TNA DPP2/5159

nineteenth century case of *Beatty v Gillbanks* as, 'a gathering of a number of people such that their behaviour in so gathering would create fear amongst the public'.[173]

The use of this charge alongside the charge of affray is an illustration of Walker's category of the oppressive and unreasonable application of laws. The definition of affray above included, 'a display of force by one or more persons without actual violence in such a manner that reasonable people might be frightened or intimidated'. This does not appear to be qualitatively different from an unlawful assembly. The pickets convicted of both these offences appear to have been punished twice for the same conduct.

Unlawful assembly was abolished by the Public Order Act 1986, which created new offences of 'Violent disorder' (section 2) and 'Fear or provocation of violence' (section 4).

5.2.5 Public Order Act 1936

This Act was described in its preamble as,

> "An Act to prohibit the wearing of uniforms in connection with political objects and the maintenance by private persons of associations of military or similar character; and to make further provision for the preservation of public order on the occasion of public processions and meetings and in public places."

It was introduced to deal with the growth of political violence by and against the British Union of Fascists led by Sir Oswald Mosley. He was attempting to create a paramilitary force, known as Blackshirts, modelled on similar movements created by Hitler and Mussolini (Stevenson and Cook 1979:234-244). The Act was not designed to cover industrial relations but, like other laws discussed below, it is available to the prosecution.

The section that was used against pickets was:

> 5. Any person who in any public place or at any public meeting uses threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence.

[173] (1882)9 QBD 308

Drake recognised that it only applied to activities in a public place, whereas building sites were private places. However, where picketing took place on the road or pavement leading to a site the Act could be used. Drake found only one example from the evidence, picketing at the Cambrian Road Works in Denbighshire.[174] One picket was charged with this offence.[175]

Section 5 of the 1936 Act and common law offences relating to public gatherings have been repealed and replaced with a new array of offences in the Public Order Act 1986.

5.2.6 Assault

Drake advised that there was, "evidence of various assaults and of damage or threats of damage to property."[176] The charge for assault depended upon the seriousness of the injury that was caused. The lowest level was the common law offence of common assault. This involved, "any act by which a person, intentionally or recklessly, causes another person to apprehend immediate and unlawful personal violence." (Smith 2002:411) It does not require any physical contact, merely the fear by someone that they are about to be harmed. (When contact is made a separate offence is committed, a battery.)

Glyn Davies was the only picket found guilty of assault. He was the sole defendant at the fifth Mold trial, on 1 April 1974, and was given a conditional discharge.

The next most serious charge was statutory, assault occasioning actual bodily harm (ABH). It was punishable by up to two years' imprisonment.[177] The only picket charged with this offence at the first trial was Tomlinson but he was not tried for it. The count alleged that he assaulted Clifford Growcott at the Brookside site on 6 September.

5.2.7 Criminal damage

[174] Opinion of Drake, ibid. para. 2(d)
[175] Count 34 of the indictment alleged that Ken O'Shea used threatening words at the Cambrian Road works, Llansannan on 8th September 1972 contrary to s. 5(a) but was not proceeded with at the trial in October 1973.
[176] Opinion of Drake, ibid. para. 2(e)
[177] Offences Against the Persons Act 1861 s.47.

Most of the North Wales pickets were charged with damaging or attempting to damage property, contrary to the Criminal Damage Act 1971. This involved damage to machinery on building sites and to the building works itself. Only six pickets were convicted of this offence, all at the Mold trials. 4 pleaded guilty and 2 were found guilty by the jury.

5.3 Criminal law in reserve

The police could have used other laws against the North Wales pickets in 1972. They remain in force today.

5.3.1 Police Act 1964

> **Obstruction of a police officer**
>
> **s.51** (3) Any person who resists or wilfully obstructs a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding one month or to a fine not exceeding £20, or to both.

Many pickets arrested on picket lines in 1972 were charged with this offence, including at the London Stock Exchange and the Blue Circle cement works in Birmingham. The most notable was the prosecution of a UCATT official, Kavanagh. He tried to step onto the road to stop a coach to speak with the workers inside who were leaving a building site that Kavanagh and colleagues were picketing. The magistrates court held that Kavanagh had no right to stop a vehicle and therefore the police officer that stopped him was acting lawfully. The Divisional Court, led by Lord Chief Justice Widgery, upheld his conviction on appeal.[178]

5.3.2 Highways Act 1959

Section 121 of this Act made it an offence for someone to wilfully obstruct, "the free passage along a highway." It was an arrestable offence. A UCATT official, John Broome, was convicted as a result of a picket in Stockport on 5 September 1972. The magistrates dismissed the case against him but the Crown appealed successfully. The Lord Chief Justice, Widgery, gave the leading judgment. He ruled that although the Industrial Relations Act 1971 permitted picketing it did not oust other statutes. Broome was found to have obstructed the highway for nine minutes to persuade a lorry driver

[178] *Kavanagh v Hiscox* [1974] QB 600

not to proceed onto a building site. His conviction was upheld by the House of Lords the day after the first three Shrewsbury pickets were jailed.[179]

The offence is now found in section 137 of the Highways Act 1980.

Conclusion

This chapter has shown that the right of working people to organise has been controlled by the state for centuries. When labour shortages enabled workers to gain higher wages, an application of classic supply and demand economics, the state intervened to prescribe wages and other terms of employment. The development of wage labour in the Industrial Revolution created a new, propertyless class of workers that spontaneously combined into trade unions. The state tried to criminalise these combinations as conspiracies but retreated from such a repressive stance and criminalised many of their actions instead, beginning with strikes. By the late nineteenth century, the demand for political reform widened the franchise and led to the Conspiracy and Protection of Property Act 1875, which protected trade unions from criminal liability. The right to picket appeared to be protected too but, as Rubin (1972) explained, a wide array of common law public order offences could be used to circumvent that protection.

During the century following the passing of the 1875 Act the criminal law was not commonly associated with industrial relations. A leading writer on labour law, Otto Kahn-Freund, observed in 1954 that,

> There is, perhaps, no major country in the world in which the law has played a less significant role in the shaping of industrial relations than in Great Britain and in which today the law and the legal profession have less to do with labour relations. (Quoted in Clegg 1980:290)

This was a period of 'voluntarism' whereby relations between employers and workers were to be determined by the market, including collective bargaining of unions with employers' federations, and not through state intervention such as compulsory arbitration (Wedderburn et al. 1983; Hyman 1975; Clarke and Clements 1977). Clegg, writing 25 years later, noted that this position ended in 1971 with the introduction of

[179] Hunt v Broome [1974] AC 587

the Industrial Relations Act. Since that year there has been an unprecedented growth in the involvement of the law and the legal profession in employment relations.[180]

The review of the law in 1972 supports the contention of many Conservative Party members who, as will be discussed in Chapter 7, argued that the problem was not a weakness in the laws available to the police. These laws illustrated how, as Hain argued, public order law, "more than any other area of the law, gives wide discretionary powers to the police that, should they choose to exercise them to the full, almost all rights of public assembly would in practice disappear." (1985:244-255)
It is the elasticity of the law, discussed in chapter two, that explains why the authorities could decide to prosecute the North Wales pickets and not others; why they applied rarely-used offences such as conspiracy to intimidate, affray and unlawful assembly rather than obstruction, assault and intimidation. The trials showed the enormous discretion available to the police in deciding whether to charge and what to charge with.

The exercise of that discretion is not purely a legal one but a political one. It highlights the disproportionate and discriminatory use of the law that Walker included as a category of miscarriage of justice. The wording of the different offences showed how the same activity could be labelled as involving two or more criminal offences, thereby multiplying the degree of criminality presented by the prosecution. This chapter has also shown that the criminal law has been developed and used over many centuries by the state to curtail the activities of trade unions.

The next chapter considers the reasons that an unprecedented prosecution of pickets was organised in 1973. It will explore the economic and political background to the 1972 building workers strike and the trials, to provide context to the decisions that were made by the police and the prosecuting authorities.

[180] One measure of this growth is the leading reference work, *Harvey on Industrial Relations and Employment Law.* The first edition was published in 1972 as a single volume. The most recent edition, June 2017, spans six volumes.

Chapter 6. The Shrewsbury trials in context

This chapter is a prelude to the three chapters that analyse the documents and other data that has been obtained about the prosecution of the North Wales pickets. It locates the building workers' strike of 1972 within the economic and political crises facing Britain in the early 1970s. It summarises the attempts of the Conservative Government to contain collective trade union action and restrict wage increases. A number of trade unions adopted the tactics of mass and flying pickets to great effect during strikes in 1972, which led to a clamour from employers and Conservative Party members for tougher police action.

The chapter is divided into four main sections. The first summarises the state of the economy which the Conservative Government, elected in 1970, was attempting to address. The second looks at the miners' strike in 1972, which involved mass picketing and the breaking of the Government's pay policy. The third section considers the dockworkers' defiance of the courts and the national strike that led to the release of five jailed shop steward pickets. The fourth section outlines the main features of the building workers' strike between June and September 1972 and the picketing in Shropshire on 6th September that was the focus of the trials of North Wales trade unionists.

6.1 The economic context

The building workers' strike began on the 26th June 1972, two years into the Conservative Government of Edward Heath. That Government, like Labour before it, was confronting the challenges of a British economy in long-term decline and falling profitability. Glyn and Sutcliffe (1972) have argued that this decline was masked by the period of major reconstruction and expansion following the Second World War. But by the beginning of the 1970s the economy was exhibiting the signs of weakness, relative to the other main capitalist economies that had been developing since the end of the nineteenth century (Hobsbawm 1968).

Glyn and Sutcliffe (1972) argue that the competiveness of British industry and exports was weak causing a devaluation in sterling. Profits declined and UK domestic investment lagged behind its competitors because capital was exported to more

lucrative markets in the former British Empire. Employers faced trade union resistance to new productivity schemes and attempts to undermine the traditional demarcation of roles between trades in factories and other workplaces (Cliff 1970). New technologies for industries such as printing, engineering and the docks could not be introduced when trade unions refused to accept wholesale redundancies and changes to working practices. The rate of inflation increased, leading to trade union claims for significant pay increases to protect the purchasing power of wages (Rowthorn 1980; Glyn and Harrison 1982).

These economic conditions contributed to a growth in trade union membership (Taylor 1980:23-70) and activity, including overtime bans, work-to-rule and strike action. Full employment in the 1950s and 1960s gave trade unions greater bargaining power, particularly in engineering. Members exercised that power by stopping work or slowing down to win demands (Hyman 1972; McIlroy et al 2007). Although trade unions could negotiate industry-wide agreements at national level it was left to the representatives at the factory floor level, the elected shop stewards, to negotiate productivity deals (Allen 1966). Local demands were made for improvements in pay and conditions that exceeded the terms in a collective agreement between the national union and an employers' federation (Blackburn and Cockburn 1967).

Table 6.1 shows that the number of working days lost as a result of strikes rose significantly from the end of the 1960s. Between 1950-1959 the annual average number of days lost was 3.25 million and in the following decade, 1960-1969, it had increased by 10% to 3.55 million days.[181] This trend changed sharply from 1968 onwards.

The Labour Government established a Royal Commission on Trade Unions in April 1965.[182] Part of its remit was to address unofficial strike action (so-called 'wildcat' strikes) and shop steward power, which was blamed for wage drift and demarcation disputes. The result of the inquiry was the 'Donovan Report', published in 1968. It was welcomed by the Government and by the Conservative's employment

[181] Gennard (1970:166-167)
[182] *Royal Commission on Trade Unions and Employers' Associations* (1968) HMSO Cmnd. 3623 though better known as the Donovan Report after the name of its chairman.

spokesperson, Robert Carr MP, who compared it favourably with their own policy document, *Fair Deal at Work*.[183] Donovan recommended restoring union power from the shop floor to full-time officials so that national agreements would be honoured and any local deals would be linked to genuine improvements in productivity (Darlington and Lyddon 2001:7-9).

Table 6.1: Strikes in the UK 1968-1976

Year	Aggregate number of working days in stoppages in progress (000's)
1967	2,787
1968	4,690
1969	6,846
1970	10,980
1971	13,551
1972	23,909
1973	7,197
1974	14,750
1975	6,012
1976	3,284

Source: *Department of Employment Gazette*, January 1979 quoted in Taylor (1980:41)

In 1969 the main proposals of Donovan were presented in a White Paper, *In Place of Strife*[184]. It highlighted that 95% of all strikes between 1964-67 were unofficial i.e. not sanctioned or ratified by the trade union executives involved. Labour recommended secret ballots for strike action, legal penalties for trade unions that failed to comply, a 28-day conciliation ('cooling off') period – during which trade unions were prevented from taking strike action – to allow for negotiations with a management to continue. There would be fines for trade unions that flouted this (Darlington & Lyddon 2001:17).

There was significant opposition to these proposals from Labour-affiliated trade unions and from many union-sponsored Labour MPs. It contributed to Labour's defeat at the General Election in June 1970, bringing the Conservative Party back to power after six years. The Conservatives brought in the Industrial Relations Act 1971, based

[183] See Carr's speech to the House of Commons at: http://bit.ly/2rbtltG
[184] *In Place Of Strife* Cmnd.3888, London: HMSO, January 1969.

upon *Fair Deal at Work* and many proposals from Donovan. According to McIlroy (1995:238) the Act, "…marked a clear rupture with voluntarism, attempting to replace collective laissez-faire with legally regulated collective bargaining." Trade unions were required to register with a Registration Officer who would supervise the union's rules and have the legal power to examine workplace agreements. A union that did not register lost immunities from legal action if it was sued for damages arising from strike action.

A new National Industrial Relations Court (NIRC) was set up to hear a variety of "industrial" cases. These included complaints against trade unions for alleged breaches of company agreements or procedures, including the flouting of the cooling-off period prior to strike action; complaints from union members against their union for breach of rules; and from non-union members who were affected by a union's conduct. (Moran 1977)

The TUC adopted a policy of non-registration and non-compliance with the Act. During 1972 several trade unions were involved in significant disputes that challenged the Act. These included national strikes of engineers and dockworkers over pay and working conditions. Some of these disputes brought the AUEW and the T&GWU before the NIRC but both unions maintained a policy of non-recognition and they refused to appear at the court. Their defiance led to significant fines for unfair industrial practices, contempt of court and orders for the sequestration of union funds when they refused to pay[185] (Coates and Barratt Brown 1973; Macdonald, 1976).

An indication of the level and seriousness of strike action during the Conservative Government was the unprecedented number of states of emergency that it invoked:[186]

Date of Proclamation	Date state of emergency ended	Nature of dispute
16 July 1970	4 August 1970	Dock Strike
12 December 1970	17 December 1970	Electricity Workers strike
9 February 1972	8 March 1972	Coal miners' strike
3 August 1972	2 September 1972	Dock Strike
13 November 1973	11 March 1974	Coal miners' and electricity power workers' dispute

[185] *Heatons Transport (St Helens) Ltd v Transport and General Workers Union* [1973] A.C. 15; *Con-Mech (Engineers) Limited v Amalgamated Union of Engineering Workers* [1974] ICR 464.
[186] Figures taken from Jeffery and Hennessy (1983:274-275)

A state of emergency was an exceptional measure, contained in the Emergency Powers Act 1920. It could be called by the monarch if he or she believed that there was a threat to the supply of food, fuel, transport, water, light or any other necessities of life (section 1(1)). Once called, the Privy Council could make regulations to ensure that those services were maintained, subject to subsequent parliamentary approval. A detailed study by Jeffery and Hennessy (1983) shows that they were used primarily against strikes. No Government invoked as many as Heath's Tory administration before or since.

6.2 The NUM v. the Government

The mineworkers' strike at the start of 1972 was an inspiration for industrial action by other groups of workers that year. Coalminers had not been involved in sustained national strike action since the defeat of the ten-day General Strike in 1926. Miners had continued their strike for a further six months but were forced back to work through starvation, accepting pay cuts and a longer working day. This defeat was symbolic within the trade union movement (Allen 1981). In 1947 the coal industry was nationalised and the miners were now public-sector employees via the National Coal Board (NCB).

The National Union of Mineworkers (NUM) submitted a pay claim for 1972 ranging between 17%-47%, well in excess of the Government's target. A detailed account of the strike can be found in Darlington & Lyddon (2001:31-73). They cite an assessment of the forthcoming strike by a former Labour MP, Woodrow Wyatt:

> The coming coal strike billed for Sunday is the saddest cock-up since the War. Rarely have strikers advanced to the barricades with less enthusiasm or hope of success…Even if the strike lasts two and a half months, it would have little effect on electricity supplies…Alas it is as if some mystery siren is luring (the miners) zombie like to destruction. They have more stacked against them than the Light Brigade in their famous charge. (Ibid. p.37)

Wyatt's prediction proved to be completely wrong and indicated how unaware he was of the political undercurrents at work in the NUM (Allen 1981; Scargill 1975) that led the union to adopt the pay claim and to win the strike so successfully. The NUM secured a pay rise of 27% from the NCB.

The significance of this victory was not simply that it destroyed the Government's pay policy, or that it was achieved by coalminers. It was the tactics used that were unprecedented. The NUM mobilised widespread support amongst their own members, as well as from other groups of workers. Thousands of pickets were available to travel to other workplaces. Through mass picketing they were able to reduce electricity production and maximise the pressure on the Government (Scargill 1975). The tactic of the *flying picket* was born.[187]

The turning point of the miners' strike was the picketing of a coke depot in the Saltley district of Birmingham. The aim was to stop lorries from driving out with deliveries of coke for industry and power stations. After days of confrontation with the police at the depot gates the NUM appealed to local trade unions for support. On Thursday 10th February 1972 thousands of engineers and other workers stopped work and marched on Saltley Gates to join the miners' picket. The police closed the depot. The next day the Government set up an inquiry under the chairmanship of Lord Wilberforce, which reported just one week later.[188] On 19 February the NUM leadership negotiated an improved offer, based upon Wilberforce's recommendations. The offer was accepted by the members in a pithead ballot and they returned to work on 28 February.

6.3 *The Pentonville Five*

Another landmark industrial dispute in 1972 was the dockworkers' strike. The employers were attempting to introduce a new technology, containers, which meant that far fewer dock workers would be needed to load and unload cargo from ships. To protect jobs the dockers demanded that the loading and unloading of containers within a five-mile radius of a registered port should be reserved to them.

A picket was organised by dockers at a container depot at Chobham Farm, east London to demand that the employer hire registered dockworkers to do the work. An application was made to the High Court for an injunction to prohibit the pickets'

[187] Technology played its part. Fifty years earlier very few people owned motor cars, certainly not coalminers. By the 1970s cars and coaches were increasingly available to take pickets long distances. "The lesson of Saltley and the building strikes was that with the advent of motorways …the days when picketing was normally a strictly local and peaceful affair…appeared to have gone." (The restricted power of the picket, John Elliott *Financial Times* 7 February 1974.)
[188] HC Deb 21 February 1972 vol 831 cc898-906

leaders from continuing the picket. When the injunction was ignored, five dockers' shop stewards were arrested for contempt of court and sent to Pentonville Prison. Over the following days a huge outpouring of support for the "Pentonville 5" developed. Workers from engineering factories, printing works and elsewhere joined dockworkers in a national strike. The TUC General Council then took the unprecedented step of calling a one-day General Strike. The issue quickly returned to court when the little-known Official Solicitor[189] made an application to quash the jailing of the dockers. The judges agreed and the Pentonville Five were released. Yet again, mass strike action and trade union solidarity proved a success.

By the middle of 1972 the Conservative Government had suffered two defeats in its attempt to restrict trade union power and hold down wages. It had introduced the Industrial Relations Act to force trade union leaders to control their membership or otherwise face the threat of fines and legal action by employers for damages. The Government believed that this would limit the use of strikes, ensure that wage increases were kept within its targets and allow employers to improve productivity through new technologies and rationalisation.

The success of coalminers and dockworkers was due to strong, unionised workforces, solidarity action from other trade unionists and the innovative tactic of the flying picket. The nature of these industries as well as engineering, printing and other manufacturing processes, encouraged collective, trade union activity (Darlington and Lyddon 2001). The physical workplaces were static and relatively permanent, as was the workforce. The building industry was very different (Clutterbuck 1980).

6.4 The 1972 Building Workers Strike

Most construction workers, by the nature of their work, are itinerant. The production process of construction usually involves building, adapting, repairing or demolishing a structure. This can range from an individual house to entire housing estates, from a section of road to a motorway, to bridges, shops and factories. These construction sites are the workplace and when the job is completed the workforce moves on to find work

[189] The Official Solicitor is an officer of the court who is primarily responsible for acting for vulnerable individuals including children and adults lacking mental capacity but is also responsible for representing anyone committed to prison for contempt of court.

elsewhere, which may be 5 miles or 50 miles away (Hillebrandt 1984, 2000; Wall et al 2011, 2012, 2014).

The challenges that building trade unions faced in recruiting members and negotiating improved terms and conditions of employment were immense and quite unique to their industry. Conflict between employer and employee was endemic due to the economics of construction, including the organisation of the production process and the contract form between employer and worker. The profit made by a contractor on any project was the difference between the contract price agreed with the client and the money paid out in wages and materials during the contract. This simple economic equation is the nexus for conflict between building worker and building contractor (McGuire 2013; Wall et al 2014).

Every time a new building site opens workers could, potentially, start a new contract of employment and this would put everything up for negotiations, beginning with the rate of pay.[190] If there were plenty of workers available the employer could offer a lower hourly rate of pay for all hours worked, including overtime. Conversely, if there was a labour shortage or if the employer needed staff to work overtime due to time penalties in a contract, it may have to offer a higher hourly rate. There were plenty of opportunities for an employer to make more profit than they had originally planned by reducing the wages bill and by avoiding the cost of equipment that made working conditions safer and more humane.[191] An employer that did not provide basic tables and chairs for a canteen, toilets and washing facilities saved money.

The construction process makes it more difficult for workers to combine into trade unions compared with those employed in manufacturing (Wood 1979). Demand for labour on a construction site varies during the course of the contract. On a new-build site the first step is to clear the site and prepare the groundwork. It requires specific trades for that period (Hillebrandt 1984). Throughout the project various trades come

[190] The forms of employment in the construction industry have changed significantly during the past fifty years. For recent studies of the greater use of agency workers, self-employed and other contingent forms see Behling and Harvey (2015); Seely (2017)

[191] A fictional account of the working conditions of building workers, and techniques used by contractors to save money by using shoddy methods and materials, is Tressell (1965). Although written over one hundred years ago it was based upon his experiences as a painter and signwriter. It was read by many building trade unionists in the twentieth century (Tomlinson 2003:178). Recent research into working conditions includes McGuire et al (2013); Wall et al (2011, 2012, 2014).

and go. For example, electricians might attend a site to carry out work for several days or weeks and then leave whilst other trades do their part. The electricians will then return to complete their work.

These characteristics of the construction industry have several consequences for the recruitment and retention of building workers into trade unions. Firstly, the size and composition of the workforce in any 'workplace' changes constantly. Secondly, there is no permanence to the workforce because the workplace changes when the construction is completed. Thirdly, the nature of the construction process means that the main contractor can easily divide the tasks and offer sub-contracts to individual firms to complete specific parts e.g. brick work, electrical work, steel-fixing, scaffolding, plumbing, joinery etc.. On a construction site, there may be half a dozen companies or more, each with their own employees, doing a particular task towards the overall construction project.

The construction process also gives an employer the opportunity to deny employment to someone more readily than an employer in manufacturing. When a construction project finishes workers have no guarantee that their current employer will offer work on the next contract, wherever that might be (Harvey and Behling 2008). By contrast work in a factory is static, without any routine interruption.[192] Building workers that were known to be trade union activists were blacklisted, their names kept on a centralised list which employers could refer to when deciding whether to offer work to someone (Hollingsworth and Norton-Taylor 1988:147-155; Smith and Chamberlain 2015).

At the start of the 1970's working conditions on building sites were poor. In 1972 alone 190 building workers were killed and over 70,000 were injured through accidents at work.[193] Many were exposed to harmful dusts and chemicals that were used. Such substances would cause many deaths in later years e.g. from asbestos-related diseases, other lung diseases and cancers.

[192] Casual forms of employment have also emerged in manufacturing and distribution over the past twenty years, especially with the use of agency workers (Forde 2001; Gray 2004)
[193] Department of Health & Social Security figures covering 1970-75 obtained from HSE, Bootle. (For a criticism of the accuracy of such figures see Dawson 1988:27-30.0

6.4.1 The lump

The Government's policy for the payment of income tax by building workers also undermined trade union organisation. A construction worker could apply to the Inland Revenue to be registered as self-employed. An employer would then pay the worker a lump sum for doing a job and leave that worker with the responsibility to pay tax and National Insurance. This practice was known as 'working on the lump' and the men who worked this way were known as "lumpers". Its main features were summarised thus:

> The short-term advantage to the lump worker is that he avoids his obligation to pay National insurance contributions and income tax, often by living and working under an assumed name. Since he is on the move from contract to contract, it is difficult for the income tax men to catch up with him.
>
> He therefore seems to earn more than anything the union can negotiate. His difficulties come when he is sick or injured. He has nothing or no one to turn to since he is on the run from the state authorities.
>
> The employers gain enormously from this system. Job organisation becomes impossible since the lump men are self-employed, living outside the law. They work all the time even in the rain since they are on lump sum payments. They do not quibble about safety and as soon as the job is finished they vanish into thin air… The employer gets out of his obligation to pay National Health and Insurance contributions and holiday stamps. He gets out of his obligations to provide a safe working environment with proper amenities.[194]

The abolition of the lump was a central demand of the strike and trade unions took up the chant, "Kill, Kill, Kill the Lump".[195] Warren's barrister made the issue an important part of the defence at his trial: "The Lump is a fraud on the Revenue and on Social Security and on all those who contribute to them…. It is also accompanied by a steady increase in the proportion of accidents and a steep decline in the number of apprenticeships and of the men in the building trade unions" (Platts-Mills 2002:534)

[194] How the System Works *Socialist Worker* 12 May 1973.
[195] This is significant because the prosecution at Shrewsbury claimed that pickets chanted, "Kill, Kill, Kill", implying that the pickets were threatening violence against non-strikers.

6.4.2 Unions and employers

The weakening position of building workers was halted by the merger of several smaller craft unions in 1971 to form the Union of Construction, Allied Trades and Technicians (UCATT).[196] Several large general unions had specialist sections for members in the construction industry including the biggest, the Transport and General Workers' Union (T&GWU) and the General and Municipal Workers Union (GMWU). The fourth main trade union to be involved in the 1972 strike was the Furniture Timber and Allied Trades Union (FTAT).

The employers were organised into several bodies. The Federation of Master Builders (FMB) was formed in 1941 and the National Federation of Building Trade Employers (NFBTE), also representing small and medium sized contractors, was formed in the nineteenth century (Hillebrandt 1984).[197] By the 1970s the FMB had 20,000 firms in membership and the NFBTE had 14,000 (Wood 1979:129). The companies that dealt with the larger civil construction projects on roads, bridges, pipelines and other infrastructure were united in the Federation of Civil Engineering Contractors (FCEC), founded in 1919.[198]

The employers and trade unions negotiated at a National Joint Council (NJC).

6.4.3 The national building workers strike of 1972

By the start of the 1970s building workers' wages were in the bottom half of the league table for manual workers. A grouping of rank and file building workers established a campaigning body, the Building Workers' Charter Group, at a conference in Manchester in 1971. The Communist Party were the leading force, though it also included members of other left-wing groups and unaffiliated building workers. They agreed a charter of demands for all trades, including a pay claim of £1 per hour and a

[196] The Amalgamated Society of Painters and Decorators, the Amalgamated Society of Woodworkers, the Association of Building Technicians and the Amalgamated Union of Building Trade Workers.
[197] The NFBTE's archives are at the University of Warwick. It re-named itself and was involved in an unsuccessful confederation of employers' organisations. Its present-day successor is the National Federation of Builders.
[198] Today the FCEC is known as the Civil Engineering Contractors Association.

reduction in the basic working week to 35 hours,[199] the abolition of the lump, greater union democracy and the formation of one union for the building industry. (Darlington & Lyddon 2001:179-207)

The Charter members were successful in winning UCATT's support for a large part of the Charter and this formed the national pay claim that the building trade unions put forward to the employers in March 1972. Charter supporters believed that their union leaders were keen to compromise the claim and avoid a confrontation with the employers. The group organised meetings and conferences to demonstrate support for the full claim and to prevent a 'sell-out' by their unions. (Darlington and Lyddon 2001:185-187)

In response to the unions' claim the employers offered small increases in pay; these were rejected. Local disputes broke out, especially in the bigger cities, which Darlington and Lyddon (2001:185-187) attributed to the growing influence of the Charter group. It offered an alternative strategy of action to union members compared with the timid approach of the trade union leaders. It was against this background that the first ever national building workers strike began, on Monday 26 June 1972.

The General Secretary of UCATT, reflecting the views of the union's leadership, did not expect building workers would support a protracted strike.

> … in May and June 1972 strike action commenced against certain selected firms. The employers for their part found it difficult to believe that building workers were serious in their intentions. National strikes were a rarity in the building industry and as on previous occasions when industry-wide strikes had been threatened but failed to materialize, the employers decided again to call what they thought was the union's bluff. (Wood 1979:16)

The unions' policy was to call out selected groups of members employed by contractors that refused to pay the higher rate. On the larger, city-based sites, where trade union membership was stronger, employers conceded the claim more readily.

[199] The significance of these two demands was that it gave an improved basic rate on which overtime and bonus payments would be based. In an industry where overtime was routine a worker could get enhanced rates for all hours worked after 35 instead of after 40 hours or more.

The unions agreed that members on those sites could return to work.[200] The members on strike would be given strike pay from union funds, which were replenished through a levy of members that remained in work. This strategy was criticised for being divisive and ineffective because members on the less well-organised and isolated building sites that continued to strike had less impact. (Warren 1982:15) North and mid-Wales was precisely such an area.

The gap between the enthusiasm of the membership to win the claim and the keenness of the union leaderships to settle it and resume 'normal' collective bargaining was shown when the NFBTE made an increased pay offer at the NJC on 28th July 1972. According to Darlington and Lyddon (2001:191-192), "When the full NJC met on Wednesday 2nd August the union side indicated that the general structure of the offer was 'now satisfactory' but the immediate increase was not high enough." If the start of the bonus system was brought forward a deal was likely. The union representatives said that they needed to obtain authority from their respective unions to accept any settlement; the employers agreed that this was a precondition before they would make any further concession.

After the NJC meeting on 2nd August the union negotiators sought approval for the offer. It brought out the division between the union leaderships and many rank and file members. The T&GWU took longer to consult about the offer and during the waiting period UCATT members discovered that their own union executive had decided to accept the offer without referring it to the members (as did the GMWU and FTAT). The supporters of the Charter mobilised. There were strikes and demonstrations by building workers throughout the country, causing the UCATT Executive to reverse its policy and reject the offer. The *Times* clearly saw the influence of the Charter, "The militants have first captured key sites, then regional officials, and finally forced the moderate union leadership into an unprecedentedly tough bargaining position."[201]

Once the employers' offer had been rejected an all-out national strike was called. On 15th August 1972, the trade unions issued a joint statement to escalate it:

[200] Acceptance of the higher rates of pay by an employer on one site did not mean that the employer would pay it to their employees on every building site. Each one was a separate battle ground.
[201] The *Times* 12 August 1972, quoted in Darlington & Lyddon (1972:193)

> That the regions be advised that the most rapid intensification possible should now take place. The Operatives' Side took into account that it was essential that middle-range firms which up to now had not been affected to a great extent, should be the type of construction firms upon which the Regional Action Committees should concentrate.[202]

This statement reflected the desire of many to extend the strike and put more pressure on the employers' side. It was also recognised that the main obstacle to a settlement was the smaller building contractors that were the backbone of the NFBTE

> One particular feature of the strategy of the present escalation is to ensure that there is a complete stoppage of work of small and medium sized firms. i.e. firms from 30 men to 200 men. It is most important that this is done with utmost speed and should be completed by the end of the week. It is therefore anticipated that a full stop of these firms will bring companies to the negotiating table regionally for company agreements.[203]

All building workers were to stop work, whether an employer had conceded the claim or not (ibid. pp.23-24). The numbers now involved in the dispute meant that there would be no strike pay because the unions did not have enough money to pay tens of thousands of striking members. This intensified the desire to win the strike rapidly. The T&GWU issued a telex message to its regional secretaries:

> Jointly with other Unions and at the request of large sections of our members it has been agreed to escalate the stoppage to complete national action but without payment of dispute benefit.[204]

The day to day organisation of strikers was devolved to Regional Action Committees composed of officials from the trade unions involved. They in turn encouraged the formation of local action committees in towns and cities throughout the UK. These committees met regularly, often daily, to discuss and organise the sites to be picketed. There were many reports of meetings of hundreds of striking building workers to maintain morale and to organise picketing.

Arnison noted that the strike threw up new young leaders of the unions, "…eager and willing to join the struggle and to win victory. Many of these were raw and

[202] Letter from G.F. Smith, UCATT General Secretary, to All Regional and Branch secretaries August 1972 (UCATT archives).
[203] Telex report from LC Kemp and GP Henderson to Regional Construction Officials 18.8.1972
[204] From a letter George Wright, Regional Secretary (Designate) to Officers Concerned, 18 August 1972.

inexperienced in the formalities of trade unionism. They were often impatient - they were having a go, some of them for the first time in their lives." (1974:24)

Another factor that contributed to the activity of rank and file members was the involvement of more than one trade union. Although UCATT was the main building workers union there were substantial numbers in the T&GWU as well as the two smaller unions, G&MWU and FTAT. The national pay claim was presented to the National Joint Council for the Building Industry (NJCBI) jointly by UCATT and the T&GWU. Their members worked together on building sites and were brought together by the strike to fight for a common purpose (Wood 1979:15-27; Warren 1982).

6.4.3.1 Picketing

It was the action of flying pickets that marked out the main strikes of 1972. At strongly organised workplaces, like coalmines and docks, picketing was limited to a token presence because virtually all trade union members would stop work. This freed up large numbers of striking members to picket elsewhere (Scargill 1975; Darlington & Lyddon 2001). Building workers adopted the same tactics as coalminers and dockworkers. The first priority was to picket the many smaller building sites that were still working, where trade union members were in a minority. But they also picketed supply companies such as cement works, timber yards and brick manufacturers. If pickets could not stop work being done on sites they could stop raw materials being delivered to them.

Arnison, who covered the strike for the *Morning Star*, commented,

> "Stopping the big sites proved no difficult obstacle for it was there that one could guarantee some form of trade union membership and organisation. The problem lay with many of the smaller sites and on the new Motorway and road construction jobs. Then the real issue facing the strikers was revealed." (1974:24)

The "real issue" was the "lumpers", building workers who refused to join a union and who were classed as self-employed. They would only be persuaded to back the strike if they saw the tremendous support that it had from their fellow building workers. The Action Committees organised groups of pickets to attend working sites to demonstrate the support that existed and to persuade those at work to stop and support the strike.

Another reason to organise large groups of pickets was the nature of a building site compared with other workplaces. Clutterbuck noted (1980:77), "Building sites have no focus like the gate of a power station or a coke depot...a building site has no perimeter and no gates, and the labour force changes weekly or even daily." In the 1970s many construction sites were not fenced off, unlike today. Workers, pickets and the public could walk onto a site from any number of directions.

6.4.3.2 Picketing at Shrewsbury and Telford

One of the weakest areas of trade union membership in the country was North and Mid Wales. The Action Committee for the area met in Chester and co-ordinated the activities of pickets in and around Rhyl, Denbigh, Flint, Chester and Wrexham. The area contained many of the middle-range firms that the unions wanted to focus upon (Warren 1982:15-16).

On 31st August 1972, the Committee held its regular meeting in an upstairs room of the *Bull & Stirrup* public house in Chester. A request was made by Oswestry strikers for help to picket out sites in and around Shrewsbury. A copy of the *Shropshire Star* of 21 August 1972 was circulated. It contained an article headlined, "Freelance builders to defy pickets", which spoke of an anti-picket squad that had been formed by local builders: "An anti-picket force has been formed by Shrewsbury building workers to defend themselves against pickets who have threatened to swoop on sites in the town." Shropshire was a centre for lump labour where, the article noted, "They say they have little to gain from any pay award because they negotiate their own price for a job."

The Chester meeting agreed to organise coaches from various North Wales towns to travel to Shropshire on Wednesday 6th September 1972 to picket sites that were still working in the area. Five coachloads of pickets, totalling around 200 men, made the journey. They met up at Oswestry Labour Club to be joined by a sixth coach of local building workers. It would act as the lead coach for the journey to the working sites in

the Shrewsbury area (Warren 1982:17)[205]. With the exception of Llywarch, none of his five co-accused had picketed in Shropshire previously.

At Warren's trial a UCATT official, Alan Abrahams, gave evidence that Abrahams was due to lead the pickets in Shrewsbury on 6th September 1972 but was unable to attend due to a meeting elsewhere (Arnison 1974:39). On the day, there was no full-time official present from any trade union to lead the pickets. So instead, Warren and other members of the North Wales Action Committee took on the co-ordinating role that day.[206]

A report by West Mercia Constabulary[207] (the "Complaints report") included records of radio communications between various officers and the control centre. It noted that the six coaches arrived in Shrewsbury at around 11:00am and parked on Shelton Road, not far from the city centre. Several sites were then picketed over the following two hours, as shown in Appendix D. The report noted that decision to travel 15 miles from Shrewsbury to Telford was only made by the pickets during the middle of that day, when it was discussed that there were several large sites in the Telford area that were still working. It was this action that lay at the heart of the subsequent conspiracy trials at Shrewsbury Crown Court a year later.

The first notification that the police received from the public of the arrival of the pickets was a 999-emergency call at 11.13am. The police responded and met the pickets' leaders by their coaches, parked outside the Oak Hotel, Shelton Road. The report noted that an incident had occurred involving a shotgun. Llywarch gave a statement to the police:

> On approaching a site in Swiss Farm Road, Shrewsbury, the pickets were confronted by a man with a shotgun. He threatened to shoot the first man who came onto the site. From this the whole of the pickets ran amok. …Someone took the gun from the man and it has subsequently been handed to the police…Up until this time it was a peaceful picket.

[205] The transcript of the evidence given at trial by several witnesses confirms the origins of the decision to picket sites in the Shrewsbury area e.g. Llywarch (Shrewsbury Archives, WCML, Salford).
[206] There were three full-time union officials present at the Bull & Stirrup, Abrahams, Armour and Prest but none of them went to Shrewsbury on 6th September.
[207] The report is simply headed, "Report File" and was compiled by Chief Superintendent Hodges to address complaints from building contractors that the police failed to control the picketing on 6 September. It is undated but the contents suggest that it was completed in 1973.

The owner of the shotgun. T. Parry, was a contractor on the first site to be picketed, Kingswood. He was never prosecuted but this was probably the most serious incident of intimidation – threatening people with a firearm – during the entire building workers' strike.[208]

The police reported noted that,

> After some discussion the pickets were allowed to make their way to The Mount building site a short distance away. Meanwhile, a Sergeant and Constable had been directed to the site from Bayston Hill, the dog handler was in attendance and Detective Chief Inspector LEWIS, with one of his Sergeants, arrived at The Mount having heard about the shotgun allegation. On arrival he learned that the shotgun affair had been partly resolved and, there being no apparent disorder, he instructed four Constables in one Police vehicle to leave the scene and return to Divisional Headquarters.
>
> During this time two Traffic Department vehicles with a total of three Constables were standing by in the area but were not called upon to assist. (Ibid.)

Later, Hodges admitted that, "…the decision to dismiss four Constables from the scene, albeit with a view to not "overplaying our hand", was premature and ill-advised to a degree." (Complaints Report 1974, para.94). This judgment was made with hindsight but on the day the police, led by a Detective Chief Inspector, saw no need for large numbers of police to remain.

A solitary Police motorcyclist followed the coaches from Shrewsbury to Telford and radioed at 14:31 for assistance,

> "…as the pickets were "tending to get out of hand". He was the only Police Officer present at that time." (Ibid.para.45)

Chief Inspector Gradwell, Chief Superintendent Meredith and one constable arrived at Telford at 2:50pm, when a meeting was in progress at the Brookside site. Hodges claimed that, "…this meeting was held after the damage and violence had been committed". (ibid. para.49). Hodges recorded that Gradwell, Insp Powell and two PCs

[208] Statement taken by Sgt.573 Box at 11.50am 6 Sept 1972, in *R v Butchers & others* Documentary exhibits (author's papers). Despite the seriousness of the incident the police queried why Llywarch made a statement about it: "For some reason still not made clear, LLYWARCH volunteered a short written statement purporting to explain the incident, although he has since admitted that he was not a witness to it." (West Mercia Police Report 1972, p.9).

attended but, "it must be said that the purpose of their visit was not so much to render numerical support but to provide continuity of identification of pickets." (ibid. para.48) But in his subsequent report Hodges criticised the evidence-gathering:

> It was clear to the police that damage had been committed by the pickets but no specific complaint was received and, in the absence of any person in authority to describe the damage to them or any other person to identify offenders, it appears that the decision was taken not to make an immediate investigation but to hold one subsequently. Yet the police at the scene made no real attempt to identify the pickets at this stage. (ibid. para.52)

On the one hand Hodges claimed that damage was obvious and would have to be investigated later but on the other, no-one was bothering to identify witnesses despite his earlier claim that Gradwell and others were there for that purpose. At, "…the height of the Brookside incident there were a Chief Superintendent, a Superintendent, three Chief Inspectors and three inspectors on the site…" (ibid. para. 117).

Hodges suggested that there were sufficient police present by the time the mass meeting at Brookside was underway, "…Officers who arrived on the civilian coach whilst the meeting was going on were held in reserve on the coach and, in fact, were not required for any part of that operation." (ibid. para.114) One of the senior police officer present on 6th September 1972, Superintendent Landers, identified Warren and McKinsie Jones as two of three pickets standing on a mound at Brookside addressing a large crowd of men including workers from the site and pickets.

> There was no shouting or acts of violence, but several of the workers obviously did not want to hear what was being said, because one or two were heard to say, "We're getting more than that now, why can't they leave us alone?" I saw no damage whatsoever to property and I heard no mention of damage or violence at that stage, and no one made any complaint to me at all.[209]

Despite the presence of a large number of police officers and the claims of damage and intimidation not one picket was arrested or cautioned on 6th September in Shropshire. Warren recalled,

> It is not widely known that all the police officers who accompanied the pickets round the sites made written statements in which not one of them could claim they had seen us commit any violence. That is why there were

[209] Statement dated 2nd April 1973 in trial papers received from L. Flynn.

> no arrests (or even mention of charges) that day in the Shrewsbury area. (Warren 1982:46)

This led Warren to conclude that it was 'simply a normal day's picketing'. He claimed that,

> On the biggest site, McAlpine at Brookside, which we reached toward the end of the day, Chief Superintendent Meredith shook my hand and congratulated me on the conduct of the meeting we held. He made no complaint about the activity of the pickets. (Ibid.:18)

Warren's barrister, Platts-Mills, cross-examined Meredith about this:

> He answered, "Yes, I did go to Warren and shake his hand, as one would with any member of the criminal fraternity." Whether he meant that this was his hopeful approach to receiving a bribe or that he expected a few stolen diamonds to fall from the cuff of any building worker was not clear. When I suggested it was an absurdity, he said that he had not really shaken hands with Warren. He had merely put out a hand to detain him. (Platts-Mills 2002:536)[210]

The West Mercia police communications on 6 September show that the assessment of police at the time was that nothing serious was taking place. P.C. Amies was recorded as saying,

> …I'm now resuming from Brookside, Telford. We've got about 20 odd beat men here. They're keeping these pickets in line so I'm resuming back to Shrewsbury.[211]

This assessment was also made in an exchange between two police inspectors:

Radford: "I've just heard a lot of squitter on the radio, whats going on up at Dawley, can you tell me?"

Williams: "Yes, there's some pickets come down from Liverpool[212] picketing building sites. They were at Telford but they've moved on and they can't find them at the moment. That's all it is, there's no trouble."

Radford: "There's no trouble?"

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[210] Meredith's evidence on this point is at pp.642-643 and Warren's at p.1221 of the trial transcript. (Shrewsbury Archives, WCML, Salford)

[211] Appendix file Radio communications Console No. 5 1454.

[212] The pickets had all travelled from North Wales or Shropshire, not from Liverpool. The comment would fit in with a prejudice and fear in West Mercia of anyone from this traditionally trade union-organised city. The only Liverpudlian was Tomlinson and he had been living and working in Wrexham for several years.

Williams: "Its just picketing and the A.C.C. informed all Divisions that this was going on you see. But as at the moment they don't know where they are and there's no trouble reported at the moment."

Radford finished by mentioning that some of his dogs' vehicles had been contacted about the picketing, but Williams confirmed that they were not needed.[213]

A radio message from the Operations Room said of the pickets, "...they've been floating round Shrewsbury not causing bother much"."[214] In another radio exchange in the afternoon PC Price was asked to contact a police patrol car about the movement of the coaches of pickets and referred to, "a bit of bother" in Dawley earlier on.[215] These radio communications do not suggest that any affray had taken place or that the pickets were an unlawful assembly.

According to the trade unions the intentions of pickets in general were always peaceful, as expressed in a statement by a District Organiser of the T&GWU, Ted Hughes, on 20th September 1973:

> The Committee Members and myself would approach the Site Agent, identify ourselves and ask for a Meeting with the Labour Force on site. At these Meetings other Members of the pickets were invited on to the site. Should this not be granted by the Management then a Meeting was arranged to take place outside the site boundaries.[216]

Warren agreed that this was the approach that they took: "Our pattern of activity during the day was to hold meetings on sites, urging workers not only to stop work but to join the pickets. Police were with us during the whole of that day." (1982:18) He had picketed sites throughout North Wales during the strike and had never been arrested. The pickets would go to the office of the Site Agent to introduce themselves and to request a meeting with the working builders. At the open-air meeting members of the Action Committee would address the crowd and explain the dispute.

Clutterbuck (1980:77) challenged this account of the pickets' actions:

> A very different kind of violence was used in the other great strike of 1972; the building workers strike. Though there were no really serious casualties

[213] Complaints Report, Appendix file, Radio communications Console No. 6 1539.
[214] Complaints Report, para.124. The full exchange in the Appendix file includes a phrase, "…5 bus loads of pickets coming from Shrewsbury, the tow rags…" (Console No.3 1347)
[215] Appendix file, Radio communications Console No. 2 1649.
[216] Statement in Shrewsbury Archives, WCML, Salford.

> (one man lost the sight of one eye) there were many minor injuries. More importantly, there was some very ugly intimidation, and an underlying viciousness about some of the incidents which was rare in the miners' strike……. The sum of human fear at Shrewsbury was vastly greater than at Saltley.

How Clutterbuck calculated 'the sum of human fear' is not explained. Tomlinson agreed that there was pushing and shoving, swearing and heated discussions between pickets and those still working.[217] Arnison (1974:25-27) also accepted that there were instances of violence but disputed the extent of it and contrasted it with the violence of the employers and lumpers towards pickets. Warren highlighted the incident with the shotgun at his trial, "…a defence barrister made the point that if a picket had taken a shotgun along with him that day he would have been charged with attempted murder." (1982:17)

6.4.3.3 The settlement

The national strike ended on 15 September 1972 after the NFBTE offered an improved pay increase. Although it did not meet their full demands many union members believed that they had won a considerable victory (Arnison 1974:40). It was the highest pay award in the history of the building industry and it had been won through militant action. According to Warren (1982) and Hyman (1983:44-45) the strike helped to overcome the divisions between different crafts and between unions that had existed for decades.

The offer was accepted by the unions, though there was considerable opposition from many members (Arnison 1974:40). In Liverpool, building workers did not accept the settlement and they remained on strike for a further week. The Midlands Regional Council of UCATT passed a resolution on 16 September deploring, "…the action of the Executive Council in respect of the Settlement of the Construction Industry Dispute…", noting that the national union had acted,

> "3... without real consideration of the position of strength from which they were negotiating –
> a) an increase in membership
> b) a preparedness by the operatives who had been out the longest to sustain their efforts for an even longer period for a more just settlement...

[217] See *Guilty? My arse* BBC One Life series

> 5. It further requests and urges all members to keep intact the organisation of site stewards that has been built up over the recent months.[218]

The demands that the building trade unions had made about health & safety and the use of 'lump' labour on construction sites were unresolved. In addition, as noted earlier in this chapter, the very nature of the construction industry meant that every time a new building project was started there would be negotiations and disputes about bonus rates, holiday and sick pay, facilities etc. regardless of any national agreement between the trade unions and the employers' federations.

The influence of supporters of the Charter Group was recognised in the West Mercia Constabulary report (1972:17-18; 43-45). It identified the Charter as the driving force throughout the strike, often at odds with the union leaderships, in persuading members to reject successive offers from the employers and in organising members to picket sites that were still working. "…(T)heir present intentions are to institute a further national building stoppage in June 1973, unless the terms of a revised Charter are met." (p.43)

There were new groups of workers with skills that were not represented by the old craft unions of bricklayers, carpenters and plumbers. They included steel-fixers, like Warren, concrete layers and scaffolders whose work was in demand from the new construction methods (Wall et al 2014). Instead of each craft negotiating on its own they were now acting together, presenting a unified claim for all construction workers. The picketing and other activity during the strike involved all trades and began to develop a common united identity amongst them. This would be the foundation for the future struggles that were anticipated by the Midlands region of UCATT and others (Warren 1980:16).

For activists like Warren it was to be the start of a new era of rank and file action:

> We had plans for extending the scope of the committees after the dispute. We aimed to win 100 per cent trade union membership, improve wages and conditions, smash the lump and the blacklist with 'recruitment of labour' agreements under which unions would supply the labour. (1982:16)

[218] Copy minutes from UCATT in author's papers

Hodges also forecast that the police would be involved with further industrial confrontation in 1973: "In the present political and industrial climate there is every indication that the Police Service will be faced with a similar situation, not only in the building trade but in other industries."[219]

The case that was made against the Shrewsbury pickets in October 1973, of conspiracy to intimidate, affray and unlawful assembly, could have been constructed against any trade unionist who had organised mass picketing in 1972.[220] The Government and police were familiar with section 7 of the 1875 Act[221] but there were no prosecutions of miners for that offence in 1972. The only comparable case was the trial of thirteen Scottish coalminers who were acquitted of 'mobbing and rioting' at a picket at Longannet Power Station in February 1972 (Wallington, 1972).

The jailing of six of the North Wales pickets at Shrewsbury did not stop mass picketing even though the Lord Chief Justice, Widgery, upheld the length of sentence on Warren and Tomlinson at their appeals in October 1974, 'to deter others' (discussed in chapter 9). In 1976-77 a mass picket of hundreds was held regularly outside a photo-processing plant, Grunwick, in a North London suburb. It led to confrontations with large numbers of police each morning when a busload of strike-breakers was escorted into the factory (Dromey & Taylor 1978). Similar mass pickets occurred during the steelworkers' strike of 1980 (McGuire 2017), Stockport Messenger 1983 (McIlroy 1991:70-75) and the coalminers' strike of 1984-85 (Fine & Millar 1985). It was only after the defeat of the miners' resistance to pit closures, followed shortly by the London print-workers' defeat at Wapping in 1986-87 (Lang & Dodkins 2011; Trow 2014), that the use of mass picketing dropped to virtually nothing in the UK.[222] It should be noted though that mass picketing has been "permitted" since then when the picketers are from one of the Conservative Party's natural base of support. Welsh

[219] WMCR p. 34
[220] A 'Note of the Cabinet Official Committee on Emergencies' discussed its use during the miners' strike: "The Home Office in a circular to Chief Constables issued on 13 January 1972 reminded them of the provisions of the Acts of 1875 and 1906 and required the police to submit immediate reports of any disorder or threat of disorder connected with the present strike." (TNA LAB10/3510)
[221] The Home Office also wrote to Chief Constables on 20 July 1970, during a national dock strike, to remind them of section 7 of the 1875 Act (TNA HO322/407).
[222] These trends are highlighted in the Government's Workplace Industrial Relations Survey 1990 (Airey, et al 1992).

farmers were not prosecuted for blockading meat imports from Ireland in 1997[223] or oil refineries, in protest at rising fuel prices in September 2000.[224]

Conclusion

Anyone reflecting at the end of 1972 about the events of that year would have seen it as one of militant trade union activity that defied Government attempts to limit wages (Darlington and Lyddon 2001; Clutterbuck 1980; McIlroy et al 2007). More strikes and working days were lost than any year since the General Strike of 1926. Two states of emergency were called that, on paper, could empower the Government to mobilise resources, including the army and police, to break strikes, but on each occasion they pulled back from taking such steps (Jeffery and Hennessy 1983). The coalminers had obtained a significant pay increase as a result of national strike action and picketing. The Government's industrial relations law, designed to reduce the number of strikes by placing power back into the hands of full-time trade union officials, was being ignored. Dockworkers had defied court injunctions and when their shop stewards were imprisoned for contempt an escalating national strike won their release. (Crouch 1982:70-79). The building trades employers experienced a national strike of a duration and intensity that it had never seen before. The dispute had developed trade union support and solidarity, which the Charter Group were intent on extending into 1973 (Warren 1982).

The significance of this year was summed up by Darlington & Lyddon (2001:1)

> What distinguishes 1972 from many other peaks of working class struggle in Britain is not just the spirit of rebellion shown by workers involved, or the militant tactics adopted and pursued by them, but their relative success: 'The miners made their …. strike effective by large-scale picketing of power stations, sending mobile groups of pickets to areas remote from the coal fields. The dockers and building workers copied this tactic. Sit-ins and factory occupations occurred in engineering disputes'.

[223] http://news.bbc.co.uk/1/hi/uk/36070.stm. The report noted that "Welsh farmers protesting against cheap meat imports from Ireland have successfully completed their third night of blockades…A row broke out between protesting farmers and the driver of the lorry which is owned by the same company that saw tons of its beef burgers thrown into the sea on Monday by demonstrators at Holyhead…Representatives of the protest inspected cargoes of meat arriving from Ireland following negotiations with police and port officials." There was no indication that the lorry drivers had consented to such unlawful inspections.

[224] http://news.bbc.co.uk/1/hi/uk/924574.stm

According to Arnison (1974:40) the employers and the Conservatives were not going to let this success pass, "Tory MPs were screaming for the blood of pickets…" One of the Pentonville Five dockworkers, Bernie Steer, observed, "These people are not finished…they are vicious people and in my view they will be like a wounded animal now. They will retreat in a corner; they have had three good wallops and now they are going to start slashing out."[225]

This was the background to the investigation and prosecution of the North Wales pickets which is discussed in the following chapters.

[225] Interviewed in *Arise Ye Workers*, (1972) from 19 minutes 50 seconds, London: Cinema Action

Chapter 7. The Employers, the Conservative Party and the Press: constructing the narrative against pickets

This chapter is the first of three that discuss the documents and other data that have been gathered from a number of archives to address whether the prosecution of the pickets at Shrewsbury Crown Court in 1973 and 1974 can be classified as a politically motivated miscarriage of justice. The chapter will show the coalition of forces that came together – employers, the press and Conservative Party members and MPs – to put political pressure on the Government to act against picketing. This pressure created the conditions to ensure that the West Mercia police investigated and prosecuted trade unionists involved with the picketing in their area during the building workers' strike.

It will be argued that the evidence about the prosecution of the Shrewsbury 24 supports class-based approaches to the understanding of the state and political power in capitalist society. The documents show the inter-relationship between employers, the media, the Conservative Government and Party, and how these links influenced the decision to use the criminal law as a deterrent to limit the effectiveness of picketing during industrial disputes.

The chapter contains three sections. It begins by examining the response of building employers to the outcome of the strike. It shows the steps that they and other employers' organisations took to persuade the Government to act against picketing. It includes an analysis of a dossier about picketing during the 1972 strike compiled by the National Federation of Building Trade Employers (NFBTE).

The second section discusses the debates within the Conservative Party at various levels, including Government ministers, local Constituency Associations, Party advisers and supporters, in response to the strikes and mass picketing in 1972.

The third section reviews some of the newspaper reports of picketing, the media's role in advancing the agenda of the employers and the promotion of a narrative that equated strikes with violence. The chapter concludes that the decision to prosecute the North Wales building workers was a convenient political expedient. It appeased employers and Conservative Party supporters but avoided a direct confrontation with the trade unions at a time when the Government wanted TUC support for its incomes policy.

7.1 The employers' response to the outcome of the strike

The outcome of the building workers' strike was regarded as a defeat by the employers. Derek Fowler of the FCEC summed it up in a letter to the CBI on 18th September 1972, two days after the trade unions had accepted a new offer.

> The outcome…is a settlement both in building and civil engineering *higher than would have been necessary* to meet the aspirations of the bulk of our labour force, of which it is estimated that only about 30% are union members[226] (emphasis added).

Fowler attributed the unnecessarily high pay increase to, "…strong arm tactics and extremely large groups of mobile pickets which are organised locally and which the unions make no attempt to control."

Before the strike ended the NFBTE were taking steps to identify the leading pickets. Its *Newsletter* of 8th September 1972 argued that, "…if it were not for the militant action being taken by a relatively small number of activists this strike would never have got off the ground on anything like the scale it has."[227] It informed members that it was compiling an "intimidation dossier" and it appealed for examples of alleged intimidation so that the dossier could be sent to the Government, "…with a view to trying to stop similar kinds of pressure being exerted in the future." (ibid.)

The FCEC shared the NFBTE's concern about the activities of flying pickets. Two days before the strike ended the FCEC wrote to the Minister for Housing and Construction, Julian Amery MP, highlighting the mass picketing in the Shrewsbury area on 6th September 1972. It alleged that there had been damage to vehicles and equipment, damage to buildings and intimidation of building workers who were working during the strike. The letter concluded by asking the Government to,

> ….pursue this matter strongly in the appropriate quarters, with a view to action being taken, e.g.:
>
> (i) by the improvement of police organisation and co-operation; and

[226] Ref. 2035, City of Westminster Archives, London.
[227] *NFBTE Newsletter* Number 17, Warwick Modern Records Centre, MSS.187/3/1/10

(ii) amendment of the law governing picketing, including trade union responsibility.[228]

The NFBTE sent a further letter about its planned "intimidation dossier" to Regional Secretaries setting out the type of evidence that it wanted from member firms. It stated that such evidence would assist with its submissions to the Government and the interdepartmental committee that was reviewing the law on picketing. The letter then stated, "Especially valuable would be signed statements from eye-witnesses …photographs of at least some of the more notorious occurrences (from local newspaper photographers) and tape recordings and personal photographs." [229] This was an appeal for evidence that the police could use to prosecute, and not simply to bolster a campaign to change the law.

The next section analyses the content of the dossier before discussing the way that it was reported by national newspapers and used by the Government.

7.1.1 The NFBTE dossier

The NFBTE dossier was presented to the Home Secretary at the end of October 1972. It was entitled, "*Violence and Intimidation. A dossier of examples of personal violence, injury, arson and damage during the building strike 1972*.[230] The introduction drew the following conclusions: Firstly, the most militant picketing took place in five regions: Yorkshire, the Midlands, the North East, the North West and Scotland. There were very few reports from Greater London, southern England and south Wales. Secondly, the use of flying pickets increased towards the end of the strike, "…culminating in the events of notorious "Black Wednesday" – September 6 – when building sites over much of the West Midlands were subjected to deliberate and well-directed attack." Thirdly, the picketing was, "…the work of comparatively small, but co-ordinated groups of people who were well organised, well directed and well financed."

[228] Ref. 2035, City of Westminster Archives, London.
[229] Letter from MAP Harnett, NFBTE Press Officer 20 September 1972, Warwick MSS/187/3/PIC/1/14
[230] Copies available in the file TNA LAB10/3510 and in file MSS.187/3/PIC/1/1-13 at the Modern Records Centre, University of Warwick.

The dossier was based upon two sources of information: newspaper reports that had been sent to the NFBTE, and private reports that were unattributed but appear to have come from member firms. The dossier broke down the reported incidents of picketing into two phases to support its argument that mass picketing intensified during the final weeks of the dispute. As was noted in Chapter 6, a turning-point in the strike occurred on 8th August, when the employers' latest offer was rejected. From 15thAugust onwards it was to be a national strike involving all building workers, regardless of whether an individual employer had agreed to pay the higher wage rates in the unions' claim.

A breakdown of the reports of picketing in the NFBTE dossier showed that incidents were recorded in the following areas:

Phase 1: August 7th-31st

East Midlands: 7 incidents (including Derbyshire 1; Gainsborough 1; Kings Lynn 1; Scunthorpe 3).
West Midlands: 13 (Birmingham 4; Cheadle 1; Coventry 6; Leek 1).
North East: 3 (Hartlepool 2; Newcastle 1).
North West: 4 (Blackpool 1; Bolton 1; Southport 1; Wigan 1).
Scotland: 4 (Edinburgh 1; Glasgow 3).
South East: 7 (London 3; Milton Keynes 1; Northampton 1; Sittingbourne 1; Southsea 1).
Wales: 5 (Buckley 1; Colwyn Bay 1; Denbigh 1; Penrhyn Bay 1; Oswestry 1).
Yorkshire: 27 (Barnsley 1; Darfield 1; Elland 1; Halifax 2; Hoyland 1; Huddersfield 2; Leeds 5; Ossett 1; Rotherham 3; Selby 1; Sheffield 3; Sowerby Bridge 1; Wakefield 1).
Unknown: 2.

Phase 2: September 1st-18th

East Midlands: 1 (Leicester).
West Midlands: 6 (Birmingham 2; Coventry 1; Shrewsbury 1; Stoke 1; Walsall 1).
North West: 5 – (Blackpool 1; Sale 3; Skelmersdale 1).
South East: 4 (Basildon 1; London 1; Lowestoft 1; Southampton 1).
Wales: 1 (Flintshire).
Yorkshire: 11 (Barnsley 1; Bradford 2; Keighley 1; Leeds 2; Sheffield 2; York 1).

The dossier is not an accurate measure of the number of alleged incidents that occurred throughout the UK during the strike. The NFBTE did not set out any methodology or statistics to analyse the reports that the dossier contained. It relied upon reports from members. There was no indication of the number of member firms that were contacted

nor the number that actually replied. The source of many of the allegations against pickets was described as "Private".

The dossier does not demonstrate a sustained increase in mass picketing after the union side had called for an intensification of the strike in mid-August. In the first phase, 7th - 31st August (24 days) the dossier mentioned 72 incidents, an average of 3 per day. In the second phase 1st - 18th September (18 days) there were only 28 recorded incidents, an average of less than 2 per day. What the reports do suggest is that the numbers of pickets involved at each site in September were greater than those involved in August.

The dossier noted the geographical concentration of alleged incidents, mainly in Yorkshire and the West Midlands. Of these two areas, it was in Yorkshire that most occurred, indicating higher levels of picketing throughout that county. The incidents in the Midlands occurred mainly in Birmingham and Coventry, though it also included the picketing in the Shrewsbury area on 6th September 1972, referred to as "Black Wednesday" in the introduction to the dossier. Almost a whole page of the dossier is devoted to accounts of that day, taken from the *Birmingham Post, Shropshire Star* and "several private reports". It also quoted a *Daily Mail* article of 11th September 1972 featuring Clifford Growcott, whom the article alleged had been attacked at the Brookside site in Telford.[231]

The dossier was one part of a concerted attempt by the NFBTE to get the Government and police to act against picketing. The agitation by the NFBTE included complaints by its Midlands region to the West Mercia constabulary about the picketing at Shrewsbury on 6 September.[232] The publication of the NFBTE dossier assisted the narrative that the employers and the Conservative Party wanted to promote: that a minority of militant trade unionists were using unlawful intimidatory picketing to

[231] The case of Growcott is discussed in more detail in the chapter 9.

[232] The Annual Report of the West Mercia Constabulary noted that the Secretary of the Midlands NFBTE, P.J. Smith, submitted a complaint to the Chief Constable in September 1972 about a, "lack of police action in Shropshire when an organised group of travelling strikers caused damage on a number of building sites" (Annual Report1972:14 in TNA HO 287/1946). The report noted that Assistant Chief Constable Rennie was leading the investigation into this complaint. As shown later, this was a very high-ranking officer compared with the others who led police investigations elsewhere in England & Wales.

impose their way on moderate co-workers and on employers.[233] The corollary of this narrative was the need for more decisive police action, and possibly changes in the law, to deal with militant pickets.

The *Sunday Times* commented that Robert Adley, Conservative MP for Bristol North East, would be asking the Home Secretary and the Employment Secretary to hold an inquiry into the allegations in the dossier.[234] The *Financial Times* noted that, "Fresh pressure on the Government to take action against mass picketing in labour disputes is likely to build up as a result of a report sent to the Home Secretary alleging "virtual mobster tactics" by "well organised, well directed and well financed" groups of pickets during the country-wide building strikes two months ago."[235]

Not all journalists were convinced by the claims in the dossier. Joe Rogaly, Political Editor of the *Financial Times*, wrote:

> This document is itself flawed, since in its introduction it suggests the existence of a sinister plot without being able to substantiate the allegation. Many of the incidents that have been listed seem to be little more than the ordinary, spontaneous angry behaviour that might be expected on a building site at any time (and especially during an industrial dispute): the net effect of the list provided is that the publication reads more like a politically-motivated pamphlet than a serious study.[236]

Rogaly's reservations were borne out by the results of several police investigations, which are discussed in the third part of this chapter.

It would be wrong to conclude from the dossier that the police did not intervene on picket lines during the building workers' strike. Pickets had been arrested during all the main national strikes of 1972 – coalminers, dockers and building workers. The pickets were often dealt with promptly at the local magistrates' courts. For example, Jim Burnham, the leader of a picket outside a building site at the London Stock Exchange in August, was fined £20 plus £20 costs for obstructing a police inspector

[233] The dossier received press coverage between 29-30 October (Elliott, J. Report tells of building strike 'mobster tactics' *Financial Times* 30 October 1972; *The Sunday Times* 29 October, *News of the World* 29 October 1972).
[234] 29 October 1972
[235] 30 October 1972. Cutting in TNA LAB10/3510.
[236] Curbing the Industrial Bullies *Financial Times* 31 October 1972, p.19.

who was trying to clear a path for non-striking electricians who wanted to go into work.[237]

In another case, "Three building pickets were fined £50 each at Gloucester for assaulting a work-mate who had refused to join the recent national building strike."[238] A fuller account in *The Guardian* explained that the three were part of a group of 20-30 pickets outside the site of Gloucester's new hospital. It claimed their colleague was cycling off the site, pulled to the ground, kicked and punched. The three were charged with assault occasioning actual bodily harm.[239] Although the three were fined they could have been sentenced to up to two years' imprisonment for being convicted of such an offence.

Pickets arrested in 1972 were generally charged with obstruction, breach of the peace and criminal damage. The newspaper reports of prosecutions of pickets that year indicate that pickets were arrested on the picket line. In contrast, not a single North Wales picket was cautioned or arrested on 6th September 1972, despite the presence of police during most of the day and despite newspaper claims of intimidation and damage to property. This suggests that, on the day, the police did not consider that anything had occurred to warrant an arrest.

A report of a trial in Yorkshire court illustrates the contrast between the routine treatment of arrested pickets and the careful management of the prosecution of the North Wales pickets which is discussed later:

> About 150 pickets from Leeds and Wakefield "frightened and intimidated" 12 workers at a small clinker block making firm at Heck, near Goole, during the builders' strike, Selby magistrates were told…Three Leeds scaffolders who were among the pickets denied obstructing the police and using turbulent and belligerent behaviour likely to cause a breach of the peace. They were each fined £15 and bound over in the sum of £100 for a year…two police constables were trying to handle between 100 and 150 pickets, who were milling round the office block of the company shouting abuse. When a lorry loaded with ash arrived at the yard the pickets started to threaten the driver.[240]

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[237] (Justinian, Uncertainty about limits of peaceful picketing, *Financial Times* 25 September 1972. Copy in TNA LAB10/3510).
[238] Note of a report in the *Financial Times* 30 September 1972 in TNA LAB10/3510
[239] Cutting from *The Guardian* 30 September 1972 in TNA LAB10/3510
[240] 'Picket clash and a boss's fear – Court story' *Yorkshire Evening Post* 14 December 1972.

The mass picketing in Shrewsbury and Telford was not qualitatively different from picketing that occurred elsewhere. Neither was it the case that the police were absent on the day. The West Mercia police recorded that, "…it must be said that the Police responded quite quickly during this incident and a total of 82 Officers were actually involved throughout the day with several others readily available if required."[241]

As will be seen below, after the strike ended several police forces were instructed to investigate incidents reported in newspapers. None of them resulted in any prosecutions. The lengthy investigation by West Mercia and Gwynedd police forces and the subsequent trials indicates that a particular group of pickets were targeted. It would provide a 'show trial' to appease the Government's supporters and intimidate trade unionists.

The publication of the NFBTE dossier, with its narrative of violence by striking building workers, was part of a determined effort by the employers to persuade the Government and the police to contain mass picketing. The NFBTE raised its concerns at a CBI Working Party on Industrial Relations, on 9 November 1972. The minutes began,

> The Chairman reminded the meeting that when the EPC had considered the question of picketing in March it had expressed the view that the existing law was in general adequate and that the real problem was one of enforcement. Since then, however, picketing, particularly in the Building Industry strike, had reached new heights of violence and intimidation and it had been decided to reconsider the matter.[242]

The meeting could not agree on the steps that needed to be taken:

> It was generally felt that in view of the organised violence of flying pickets in the Building Industry strike, the previously held view that the existing law was adequate was no longer tenable. There was, however, some difference of opinion as to whether it would be politically practicable to tighten up the law at the present time. (Ibid.)

It was noted that "…the activities of flying pickets in the Building Industry strike suggested that there might need to be some restrictions on the number of pickets and

[241] West Mercia Police Complaints report p.5. The report is discussed in detail in the next chapter.
[242] TNA LAB 10/3510. The EPC was the Employment Policy Committee.

on the persons who might be allowed to picket."[243] The meeting concluded that the CBI would seek a meeting with the Home Office, "…to try to establish what practical difficulties existed in the proper enforcement of the law."

The CBI wrote to Heath, Carr and the Employment Secretary, Maurice Macmillan, on 30th November 1972 urging them to, "tighten up the enforcement of the present law and to consider the introduction of certain changes on the law."[244] Both Carr and Macmillan had addressed the issue at the previous month's Conservative Party conference and stated that the law was adequate; the problem was a failure of the police to enforce it.[245]. Macmillan repeated this line in the House of Commons the following month, in answer to questions from several backbench Conservative MPs, "It is already illegal to do many things. The problem is one of enforcement against those carrying out illegal practices."[246]

Thus, in the aftermath of the building workers strike the building employers' federations and the CBI were pressing the Government to take action on picketing. They all agreed that the police had to be more active in arresting and prosecuting pickets but they were less certain about whether the law needed to be changed. The employers' lobbying of the Government fuelled the debate and the options that might be available to check the growth in trade union militancy.

The next section examines how the Conservative Government responded to the employers' demands and how this created the political conditions to charge the North Wales building workers in February 1973. It discusses some of the responses within the Conservative Party at local and national level to the spread of the tactic of flying pickets in 1972. It shows how the political agenda was shaped to encourage the prosecution of the North Wales pickets.

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[243] TNA LAB10/3510

[244] TNA HO325/103*

[245] *The Guardian* 12 October 1972, 'Pickets may face mobile police units'. *The Times* 14 October 1972, 'Hope for code of picketing practice to stop troublemakers'. Their speeches had been discussed in advance at a Cabinet committee on 9 October 1972 attended by Heath. He summed up the discussion by repeating that no change in the law was necessary. ('Picketing and Secondary Industrial Action' 10 October 1972, TNA FV62/110.)

[246] Quoted in *The Times* 8 November 1972. Cutting in TNA LAB10/3510. (HC Deb 07 November 1972 vol 845 cc801-4)

7.2 The Conservative reaction

The Conservative Party was alarmed at the number of strikes and mass picketing in 1972. Discussions took place at all levels, from constituency associations to members of both Houses of Parliament, the Commons and Lords. Like the employers, various Conservatives put forward suggestions to strengthen the law, and demanded that the police act more firmly in future disputes. The evidence discussed in this section shows that the Conservatives were exploring steps that could and should be taken to halt flying pickets. The options had to assessed in the context of the Government's next steps in its counter-inflationary economic strategy and the need to avoid a further confrontation with trade unions over incomes policy.

The Conservative Party leadership had longstanding links with the construction industry. Sir Keith Joseph, the Cabinet Minister responsible for health and social security was connected with Bovis.[247] The Home Secretary, Reginald Maudling, had resigned in July 1972 following a scandal related to his connections with property companies.[248] The Minister of Employment, Robin Chichester-Clark, became a consultant to the NFBTE when he stood down from Parliament in 1974.[249] Conservative councillors had regular contact with small and medium sized firms that routinely bid for council contracts. Many local builders were members of their local Conservative Association.[250]

Political donations were made to the Conservative Party by major construction companies including W&C French, Sir Robert McAlpine & Co., John Mowlem & Co., Tarmac, Taylor Woodrow and Wood Hall Trust. Several building materials companies also donated: BPB Industries, Hanson Trust, International Timber Corporation and

[247] "He had grown up in considerable comfort. His father, Sir Samuel Joseph, a baronet, headed the family firm, Bovis, one of the biggest construction companies in the country, and also served a term as lord major of London." (Yergin 1998:93) Joseph was also a key ideologue for the policies introduced by the Thatcher government from 1979 (https://www.margaretthatcher.org/document/110796).
[248] In 1966 Maudling became director of a property company headed by John Poulson and an adviser to the Peachey Property Company. Both companies collapsed when the chief executives were discovered to have been corrupt. Maudling's association with Poulson led directly to Maudling's resignation as Home Secretary on 18 July 1972 (Baston 2004).
[249] http://www.historyofparliamentonline.org/volume/oral-history/member/chichester-clark-robin-1928
[250] Nicholas Ridley MP, a junior minister in the DTI, was another construction company director and engineer. (HC Deb 22 January 1976 vol 903 cc1631-60.)

Kelsey Industries.[251] The highest-ranking donor to the Conservatives in 1973/74 was Newarthill, giving £43,540.[252] In 1974 the Conservatives received donations totalling £67,703 from companies in the building and civil engineering sector and £30,299 from companies in the building materials sector.[253]

The full extent of building industry lobbying within the Conservative Party cannot be assessed because it was unrecorded. Discussions took place at un-minuted, informal meetings, although references to such conversations appear in documents. In a mass political party like the Conservatives there were open discussions in which groups of members tried to influence party policy. The Central Fife Conservative Association sent a letter to local party associations in March 1972 expressing grave concern about picketing during the miners' strike. It sought support from fellow Conservatives for its motion on picketing that it had submitted for debate at the annual party conference that year. It encouraged a letter-writing campaign to the Government by other Conservatives to urge it to act on picketing. The Fife Tories also wrote to Chichester-Clark at the Department of Employment.[254]

The South Norfolk Conservative Association took up the Fife appeal and wrote to Maurice Macmillan on 17 July 1972: "On 14 July this Association considered a Central Fife appeal for support, both for their letter to you and for a conference motion. It was unanimously agreed to give full support."[255] The Fife Conservatives also wrote to Macmillan and his cabinet colleague, John Davies (Secretary of State for Trade and Industry) criticising, "…the use of coercion, intimidation and violence in recent disputes…and would urge upon you the need for the Government to take suitable action…"[256]

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[251] These companies made direct donations to the Conservatives in 1971-72 totaling £13,915 (the equivalent of £177,639 in 2017). Another source of funds from industry to the Conservative Party was via British United Industrialists (Rose 1974:224). BUI received £5,000 from Associated Portland Cement and £15,000 from Rugby Portland Cement (an equivalent total of £255,320 in 2017).

[252] £483,814 in 2017 prices. *Labour Research* August 1975 p.163. The company was owned by a branch of the McAlpine family.

[253] *Labour Research* August 1975 pp. 162-164. In 2017 prices the amounts are £752,312 and £336,681 respectively.

[254] TNA LAB 10/3510

[255] TNA LAB10/3510

[256] Letter 12 July 1972 TNA LAB10/3510

At a more senior level Lord Hugh Molson, a former MP and junior minister, wrote to Lord Hailsham, the Conservative Lord Chancellor on 20 September 1972,

> Mr dear Quintin, The Government must do something about forcible picketing…You said that a picket of three has been held not to be "peaceful"…I want a simple test of what the police can prevent or stop without complicated proof. One hundred men with menacing expressions is not really peaceful, even if they neither say or do anything.[257]

Hailsham acknowledged Molson's letter five days later and was "…very glad to have your suggestion and will keep it in mind."[258] Hailsham wrote to Macmillan to advise that he favoured only limited legislative changes (to the Emergency Powers Act 1920) because, "…if understood and obeyed the present law is adequate."[259] Hailsham recognised that any change was, "basically a political decision", rather than a legal one but thought regulations, "ought to prohibit picketing in excessive numbers and by parties extraneous to the dispute..." (ibid)

The Government knew that picketing would be debated at the annual Conservative Party conference in Blackpool in October 1972. It was a forum for party members to put pressure on "their" Government to take action. In the 1970s the annual conferences of the main political parties were broadcast live on the BBC during the daytime. Extracts from the key speeches and debates were featured in the evening news bulletins on BBC and ITV.[260] This national profile could allow the Government to convey a strong message to its supporters, that action would be taken against violent picketing.

The Government's position was set out in a number of pre-conference speeches. Attorney General, Sir Peter Rawlinson, made a speech[261] in his Wimbledon

[257] Note in the Churchill Archives Centre HLSM/2/30/18
[258] Churchill Archives Centre HLSM/2/30/18
[259]Letter to Macmillan 5 October 1972, TNA LAB 43/718 and Churchill Archives Centre HLSM 2/30/17.
[260] In 1972 there were only three television channels available in Great Britain: BBC 1, BBC 2 and ITV. This compares with the hundreds of channels that can now be viewed today.
[261] Seven years later the Conservative Leader of the Opposition, Margaret Thatcher, commended Rawlinson's speech during a House of Commons debate on the industrial situation. "… the law on the nature of picketing has not changed for a very long time. The best exposition that I know on this…. is an exposition given by the Conservative Attorney-General, then Sir Peter Rawlinson… in a speech in September 1972…The only right is that of peaceful persuasion. There is no right to stop a vehicle. There is no right to threaten loss of a union card. There is no right to intimidate. There is no right to obstruct, and numbers themselves can be intimidating. He also pointed out what few other people have

constituency that was reported prominently in the following day's *Times, Financial Times* and *Daily Telegraph*.[262] It was noted that his speech, "…coincides with the publication of motions for the Conservative party conference calling for action against violence in industrial disputes."[263]

Rawlinson accepted that trade unionists had a right to picket but it had to be peaceful and only for communicating information.

> If pickets, by sheer numbers, seek to stop people from going to work or from delivering goods, they are not protected by the law since their purpose is to obstruct rather than to persuade…it is likely to be intimidating even if no violence is involved.[264]

For Rawlinson, picketing in large numbers was intimidatory even if the pickets did nothing but stand quietly. He reassured his audience that the existing law dealt adequately with preventing the type of mass picketing that had been witnessed during the miners' strike and other industrial disputes that year. Pickets had no right to stop people or vehicles; their actions were limited to peaceful persuasion, for which purpose only a small number of pickets were required. The *Daily Telegraph*'s report repeated the Government's position, that the problem lay with the lack of action by the police, "A clear indication that the Government expects the police to enforce the law against unlawful picketing more vigorously than in recent strikes was given last night by Sir Peter Rawlinson, Attorney-General."

Robert Carr, also made a pre-conference speech focussing on picketing, in an address to the Magistrates' Association. It was widely reported and designed to reassure Conservative supporters. One account began, "A strong warning about the increasing growth of violence, particularly in industry and in recent strike picketing, was given last night by Mr. Robert Carr, the Home Secretary." [265] He identified picketing as part of a general problem of law and order in society, a subject that was a regular debate at

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said—that every person in this country has a right to go about his daily work or pleasure free from interference by anyone else." (HC Deb 16 January 1979 vol 960 cc1524-641)

[262] Newspaper cuttings of these reports are in TNA LAB10/3510 and DPP2/5159

[263] *Daily Telegraph* 22 September 1972.

[264] *Daily Telegraph ibid.* The speech contained large sections of an earlier, less-publicised speech that Rawlinson gave to a constituency club, the 1964 Club, on 19 March 1972. An extract was attached to an internal Home Office document dealing with contingency planning during the upcoming miners' strike, 'Picketing: Contingency Planning 31 January 1974' in TNA HO287/2194/1, PREM15/2117, DEFE70/367 and T357/490.

[265] *Financial Times* 6 October 1972 (cuttings in TNA LAB 10/3510 and LAB 43/632).

each year's Conservative Party conference. He noted, "And there is industrial violence in the form of violent picketing which seems frequently to be inspired by people not directly involved in the dispute." (ibid.) Carr urged the audience of magistrates to impose harsher sentences, including imprisonment, for picketing offences.

> I think it is right some treatment is severe. Indeed, I should not be ashamed to use the word punishment when referring to the treatment given to serious offenders, particularly those who commit violent crimes. (Ibid.)

At the same meeting a crossbench peer, Hartley Shawcross, also spoke on the issue.[266] He criticised the previous Home Secretary, Reginald Maudling, for suggesting that most picketing had been peaceful and, "…that it was only occasionally that there were breaches of the law." Shawcross declared,

> The whole thing was an unlawful conspiracy. Whenever three or more people gather together to carry out any common purpose in such a manner as to cause people of ordinary courage and firmness to be in fear, that very quickly becomes a riot.[267]

On the day that the Conservative Party conference opened in Blackpool the *Glasgow Herald* published an article headlined, "How the Communists plan to take over Britain".[268] It referred to picketing of building sites in Birmingham led by Peter Carter, a prominent member of the Communist Party in the city. It would reinforce the arguments put forward by speakers at the conference during the week.

At the conference Carr replied to the debate on law and order. The *Daily Telegraph* reported that, "…Mr Carr's main message to the conference was that the law as it now stands is adequate to deal with the danger of obstruction and intimidation without special legislation."[269] The existing law, "…makes it absolutely clear that the right to picket is not a license to intimidate, and that sheer numbers of pickets can of itself constitute intimidation." The next day it was reported that,

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[266] The speeches of Carr and Shawcross were cited in the letter from Robert McAlpine & Sons Limited to the Metropolitan Police Commissioner, 26 February 1973.

[267] *Ibid*. The phrase, "unlawful conspiracy" and the suggestion of himself and Rawlinson that sheer numbers alone could be intimidatory would be taken up by the prosecution to formulate a novel charge, "conspiracy to intimidate", that was laid against six of the Shrewsbury pickets in February 1973.

[268] Cutting from article by Colm Brogan, Monday 9 October 1972 in TNA LAB10/3510.

[269] *Daily Telegraph* 12 October 1972 (cutting in TNA LAB10/3510).

> (Carr) was expected to urge chief constables from police forces all over the country to consider setting up special police "flying squads" to cope with groups of "flying pickets" such as those which have operated during recent industrial disputes. [270]

The speeches made by senior Conservatives before and during the Conservative Party conference were designed to make it clear that the outbreak of mass picketing in 1972 was not the fault of the Government. Although laws relating to picketing did not specify a maximum number who could be present the Government argued that existing laws prohibited large numbers behaving in an intimidatory way or of obstructing the highway. Although some minor changes to the law could be made the problem lay with the police and the courts. The Conservatives were giving both bodies a clear message that they should take tougher action against pickets.

The pressure on the Government to act continued in the weeks following the conference. The Chief Whip, Francis Pym, wrote to Carr on 29 November 1972[271] setting out the opinion of many backbench Conservatives MPs following a meeting of the Conservative Party Home Affairs Committee. Rawlinson had opened the discussion. Pym urged Carr to take action, whether that was simply a restatement of the law on picketing or a change to limit the number and type of people who could picket.

The Government's Special Adviser, Michael Wolff argued for both: "I do not think that it is enough to concentrate on enforcement: for the law cannot be enforced unless it is amended."[272] He commended a recently-published pamphlet from the Bow Group[273] that took the same line,[274] including the suggestion that there should be a statutory limit on the number of pickets at a workplace. Wolff also advocated an increase in the penalties for intimidation under section 7 of the 1875 Act.

> This would be largely window-dressing, *because of course charges could in many cases be brought under laws which carry higher penalties*; but it

[270] Aitken, I. Pickets may face mobile police units, *The Guardian* 12 October 1972. Cutting in TNA LAB 10/3510. These tactics were to be implemented in the miners' strike of 1984/85.

[271] TNA HO 325/103

[272] Note of 5th October 1972, Churchill Archives Centre, Cambridge GBR/0014/WLFF3/3/9

[273] The Bow Group is a think-tank linked to the Conservative Party.

[274] Barber, R. (1972)

> might have a good effect on police and on magistrates, as well as on the general public and the responsible trade union leaders.[275] (Emphasis added).

Wolff's comments indicated the wide range of public order offences that could be used against pickets, as discussed in Chapter 5. But the more serious ones had rarely been used by the police against pickets.[276] It was precisely these types of common law charges that were to be brought against the six pickets arrested on 14 February 1973 and tried at the first Shrewsbury trial, in October 1973. A conviction for the common law offences of conspiracy, affray or unlawful assembly could result in a much higher sentence, as Wolff suggested.

At the Party conference Carr had praised the Lincolnshire police operation during the dockworkers strike in July-August 1972 and announced that he would be highlighting the lessons to all police forces, including the need for good intelligence on the movement of flying pickets so that they could be intercepted. He also commended co-operation between local police forces.[277] Shortly after the conference Carr met fifteen chief police constables,

> to discuss violent picketing during industrial disputes. A Home Office official said later: "This is the first of a series of meetings with chief constables to discover whether the law needs strengthening in view of recent violent picketing."[278]

The importance of co-operation and co-ordination of police resources was also noted at a meeting of the Inter-Departmental Committee on picketing. It was suggested that the Government must make further efforts, "…to improve enforcement of the existing law by strengthening, as necessary, the arrangements for mutual aid between police forces…"[279]

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[275] Churchill Archives Centre, Cambridge GBR/0014/WLFF3/3/9

[276] A conspiracy charged was tried, unsuccessfully against a group of London and Liverpool dockers. The prosecution was led by the then Labour Attorney General, Hartley Shawcross. (Heilbron 2012)

[277] This was one of the lessons that the Government learned from the success of flying pickets. If trade unionists organised groups of up to 250-500 pickets to visit a workplace the police had to be able to assemble a force of a similar size to deal with them. This approach was used most effectively during the coalminers' strike against pit closures in 1984-85. (Fine & Millar 1985)

[278] *The Times* 9 November 1972. Cutting in TNA 10/3510. No records of Carr's meetings with police constables have been found at the National Archives.

[279] Note of meeting in TNA FV 62/110

7.2.1 The Parliamentary Platform

In addition to the Conservative Party conference there was another forum within which Conservatives could argue for action against pickets. Several Conservative MPs initiated or spoke during debates on picketing in the House of Commons in autumn 1972. Press reports of those debates reinforced the message that government action was required urgently. The *Financial Times*[280] reported a speech by the Conservative MP for Bolton West, Robert Redmond, during a debate on industrial relations. Redmond observed:

> It seems to me that the law regarding picketing is clear enough and quite adequate, and the law concerning peaceful picketing, which was passed many years ago, is as it should be. But what we have seen recently is not peaceful, and it is not picketing. It is, in fact, the "heavy mob" going round and saying" Might is right ". What we saw in the building strike and some other strikes recently is tending, I believe, to go far beyond what one can regard as industrial relations…
>
> The "Rent-a-Picket" style of operation, it seems to me, has something in common with the Provisional IRA in Belfast. [Laughter.] …We are seeing something now which is threatening the security of the State, and what I suggest… is that there is a Mafia at work forcing men to strike against their will…It seems to me that the reports one read in the News of the World on Sunday were probably far from exaggerated…
>
> I do not usually talk about matters outside my constituency, but I must tell the House that, when I visited Merseyside a few weeks ago, I saw and heard of gangs of people following building workers about and threatening physical violence to bring them out on strike. A friend of mine on Merseyside—this is hearsay evidence, I know, but I am asking for an investigation to test the truth of these things—told me of how he had approached a picket, or so-called picket, to ask what he was doing, and the picket replied "We are doing this because we wish to destroy the constitution of this country".
>
> However much hon. Members opposite may laugh at this desperately serious situation, I urge the Government to take the reports one hears seriously and to recognise the danger which exists.[281]

[280] Financial Times 2nd November 1972
[281] HC Deb 01 November 1972 vol 845 cc173-315: 261.

This theme continued during the final weeks of the year. On Friday 8th December 1972 a Conservative MP, Kenneth Lewis, opened a debate on industrial relations and argued that the building workers strike was the work of extremist groups:

> Their declared main aim is revolution. They move in on strike situations simply to further the revolution. During the building strike the agitation was led by the Building Workers Charter Group, a breakaway from the Communist Party and based at the headquarters of the International Socialists.
>
> In April there was a national conference of building workers. The speakers included a former Young Communist organiser, Peter Carter, and a Liverpool Communist, Alan Abrahams. These men and these organisations had been holding meetings stimulating the building strike.
>
> I have here a book. It is a considerable document. I shall not read extracts from it, but it has been compiled by the National Federation of Building Trades Employers. It is not just what that federation says, because it contains pieces from the Press, comments, letters and the like. There are over 100 examples of violence and intimidation during the building workers' strike.[282]

A lengthier debate, on the role of trade unions in industry, took place in the Commons later that month, introduced by another backbench Conservative MP, Sir Edward Brown.[283] Chichester-Clark replied for the Government. He pointed out that any violence that occurred during picketing could be dealt with under section 7 of the 1875 Act or under other statutes, including the Public Order Act 1936 and the Police Act 1964. He also pointed out that there had been many arrests on picket lines that year – 350 during the miners' and dockers' strikes – and fines were imposed averaging £40,[284] which he considered to be a severe punishment. He then went on to claim:

> As the House knows—this has been made plain over and over again in the country—the Government do not direct the police. However, it is true that my right hon. Friend the Home Secretary has recently met the chief officers of police to discuss the whole range of problems involved in picketing, including manpower reinforcements between police forces and other forms of co-operation, and he has stressed the importance which the Government attach to the preservation of the right to work. He has assured the police

[282] HC Deb. 08 December 1972 vol.847 c.1891. The "book" he referred to was the NFBTE dossier.
[283] Brown was an unusual Conservative MP. He was a trade union member and led the 'Conservative Trade Union Movement'.
[284] Approximately £520 in 2017 values

> that they will have the fullest support of the Government in enforcing the law.[285]

Chichester-Clark's claim that the Government did not direct the police was misleading. As will be shown below, the F4 Division of the Home Office was behind the inquiry by West Mercia police. The senior Government law officer, the Attorney General, directed the DPP to order police investigations into allegations of criminal activity by pickets reported in the *News of the World* and *East-West Digest*.

The picketing during the miners' strike in January and February 1972 led the Government to establish an inter-Departmental Working Party on Picketing but nothing came of it until the autumn when pressure on the Government caused it to be resurrected:

> It issued a report in May, which Ministers reportedly failed to consider properly, and now had before it a request from the Prime Minister to urgently update this report in the light of developments which had taken place (eg the events of the dock strike).[286]

Despite Heath's intervention there was no rush to make dramatic changes to the law even though the Government was constantly urged to act. A Department of Employment memo observed, "Pressure from Government back benchers, and from the CBI, still remains for some Government action on the law on picketing, which is known to be under review."[287] It suggested the reintroduction of section 3(1) of the Trades Disputes Act 1927 which would make it, "a specific arrestable offence to picket in a way (eg in excessively large numbers) which led to intimidation, or obstruction or a breach of the peace…"[288] It was also suggested that Regulations could be issued under the Emergency Powers Act 1920, "… to make it a criminal offence to picket essential installation (such as power stations).." unless it was a dispute between power station workers and their employers, the CEGB.[289] The memo concluded, "It must be admitted that it is doubtful whether either alternative would in fact make significant

[285] HC Deb 18 December 1972 vol.848 c.984.

[286] Confidential Note from HP Brown to Mr Woolmer 21 September 1972, TNA LAB 43/718.

[287] Memo T R Hornsby 9 January 1973. TNA T357/490.

[288] The Trades Disputes Act 1927 was introduced by the Conservative Government a year after the General Strike. It outlawed mass picketing and secondary strikes. It was repealed by the Attlee Government in 1946.

[289] Some of these proposals were eventually adopted by the Thatcher Governments between 1979-85 (Ritchie 1992:201).

differences to the balance of industrial power." The Government had to weigh up the benefits of any change to the law on picketing, of which the officials were sceptical, with the need to be seen by its supporters to be taking action.[290]

The Conservatives were planning to introduce a 'second stage counter-inflation policy' and needed to assess whether the TUC would acquiesce or oppose it. It was noted that "moderate trade union leaders" could secure a majority within the TUC for acceptance of the Government's policy.[291] These were the same people that the Government sought to persuade to control picketing by its members.

The Government planned to publish a pamphlet setting out the law on picketing and hoped that the TUC would produce a code of conduct. An approach was made to the TUC General Secretary, Vic Feather, who replied that he had his own proposals to put to the General Council. He asked Heath not to write to him asking for co-operation in producing a pamphlet as this might make it more difficult to get the TUC General Council to agree to publish one of its own.[292]

After a lengthy exchange of memos and drafts of a proposed pamphlet on picketing involving six departments (Home Office, Lord Chancellor, Employment, Scottish, Trade & Industry, Prime Minister's Office) the project was abandoned. The Government feared that such a publication might be used by the left wing of the trade union movement to argue against any co-operation with the Government. It would make it more difficult for right wing union leaders to win a vote on the TUC General Council for acceptance of the Stage 2 prices and incomes policy. The Government announced instead that it was not going to change the law but would publish a new

[290] These issues were also discussed in a Briefing Note by HP Brown 24 January 1973 for the Cabinet's Industrial Relations Policy Committee TNA CAB129/162/7

[291] Memo from RRD McIntosh to Mr Bailey 24th January 1973 TNA T357/490

[292] Letter 18 August 1972 Christopher Roberts to Geoffrey Roberts, TNA LAB 43/718; letter from Christopher Roberts to Edward Heath 24 August 1972, TNA LAB43/718. Evidence of the lines of communication between the TUC and the Prime Minister include a telex from Christopher Roberts to Heath: "Mr. Feather telephoned to say that after reflecting and consulting some of his colleagues he would prefer you not to, repeat not to, send him the proposed letter suggesting that the TUC might draw up a code of practice for picketing. Mr Feather went on to say that he was taking some initiative on picketing and would like you to know in more detail what this was. He therefore suggested that I should have a word with him and I have arranged to go round to Congress House tomorrow afternoon." TNA LAB43/718.

statement for police, employers and trades unions,[293] which would be far less ambitious than a pamphlet. It would also welcome TUC proposals for picketing guidelines if and when they were published.[294]

To summarise, in public it appeared that throughout autumn 1972 the focus of agitation by employers and Conservatives was on changes to the law and police behaviour that would affect *future* industrial disputes and picketing, restrictions on the number of pickets at the entrance to a workplace and on the category of person that could picket premises during a strike. They wanted the police to be more willing to arrest any picket that acted unlawfully in the future.

The public discussion of these issues by Conservatives contributed to a narrative that there had been unprecedented levels of violent picketing during 1972 that had not been dealt with adequately by the police. Any post-strike investigations of picket line incidents were going to be encouraged. This is what happened after several newspapers and magazines published articles in the autumn 1972 about alleged incidents of violence during the strikes in the summer.

The final part of this chapter discusses how picketing was reported in the press. It shows the intersection between the NFBTE's dossier, the agitation of Conservative MPs and police investigations of picketing. This was the background against which the Director of Public Prosecutions, who was responsible for taking the decision whether to prosecute pickets, had to consider the issues discussed above: was there evidence that criminal offences had been committed by specific building worker pickets during the strike in the summer of 1972; if so, which laws were appropriate for dealing with them.

7.3 The press and police investigations

Although building workers were engaged in an official, national strike it did not receive the same level of reporting in newspapers as the other major industrial disputes in 1972, in particular the miners' and dockworkers' strikes. Darlington & Lyddon (2001:179) noted that, "As with the Manchester engineering sit-ins, there was limited

[293] 'No change in picket law' *The Times* 19 March 1973 p.1
[294] TNA FV 62/110

press coverage, and both disputes seemed overshadowed by events in the docks." The strike was reported regularly in the newspapers of the left but their circulation was small. There were two daily papers, the Communist Party-backed *Morning Star* and the Socialist Labour League's *Workers' Press*. The larger of the various weekly papers was *Socialist Worker*.[295]

The sparse national press coverage of the building workers' strike reflected its lack of direct impact. The construction industry was more fragmented than coal mining and dock work. Building workers were employed on thousands of sites spread throughout the country. The sites ranged in size from a handful to several hundred building workers. The strike did not affect the general public directly, unlike the earlier miners' strike (power cuts) or dockworkers' strike (shortage of imported food and of materials for industry).

Eight weeks into the strike Lee Wilson wrote in the London *Evening News*[296]:

> The only untypical thing about the strike of Britain's building workers, is that until now few people have been affected. At least visibly, immediately affected. Incredibly the dispute has been going since June 26.
>
> Rampaging pickets have not tossed bricks at the police. No one has been asked to tighten his belt. We haven't been warned that we are losing the flavour of Greatness, and so far the Government has not declared a State of Emergency.
>
> After the miners and the dockers, the building workers seem to be as menacing as a walk-out by a church choir.[297]

Wilson ended his piece by warning, "But now things might change." This reflected the unions' recent change of tactics, from selective local strikes to an all-out national strike. Press interest in the strike now increased, particularly as the dockworkers had returned to work and building workers took up the flying picket tactic.

As we have seen, many press reports of picketing were collated in the NFBTE dossier and when it was published it was featured by many newspapers, particularly the *News of the World*. Several newspaper reports of picketing were also discussed in *East-West*

[295] Archive copies for the period are in the Working Class Movement Library, Salford.
[296] This was one of two mass-circulation evening papers in London in the 1970's.
[297] *Evening Standard*, London 17 August 1972

Digest (discussed below). In response to these two publications the Government ordered police inquiries into a number of reported picketing incidents. Each of them is now discussed, together with two other important reports, in the *Sunday People* and the *Daily Mail*.

7.3.1 East-West Digest

East-West Digest was edited by Geoffrey Stewart-Smith, a right-wing Conservative MP who spent his career promoting anti-communist causes through his Foreign Affairs Publishing Co.. The bulletin was sent to every Member of Parliament as well as to senior civil servants.[298] The September 1972 edition contained an article headed, 'The Menace of Violent Picketing', which prompted several police inquiries.[299] The day that the strike ended, 15 September 1972, Tony Hetherington of the Attorney General's office wrote to Ryland Thomas, Deputy Director of Public Prosecutions (DPP) enclosing a copy of the September editorial from *East-West Digest*. Hetherington asked the DPP to,

> consider whether there is any material in this article which would justify police investigations of criminal offences. In particular, he would like to have some information about the incidents described on pages 644-5 concerning the picketing at Scunthorpe, at page 645 concerning Halifax and at page 646 concerning Sheffield. He would be grateful if you could ask the appropriate police forces for some information about these matters. [300]

The DPP wrote to the Chief Constables of Lincolnshire, West Yorkshire and Sheffield & Rotherham asking each one to investigate the alleged incidents in their area and prepare a report.[301] A summary of each alleged incident from *East-West Digest* is presented below, followed by the outcome of police inquiries. They show that none of the three police forces gave a fraction of the time and resources to the investigations compared with their counterparts in West Mercia and Gwynedd.

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[298] Dod's Parliamentary Companion 1971 - New Government Edition, Epsom, Surrey, p.515. See TNA FCO95/906 for further information about Stewart-Smith

[299] Extracts from the *East West Digest* (pp.644-648) are in the files of several Government Departments for 1972-73. The September 1972 article on picketing is in TNA LAB10/3510.

[300] TNA DPP2/5159

[301] Letter 19 September 1972 TNA DPP/2/5159

7.3.1.1 Neap House Wharf, Lincolnshire

The first report in *East-West Digest* involved the dockworkers strike:

> A statement issued by Lincolnshire Constabulary…at the height of the clashes said "it is very disturbing that after so-called peaceful picketing we have five police officers detained in hospital. Two of these officers have back injuries and cannot move and two others were brought in unconscious" The situation arising from the violent clashes outside the Neap House Wharf resulted in sizeable police reinforcements having to be called in… (p.645)

The Chief Constable of Lincolnshire responded to the DPP on 4th October 1972. He enclosed two reports on the policing of picketing during the dockworkers strike in August.[302] The main report had been completed on 13th September 1972 and covered the police operation to deal with mass picketing at the ports on the Rivers Trent and Humber, including Neap House Wharf. It described the deployment of hundreds of police to keep the ports open. The summary noted that 60 dockers were arrested during the four weeks of picketing and 31 were dealt with at court. Of the rest, 28 were bailed to appear at the Scunthorpe Magistrates Court on 14th September 1972 and one had been committed for trial at the Crown Court.

The DPP passed on the report to the Attorney General on 19 October 1972 and included a note of the outcome of the prosecution of pickets:

> All but about 14 now dealt with. The vast majority charged with Sec.5 Public Order Act and each fined £40 and bound over for 12 months in a sum of £100.
>
> One man charged with Sec.5 Public Order Act and also two offences under Section 51 Police Act, 1951 (assault on police). Fined total of £190 and six months imprisonment suspended for 2 years.
>
> One man charged with possession of offensive weapon and Sec.5 Public Order Act. Fined £25 and £40.
>
> One man charged with Sec. 47, ass.a.b.h.[303] and fined £60.
>
> Most serious charge was one of wounding (Sec.20) and has been committed to Crown Court – should be dealt with on 19.11.72.[304]

[302] TNA DPP 2/5159
[303] Assault occasioning actual bodily harm. (Section 47 Offences Against the Person Act 1861)
[304] TNA DPP2/5159

The police report included several photographs that showed pickets appearing to pull down wire fencing. In addition, there were photographs of items confiscated from dockers' cars including dockers' hooks, wheel braces, shovels, a cricket bat and a bag of golf clubs. The implication was that the dockers brought these to attack strike breakers, even though they were everyday items carried in someone's car.[305]

7.3.1.2 J & J Fee Limited, Halifax

The *East-West Digest* reported an alleged incident in Halifax:

> …120 pickets had taken over a housing development in Halifax where 60 men were at work. Threats were uttered to bring in "the heavy gang from Leeds" unless work stopped at once.[306]

West Yorkshire police sent a report to the DPP on 13 October 1972. It stated that 70 pickets were present at a site of 40 non-striking building workers. A police inspector and sergeant attended by which time the pickets had already addressed the non-strikers. The inspector explained the law on picketing to the pickets' leader, particularly commenting on the number of pickets present. The pickets' leader replied that they were going to disperse into small groups to picket the many building sites in town that were still working.

The police then spoke with the non-striking workers at the site. Comments were made about threats and intimidation but none of the builders would give a formal statement and they decided not to continue working for the rest of the day. The report concluded that it would now be difficult to trace the pickets but that if the DPP wanted the workers to be re-interviewed they would attempt to trace the picket leader and some of the other pickets.[307]

Pressure for an investigation into the picketing at this site came from the main contractor, J & J Fee Limited, which was building several hundred council houses for Halifax Corporation. Peter Fee sent a statement to his local MP, the Conservative

[305] Photos in TNA DPP2/5159
[306] *East-West Digest*, September 1972 p.645. The report was based upon a statement from 'Yorkshire building trades employers, issued in mid-August'.
[307] Report in TNA DPP2/5159

Wilfred Proudfoot, who in turn sent a copy to the Home Secretary, Carr, with the following comment: "The agitation within my constituency is not only from dyed in the wool Tories but from those whose political affiliations I do not know but who are moderates but all insist that this evil must be stopped."[308]

7.3.1.3 Motorway development at Sheffield

The *East-West Digest* reported:

> …three huts and an excavator caught fire and a gas cylinder exploded at a motorway construction site in Sheffield after 90 workers had defied pickets by carrying on working. (p.646)

Rotherham CID sent a one-page report to the DPP on 5 October 1972. It stated that fires were started using oil and paraffin stored on the site, damaging two wooden huts completely; a lorry used as a mess room was gutted and a 'Grader' machine was extensively damaged. The report noted that, "Extensive enquiries have been made, a number of pickets have been traced, interviewed, and eliminated, and the matter remains undetected."[309]

The DPP forwarded the three police reports from the Lincolnshire, West Yorkshire and Rotherham forces to the Attorney General. Due to the intervention of Wilfred Proudfoot further inquiries were made of the Halifax incident but neither the DPP nor the Attorney General's department believed that those inquiries had much chance of success.[310] There was little prospect of arresting and prosecuting pickets weeks after the alleged incidents occurred.

To summarise, the police were asked to investigate three incidents featured in *East-West Digest.* It is unlikely that this reflected the influence of its editor, Stewart-Smith, though his journal conveniently grouped together reports and newspaper articles in that September edition. The decision of Rawlinson to order police investigations was in response to much wider concerns within the Conservative Party about picketing. Just before the party conference Wolff had noted, "Every Minister who has visited the

[308] ibid.
[309] ibid.
[310] See correspondence between the DPP, Attorney General and police forces in TNA DPP2/5159.

provinces in the last few weeks has testified to the depth of feeling that violent picketing, especially in the recent building strike, has aroused."[311]

The Lincolnshire police report confirmed that pickets were arrested on picket lines. It showed the type of charges that were used, that pickets were brought before the magistrates' court speedily to be tried and, if convicted, received fines. This contrasts with the way that the North Wales pickets were treated a year later.

As will be seen in the next chapter there were similarities between Fee's lobbying of his local MP, Proudfoot and of Shropshire builders lobbying their local Conservative MPs (such as John Biffen). The difference was that the West Yorkshire police did not use Fee's complaint as the basis for a major police investigation into the actions of the 'Leeds heavy gang' or other Yorkshire pickets. The three police reports discussed above show the inconsistencies in the application of the law towards pickets in 1972 and the charges that were laid against them. The decision to investigate and charge the North Wales pickets was carefully calculated, as will be shown in the next chapter, and was guided by the Home Office from the very beginning.

7.3.2 The News of the World

A second set of police inquiries was instigated as a result of an article about the building workers' strike published in the *News of the World* on 22nd October 1972.[312] The Attorney General wrote to the DPP:

> The Law Officers have asked me to send to you the enclosed cutting from The News of the World relating to industrial sabotage. They ask whether you can "take it on board in the course of your present and future enquiries" into this matter.
> The difficulty as I see it is that there is no hard evidence on which the police can act. It is one thing to write a newspaper article but another to have sufficient evidence to found a police investigation.[313]

The two-page newspaper article was headed, "THE STRIFE MAKERS EXPOSED" and claimed that it was the result of a *News of the World* team spending months,

[311] Letter to Mr Prior and Lord Carrington 5 October 1972, Churchill Archives Centre WLFF 3/2/4
[312] The *News of the World* was the UK's biggest selling Sunday newspaper. In the 1970s it sold five million copies each week.
[313] Letter from John Glover, Attorney General's Department, to the DPP 25th October 1972: TNA DPP2/5159

"seeking the truth about The Strife Makers." It was published several days before the NFBTE sent its dossier to the Government and to the media. A second article was published a week later which suggested that the newspaper's earlier research was now supported by the contents of the dossier.

The main claims in the *News of the World* article will now be discussed. Each one is followed by the findings of the various police forces that were ordered by the DPP to investigate the allegations.

7.3.2.1 Henry Boot site, Corby

The report about the Henry Boot site was written by a staff journalist, Simon Regan. He claimed that he posed as a picket during six weeks of the strike:

> On August 30, at the height of the strike, I watched pickets in action at the Henry Boot site at Corby, Northants. Two workmen were injured with bricks. Another man, chased by pickets, was so scared he locked himself in his home. A site office was set on fire, three windows were broken and car tyres were slashed.[314]

Northampton and County Constabulary investigated Regan's claim and prepared a report for the DPP.[315] Police Inspector Cooper was responsible for supervising the policing of the picketing of the two Henry Boot sites and said of Regan's article:

> I have read the account of this industrial dispute in the 'News of the World' Newspaper and the comments surrounding the alleged trouble at Henry Boot site have been brought to my notice. I have no evidence at all to support this claim and at no time did I see or receive any notification of incidents as setting light to huts or car tyres being slashed. No subsequent complaint was made to my knowledge at this station that damage had been caused as a direct consequence of this industrial action. I remained in contact with both sides of this dispute locally and neither of these parties brought to my attention anything of this or a similar nature.

Cooper's evidence was supported by statements of other officers that attended the site - Sergeant McCormack, PCs Plowright and Bird - and by the Henry Boot site manager, Norman Bawdon. In a statement to the police dated 13th November 1972, Bawdon stated,

[314] Cutting from News of the World 22 October 1972 in TNA DPP2/5159
[315] Letter TNA DPP2/5159

> I have been shown the article in the News of the World newspaper regarding events which are supposed to have taken place on these sites on the 30th August, 1972. I can quite definitely state that no workmen were injured by bricks being thrown at them, no-one was chased off the site, no site office was set on fire nor windows broken and no car tyres were slashed.

Detective Sergeant Wright prepared a summary of the evidence and concluded, "From the enquiries made the investigating officers are of the opinion that the alleged incidents on 30 August 1972 never took place." Most notable of all he wrote:

> 10. It is the contention of the investigating officers that the author of the article, Simon REGAN was either:
> (a) Never present at the Henry Boot and Sons (Midlands) Ltd. Site at Corby on 30th August 1972, or
> (b) if present, completely fabricated the incidents referred to in this article.[316]

Thus, the conclusion of the police inquiry was that Regan's report in the *News of the World* was untrue. Nevertheless, Regan repeated his story in a documentary produced by Woodrow Wyatt, *The Red Under the Bed*.[317] It was broadcast halfway during the first Shrewsbury trial, on the evening that the prosecution had concluded its case. The programme, like the newspaper articles used at the trial, could only have a prejudicial impact on the minds of the jury.

An insight into Regan, his possible contacts and motives for writing the *News of the World* article was found in a government file dealing with Wyatt's television programme.[318] It reveals a link between Regan and government propaganda agencies. One of the most significant documents is a memo of 21 November 1973 from T.C. Barker of the Information Research Department, (IRD) a secretive branch of the Foreign Office (Wilford 1998; Lashmar & Oliver 1998). Barker's memo noted that Wyatt, "…approached of his own accord another old and trusted contact or ours, Mr. McKeown of Industrial Research and Information Services Limited (IRIS)…".

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[316] The full Northampton Police report is in TNA DPP2/5159

[317] The *Red Under the Bed* programme http://explore.bfi.org.uk/4ce2b7603ed62 was broadcast on ITV on 13th November 1973. It is discussed in chapter 9. Wyatt was a former Labour MP who moved politically to the Conservative right and promoted anti-communist causes in a column 'Voice of Reason' in the *News of the World. (http://ind.pn/2wjKR4H)*

[318] TNA PREM15/2011.

Barker considered the film to be, "…a feather in the cap of the modest but well-informed, and effective, anti-Communist organisation IRIS."[319] He continued,

> It is…worth noting that the News of the World reporter[320] who figured prominently in the programme as a witness of violent picketing had been originally brought to Mr Wyatt's attention by IRIS and ourselves, and that the newspaper series to which he had contributed in 1972 had been completed with the active help of IRIS in the first place.[321]

7.3.2.2 Blue Circle site, Birmingham

Regan wrote:

> On August 23 he (Peter Carter[322]) led about 100 pickets, including me, on the Blue Circle Cement depot at Sparkbrook, Birmingham. One policeman was kicked in the mouth and lorry windows were smashed with bricks. The previous day at another cement depot, there was much spitting, swearing and scuffling and six men were arrested. …Twelve days earlier, Carter led a coachload of pickets, carrying pickaxe handles, who chased men off a site at Rotherham, Yorks.

Regan claimed to have visited Yorkshire as well.

> One of the most notorious picket squads became known as "The Leeds Mob" formed at a meeting of 4,000 strikers in Leeds on August 5. Repeatedly as I toured the North with the pickets I heard workers told: "You'd better come out – you don't want the Leeds Mob here, do you?"

There is no evidence that Peter Carter led picketing anywhere in Yorkshire. He was active in the West Midlands region. It is unlikely that Yorkshire strikers would need coachloads of pickets from Birmingham, over 90 miles away, if there was a "Leeds mob" formed at a meeting of 4,000 strikers on 5 August.

The Birmingham police reported to the DPP within just three weeks of the request.[323] Once again a police force concluded that Regan had fabricated his story:

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[319] Industrial Research and Information Services Limited. IRIS was a covert grouping funded by the Government and private businesses to promote pro-capitalist ideas and individuals within the trades unions (see Milne 2004:386-7).
[320] This is a reference to Regan
[321] Barker ended his note by advising that a copy of it be shown to Sir John Rennie, the Director of the Secret Intelligence Service (MI6) 1968-1973 and previously director of IRD.
[322] Peter Carter was widely known as a leading member of the Communist Party in Birmingham.
[323] Report 20 November 1972. TNA DPP2/5159

> With regard to the "News of the World" article of 22 October 1972, on that particular day Peter CARTER was not seen in Sampson Road North and at no time were there 100 pickets in attendance. The article describes the premises as the "Blue Circle Cement Depot" and claims that on the day in question a policeman was kicked in the mouth, also that lorry windows were smashed. None of these incidents occurred…and it would appear that the author is either mistaken in the location of the incident, or suffered at the time a figment of imagination.

The police did arrest some pickets at the Blue Circle cement depot. The police report noted that on 23 August 1972 there were scuffles between pickets and police when the former attempted to prevent a lorry from leaving the cement works. Six pickets were arrested. Later that afternoon two further pickets were arrested after they,

> …commenced to play a game of chess, placing the board for that purpose on the roadway immediately in front of the gateway of the depot, and sitting either side. They were warned about their action but paid no heed, so were also arrested and charged later with obstructing the highway.[324]

The following day four more pickets were arrested for trying to block a lorry from entering the depot. A report in the *Morning Star* the following month noted that six men appeared in court and denied charges of "disorderly conduct". They were remanded on bail. Another man, "…admitted committing a disorderly act outside the depot on August 24 and was given a conditional discharge." [325]

Of the twelve arrested pickets at the Henry Boot site, six pleaded guilty at the magistrates' court on 19 October 1972 to charges of obstruction or disorderly conduct. Four of them were fined between £5 and £10,[326] two were given a conditional discharge for obstruction and one was fined £10 for assaulting the police. The six pickets who pleaded not guilty appeared in court the following day, when they were all found guilty of disorderly conduct and fined between £5 and £15.

The following week's edition of the *News of the World* continued Regan's theme. An unattributed article referred to the NFBTE dossier and concluded, "Criminal charges are almost certain to be preferred against some picket leaders."[327] This was the first

[324] Letter from Assistant Chief Constable to the DPP 20 November 1972, page 3, TNA DPP2/5159.
[325] Cutting from the *Morning Star* 22 September 1972 in TNA LAB10/3510.
[326] £10 in 1972 is worth £130 in 2017. (http://bit.ly/OoCn2k)
[327] Cutting from News of the World 29 October 1972 in TNA LAB10/3510.

suggestion that any pickets were likely to be arrested and charged for incidents arising from a strike that had ended weeks earlier.

The trials of the North Wales building workers a year later related to picketing in Shrewsbury and Telford on 6th September 1972. Two national newspapers, the *Sunday People* and the *Daily Mail*, published articles shortly after that day, highlighting the mass picketing at the Brookside site of Robert McAlpine in Telford.[328]

7.3.3 Sunday People

The *Sunday People* article of 10th September 1972 was headlined, "The Wrecker". It was a profile of Des Warren and described him as, "the leader of pickets at housing sites at Shrewsbury last week." It was based upon an interview with Warren by two of their journalists on the evening that he returned home from the picketing on 6th September (Warren, 1982:18), though no journalist's name is attributed to it. The article was illustrated with a large picture of him and was used by the prosecution at his trial in October 1973.[329]

Warren recalled, "On arriving back home in Prestatyn later that same evening, I found two Sunday People reporters waiting for me. They had been there since 2 o'clock in the afternoon…" (ibid.) It is noteworthy that the two *Sunday People* journalists had discovered Warren's identity and home address and were waiting at his home hours before the picketing in Shrewsbury had concluded that day. It is not known why they had selected Warren to be interviewed for an article on picketing during the strike. There were more prominent building workers' leaders and Communist Party members whom they could have interviewed. The *News of the World* two-page feature named and printed photographs of several men, including Alan Tattam, Peter Carter and Lou Lewis. It described them as leading communists and organisers of flying pickets

[328] Warren believed that the pressure to investigate and prosecute the North Wales pickets came from Sir Alfred McAlpine & Sons. (Warren 1982:25-26). The McAlpine family were very influential in North Wales and the son-in-law of Sir Alfred McAlpine and company director, Peter Henry Bell, became the High Sherriff of Denbighshire in 1973.

[329] Trial exhibit item B Bundle 7, TNA J182/23. The article had no direct evidential value other than that of being a newspaper article that was published on 10th September. But the prosecution did not need it to prove a particular allegation. Instead a page-long article containing Warren's photograph below a headline, The Wrecker, was useful to them to reinforce a point; it could have a visually potent effect.

throughout the strike.[330] Regan claimed he attended a strike meeting at the offices of the Transport & General Workers' Union where Lewis gave details of five London sites that were to be picketed to a standstill.

The newspaper articles in the left-wing press in July and August 1972 had also named several senior Communist Party members who were active in the dispute, amongst dozens of active CP building workers throughout the country. The most prominent were Carter, Lewis and Alan Abrahams who were leading the strikes in Birmingham, London and Merseyside respectively. Their names appeared frequently in the *Morning Star* whereas Warren was not mentioned at all.

Warren was an unknown compared with them.[331] He was one of approximately 250 pickets that had gone to Shropshire on 6th September. He was a union activist and an experienced shop steward on the sites at which he worked. At the start of the strike in June 1972 Warren was unemployed and had difficulty finding work because employers blacklisted him. During the strike, he was as a member of the *ad hoc* North Wales Area Strike Committee and co-ordinator of picketing in the area (Warren1982:15).

Warren (and Arnison 1974:47) believed that he was named and subsequently became the centre piece of the trials because he was an effective leader. The fact that he was less well known than other CP members and came from a region of Britain with a lower density of trade union membership made him an easier choice for the authorities. They were more likely to secure a conviction and deterrent sentences against Warren and fellow North Wales pickets than a prosecution of pickets from Liverpool, Birmingham or Leeds where the trade unions were stronger. The *Sunday People* article raised Warren's profile considerably and was used as "evidence" against him at his trial.

[330] 22 October 1972

[331] Carter, Lewis, Abrahams and Tattam were named by Conservative MPs during debates about industrial relations: HC Deb 18 December 1972 vol 848 cc927 and HC Deb 08 December 1972 vol 847 cc1891.

7.3.4 Daily Mail

An article in the *Daily Mail* on Monday 11 September 1972 was headlined, "Terror ordeal of a man who defied a strike". It featured a labourer, Clifford Growcott, who had been working at McAlpine's Brookside site in Telford on 6th September. The article alleged that Growcott suffered eye injuries as a result of a beating by pickets who pulled him from scaffolding when he refused to stop work to attend a site meeting. These allegations were repeated on a number of occasions in the following twelve months in newspaper articles and in speeches by Conservative MPs. Growcott gave evidence at the first Shrewsbury trial. The reports and his claims about the injuries that he sustained are discussed in more detail in Chapter 9.

The newspaper articles discussed above would not have made an impact in isolation. They have to been seen in the wider context of industrial relations in 1972. The Government's attempts to hold down pay increases and public-sector spending were met with opposition from many trade unions. National newspapers had reported an unprecedented number of strikes during the year.[332]

Although the police investigations into press allegations of picket-line violence concluded that many were false, the newspaper reports contributed to a narrative that equated pickets with violence. The Government was aware of the importance of the press disseminating a negative view of strikes and pickets. Just after the dockworkers' strike had ended in July a letter from the Prime Minister's office noted:

> It was also important to keep in front of the public the Communist affiliations of Mr Steer, the Secretary of the unofficial Shop Stewards Committee[333]. The Press Office at 10 Downing Street in consultation with the press offices of the other Departments concerned would do what they could to put these points over to the media.[334]

The West Mercia Police report also acknowledged the impact that press reporting (and parliamentary debates) had upon their inquiries. [335] It claimed that potential witnesses

[332] A total of 23.9 million working days were lost due to strike action in 1972 compared with 13.5 million in 1971 and 7.1 million in 1973 http://www.ons.gov.uk/ons/dcp171776_411531.pdf .
[333] Bernie Steer was also one of the 'Pentonville 5' who was imprisoned for contempt of court in July 1972.
[334] Letter Christopher Roberts to Geoffrey Holland, Department. of Employment, 18 August 1972 in TNA LAB 43/718.
[335] WMPR report p.24

amongst non-strikers and "passive pickets" were frightened to give evidence due to possible reprisals but were emboldened both because of the size of the police inquiry and the coverage given to the issue of mass picketing in articles in the *Observer* and the *News of the World* and exchanges on the subject in both Houses of Parliament.

Conclusion

To sum up, this chapter has provided evidence to show the political nature of the pressure for legal action against mass picketing. Various employers' organisations and individuals demanded tougher policing and changes to the law. They were supported in this by Conservative Party members and MPs who took the issue to the Party conference and raised it in Parliament. The local and national press reported picketing incidents and the subsequent demands of employers and MPs for action by the Government and the police. Each group fed on the other to create a picture of a country under threat from militant trade unionists that had to be dealt with through the criminal law.

The Conservative Party hierarchy were well aware of these concerns and the Government itself also relied upon the press to report ministerial speeches setting out its position, that the law was adequate but needed to be enforced by the police. The documents show that the Government wanted to appease the employers and party members but avoid a further confrontation with the trade unions when it needed TUC support for its incomes policy.

The fundamental message that the Government put across in the final months of 1972 was that the problem lay with the police and courts. The former had not been active enough on the day in controlling pickets and arresting those that were behaving unlawfully. The latter were not imposing sufficiently severe sentences when pickets were convicted of offences. A carefully constructed message from the Conservatives, which was reported in the press, made a distinction between lawful strikes and picketing (involving peaceful behaviour by a handful) with the violence and intimidation of mass picketing. The press reporting was one-sided and, as has been shown, untruthful at times but it reflected the political outlook of its proprietors that also wanted action taken against trade union power.

The press narrative set the scene for the delivery of two police reports about the activities of North Wales pickets. The reports were sent to the DPP on 19 December 1972 and were the beginning of a process that led to the imprisonment of pickets for conspiracy exactly twelve months later. These are now discussed in the next chapter.

Chapter 8. Police investigations, charges and dress rehearsals

This chapter is an analysis of the documents and data that have been obtained about the police investigations, the arrest, charging and preliminary trials of North Wales building workers. The chapter is divided into six sections: the role of local builders in pressurising West Mercia police to investigate; the political theme in the police reports; the response of the DPP; the role of Robert Carr, the Home Office and Assistant Chief Constable Rennie; the legal opinion of Maurice Drake QC; and, finally, the trials at Mold Crown Court.

8.1 The pressure to investigate

In the previous chapter, it was noted that political pressure from employers and Conservative Party activists, assisted by press coverage, led the Attorney General to request reports from several police authorities about picketing in their areas.[336] Most of the investigations were completed within a few weeks and the reports showed only limited efforts to trace and interview witnesses. But, unknown to many, a significant police operation was underway in autumn 1972 into the activities of the North Wales pickets during the strike. This was also in response to pressure from local employers, but the documents suggest that the Government, in particular the Home Office, were instrumental in directing the West Mercia police to conduct an extensive investigation from the start.

Two police forces produced reports, West Mercia and Gwynedd.[337] These were sent to the DPP by West Mercia's Chief Constable, John Willison on 18 December 1972.[338] Yet Willison's letter gave no indication of the initiative for the police inquiries. There was no reference to an earlier request for a report from the DPP; Willison's letter appears to come out of the blue.[339] It begins simply, "Two files are forwarded, one by

[336] The office of the DPP was not a Government department. It was supposed to be an arms-length body that took decisions on prosecutions without political interference, although it was answerable to the Attorney General. The DPP now heads the Crown Prosecution Service, which was formed in 1986 from an amalgamation of the DPP's office and local police prosecution departments (Rozenberg 1987).

[337] The Gwynedd report has not been traced but the surrounding evidence suggests that it was similar in content to the West Mercia report except that it covered picketing in North Wales. It was the basis for the prosecutions of pickets at Mold Crown Court in June and July 1973.

[338] Letter from Chief Constable to DPP 18 December 1972, TNA DPP2/5159.

[339] No exchange of correspondence between the DPP and the West Mercia and Gwynedd police forces has been found in Government files at the National Archives before 18th December 1972 about these investigations. This contrasts with the reports sent to the DPP by police forces in Rotherham,

Gwynedd and one by West Mercia Constabulary, concerning the actions of pickets on a number of dates and places in Gwynedd and on one day in Shrewsbury."[340]

West Mercia Constabulary had actually produced two reports.[341] The first one, (WMPR) was sent to the DPP by Willison. It had been prepared by Chief Superintendent F.R. Hodges and Detective Chief Inspector C. Glover.[342] The report contained a summary of the picketing in Shrewsbury and Telford on 6 September 1972, the witness and other evidence that had been obtained in the following months, and their recommendations for prosecutions.

The second West Mercia report[343] (WMCR) was prepared by Hodges alone and addressed complaints that the police had received from building contractors about the inadequate policing of picketing on 6th September. It gave a detailed account of the police response to picketing on the day and an explanation for the lack of any arrests. It is undated but appears to have been completed in Spring 1973.

The WMCR shows that, from the very beginning, local building contractors put pressure on the police to investigate and prosecute the North Wales pickets. It began within hours of the pickets leaving Shrewsbury and Telford on 6th September. A company director, Walter Watkin,[344] organised a meeting at his home that evening. In attendance were his co-directors, Peter Starbuck and Brian Jones; Maurice and Graham Galliers, directors of Maurice Graham Limited;[345] and the press relations officer of Sir Alfred McAlpine Limited[346] who had travelled over 50 miles from

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Lincolnshire, West Yorkshire, Birmingham and Northampton. The covering letters from each police force make reference to the DPP's request for the report.

[340] The two reports were not with Willison's letter in the DPP file at the National Archives or with any other document that referred to the police reports e.g. the form from the DPP to the Attorney General asking for the nomination of counsel said that the two police reports were attached (TNA DPP2/5159) but no copies were discovered in the Law Officers' files at TNA either.

[341] The two West Mercia reports only became available in March 2017, after the main collection of documents for this thesis had been completed. (See Chapter 4. Methods.)

[342] West Mercia Constabulary *Disorderly conduct by pickets at building sites in Shropshire on Wednesday 6th September 1972*. Copy in author's possession. Referred to as the "WMPR".

[343] The report does not have a formal title. The front cover simply has a heading, "REPORT FILE". For simplicity, it is referred to in this thesis as the 'Complaints Report' or "WMCR".

[344] Watkin was a director of Watkin Starbuck & Jones, the main contractors at the Severn Meadows site in Shrewsbury. The Complaints Report noted that, "Mr. WATKIN is a Magistrate at Oswestry and is a man of substantial local standing…." (p.2 para.7-8)

[345] Maurice Graham Limited was the main contractor on The Mount construction site.

[346] Sir Alfred McAlpine Limited was the main contractor of the Brookside site at Telford. The company has been referred to as McAlpine in this thesis although there were linked companies that included the

Hooton to attend. Watkin invited Superintendent Brookes to the meeting, who attended with Chief Inspector Gradwell. Although the, "…meeting accomplished nothing…"[347] several of the attendees followed it up with written complaints and meetings with MPs.

The first was Starbuck, who met John Biffen, Conservative MP for Oswestry, on Saturday 9 September. Biffen asked Starbuck to put in writing the complaints that he had made about the picketing at the Severn Meadows site. When Biffen received Starbuck's letter, which included a two-page report prepared by Starbuck's company,[348] he forwarded it to the Home Secretary, Carr. In Biffen's covering letter he said that he had recently had,

> …. a personal meeting with a number of building employers… On a personal note I would like to assure you that the activities of building strike pickets is causing immense anxiety in north Shropshire. It is an anxiety I share; and I believe that we now stand measurably nearer bloodshed in industrial disputes than six months ago. I have not reached this judgment casually.[349]

The Director of the Midlands region of the NFBTE, Peter Smith, wrote to Willison on 11 September.[350]

> We understand that there was to be some form of Enquiry, and my officers hope that the results will be communicated to them and will give some reassurance that effective measures will be taken to protect persons and property from this kind of violence in the future.[351]

Two days later Superintendent Patrick visited Smith at the NFBTE office in Birmingham and took a statement. Smith confirmed that he did not want his letter to be recorded as a complaint against the police:

> I am of course anxious that an investigation should take place, but this I hope will be with a view to tracing the culprits responsible for the outrages

surname in their titles. A brief history of the various companies is given in *Sir Robert McAlpine Ltd v Alfred McAlpine plc* [2004] EWHC 630 (Ch) para.2.

[347] Complaints Report pp.2-3.

[348] Untitled report of Watkin Starbuck & Jones Ltd. It is contained in a bundle of documents entitled "APPENDIX FILE" that accompanied the WMCR, as Appendix C.

[349] Letter John Biffen to Robert Carr 18 September 1972 ibid.

[350] This was the day after the *Sunday People* article profiling Des Warren as "The Wrecker"

[351] Letter in WMCR "Appendix File".

> in Shropshire last week, and not with a view to getting any police officer into any kind of trouble.[352]

McAlpine also prepared a report about events at their site, Brookside.[353] Hodges noted that McAlpine had not formally complained to West Mercia Police and he, "… understood that they have taken action in other ways, for example, by privately petitioning members of Parliament with a view to changes in the law on picketing being instituted."[354]

The Complaints Report makes clear that the employers were demanding a prosecution of pickets as the price for dropping any complaint against the police. Hodges emphasised that putting pickets on trial was the NFBTE's priority, regardless of whether the evidence was strong enough to secure a conviction:

> "Mr SMITH of the N.F.B.T.E. has intimated confidentially that the various building employers as a whole are very pleased with the fact that such a comprehensive investigation has been carried out. He has gone on to say that if a case comes to Court then, irrespective of the outcome, there would be no pursuance of any complaint against the Police." (WMCR p.4)

On 18th September, a team of police officers was established.[355] Hodges was appointed by Assistant Chief Constable Rennie to lead the inquiry. The next day Hodges interviewed Watkin and Jones, followed by the Galliers brothers.[356] He summarised the position: "…the complaint is not that the Police took no action, but that such action as was taken was ineffective." (WMCR p.5)

Hodges claimed that the police would have acted differently if they had been forewarned of the visit of the pickets, "…or of the type of disorder likely to occur – or even the scale of numbers involved. It has also become apparent during the enquiry that knowledge of each of these factors was either in Police possession or was easily obtainable." (WMCR p.14) He claimed that this was not just a local issue; there was a lack of any national contingency plan to deal with picketing. Hodges referred to the

[352] Ibid.
[353] WMCR Appendix File, Appendix D: Telex from R.J. McAlpine Esq., Telford to Sir Robert McAlpine & Son Ltd. Head Office, Hooton.
[354] WMCR p.4
[355] Darlington and Lyddon (2001:206) put the start of the police inquiry at "…early in November" but the discovery of the report now shows that it began on 18 September, if not sooner.
[356] WMCR pp.2-3.

NFBTE dossier that identified most "trouble" occurring in the North West and Yorkshire, North Wales and the Midlands yet there was no sharing of intelligence between them.

> Indeed, the first conference of its kind appears to have been called by West Mercia, at the outset of the current investigation, when Officers were invited from Staffordshire, Manchester, Cheshire and North Wales to discuss similarities in the disorders occurring in their respective areas. (WMCR p.16)

8.2 The politics in the police reports

Although the two West Mercia Police reports related to a criminal investigation into picketing incidents, it is notable that they highlight the politics running through the dispute. Hodges reported that at the police conference in Chester,

> Gwynedd Constabulary proved to be well organised from the point of view of special branch surveillance. [357] At the conference already referred to, it was found that they had a wealth of information about the strike and the intentions of the pickets – in some cases to the extent of verbatim records of what was said at meetings. (ibid.)

The role of the Building Workers Charter group was discussed.

> Bearing in mind the recent disorders during the miners' and dockers' disputes, the Police service generally should have appreciated on a national basis that this type of militancy was liable to be produced in the building dispute…References have been made elsewhere to political aspects in the miners' and dockers' disputes and in this connection the Communist-inspired Building Workers Charter, drawn up in April, 1970, was well known to Special Branch officers.
>
> The possibility of serious disorder was not a confidential matter as it had been predicted in the "News Review", published by the Economic League,[358] from the time the Charter was drawn up. This publication had also commented from time to time on the increasing use of "flying pickets". Whilst accepting that the publishers many have a private axe to grind, much of what is written has the ring of authenticity and is therefore worthy of consideration. (WMCR pp.14-15)

[357] It may seem surprising that a rural police force in North Wales was identified as having such an efficient Special Branch but their area included one of the main transit points between the UK mainland and Ireland, the port of Holyhead. This was kept under constant surveillance in the 1970s for IRA movements of people and weapons.

[358] The Economic League was a secretive body set up by employers just after the First World War to gather intelligence on trade union and political activists. It established a blacklist that member firms could use to deny employment to someone. When it closed in 1993 personnel and the blacklist transferred to the Consulting Association, which was funded largely by construction companies (Smith & Chamberlain 2015)

This focus upon trade union activists was repeated when Hodges noted that DCI Glover attended a Security Conference at Birmingham City Police Training School. During a session on "industrial disputes in the building trade" the speaker, "…a Detective Sergeant in Birmingham, referred to a list of names of the militant organisers, all of whom are CP or IS members."[359] (WMCR p.19)

Warren was identified in several ways as being both a leader and someone who was to be selected for prosecution.

> The man WARREN deserves a special reference: he does not have the confidence of his union but appears to have a special knack in arousing workmen to militant action. He is strongly inclined to the Left and appears to eke a living somehow by spreading industrial disorder in the building trade. Certainly he admits (the only thing he did admit) to being "blacked" on various sites and has to resort to pseudonyms to gain employment. As a result of a recent similar incident, Gwynedd Constabulary have put forward a suggested charge against him of obtaining the opportunity to earn remuneration by deception.[360]

West Mercia obtained information about Warren's background, most likely from the Home Office (discussed below): "In this connection, there does not appear to be any National liaison in Special Branch and it is interesting to note that one "leader" in the present enquiry (Desmond Michael WARREN), who was active on the Barbican site dispute in the City of London, was "lost" to New Scotland yard after 1966 when he left the area." (WMCR p.15)

The police also obtained information about Warren from his own union. [361] In discussing the policy of raising a levy[362] amongst members that were allowed to return to work at sites where the employer had agreed to the unions' claim the report alleged, without corroboration, that some of this money had been misapplied for private gain.

[359] "IS" were the International Socialists, publishers of *Socialist Worker*. They are now known as the Socialist Workers Party (SWP).
[360] West Mercia Police Report p. 44. It would have added insult to injury if a trade unionist who was blacklisted by employers was then prosecuted by the police for earning money by using a false name. Smith and Chamberlain (2015) have shown how the police actually assisted the employers in compiling the blacklist by sharing intelligence with the Consulting Association.
[361] The source was probably the UCATT official, Albert Prest. In his memoirs, he recounted a visit to the police to discuss the picketing and Warren. (Modern Records Centre, Warwick MSS.78/UC/6/1)
[362] £1 per week would be collected from those union members earning a full week's pay to contribute to the expenses of those on strike who needed to pay for petrol or hire vehicles to go picketing.

"Information has been received from a confidential source that a man, Dennis Michael WARREN, is being disciplined by the union for this – and other things." (WMPR p.42)

Other supporters of the Building Workers' Charter were mentioned in the report including William Reagan, someone of interest, "because of his political inclinations and had arranged some of the coaches on 6th September." (WMPR p.45) Another Communist Party member, Lou Armour, was also discussed (pp.44-45).

This analysis of the two reports from West Mercia police reveals that the employers in Shropshire placed considerable pressure upon the police to investigate and prosecute the pickets. The employers used their contacts with Conservative MPs to lobby the Government for action. Yet this was no different to employer agitation demanding police action in other towns and cities discussed in the previous chapter. As will be seen below, a decision was made that a major trial of pickets was to be held to address the political demands that decisive action be taken by the police and courts. West Mercia police were given full support and encouragement to build such a case by the Home Office, employers and Conservative MPs. The WMPR's discussion of the politics of the building workers strike, including the role of the Charter campaign, indicates that the decision to prosecute was a political one. The report identified the most active pickets and several Communist Party members and recommended that they be prosecuted. The decision was now passed to the DPP.

8.3 The Director of Public Prosecutions

The police investigations were extensive and the statements that accompanied the West Mercia report covered a period from 8 September to 11 December 1972. The *Liverpool Daily Post* announced that,

> Detectives have seen nearly 800 people in a mammoth inquiry into alleged incidents involving pickets during the building strike last summer…. Most of the inquiries have been in Shropshire and North Wales and have lasted nearly three months. Claims made by employers in a dossier are among those that have been probed.[363]

[363] 30 November 1972. *The Daily Post*, although Liverpool-based, published a separate edition, which was the main daily newspaper in North Wales.

A conference to discuss the police reports took place at the DPP offices on 29 December 1972 involving Willison and two DPP representatives, the assistant Director, Michael Jardine and John Walker. In his letter of 18 December Willison had outlined some of the difficulties in pursuing prosecutions. There were weaknesses in the police evidence, including the hearsay nature of many of the statements, the difficulties in identification evidence due to the lapse of time and the need to call up to 200 witnesses to court. Many of the alleged offences in the Gwynedd police report were minor and not appropriate for a Crown Court trial. He warned that trade unionists may criticise any prosecutions for being politically motivated whereas if the police did nothing or the pickets were acquitted it would encourage them to carry on.

The evidence may have been weak but the political imperative for a trial was stronger. A file was opened listing twenty-six names, beginning with Henry Winston Barton.[364] Willison noted that fifteen were connected with incidents in both Gwynedd and West Mercia and a further eleven were concerned with events in Gwynedd only. This contrasts with the final numbers tried at Mold Crown Court for events in Gwynedd (fourteen), and at Shrewsbury for events in West Mercia (twenty-four).[365] This demonstrated the fluidity of the decision-making, of who to charge and with what offence.

The DPP decided to seek an opinion of the evidence from a barrister. A *pro forma* requesting the nomination of two counsel was sent to the Attorney General, Sir Peter Rawlinson on 1st January 1973[366] with copies of the two police reports,

> …to advise and, if necessary, conduct the prosecution in the case of Barton & Others at Shrewsbury…for Intimidation – Affray – Conspiracy & Protection of Property Act 1875.[367]

[364] TNA DPP2/5159. Barton and five others on the list were not prosecuted at either Mold or Shrewsbury, but during the following weeks further pickets' names were added.
[365] Some pickets were tried at both courts. The total number of North Wales pickets prosecuted was thirty-two.
[366] This was a Monday and a normal working day. 1st January only became a public holiday in England & Wales the following year, 1974.
[367] Pro forma, TNA DPP2/5159

The DPP form was signed by Walker and he had written the names of two counsel on it, Maurice Drake QC and Desmond Fennell.[368] Rawlinson endorsed Walker's suggestion on 16th January and instructions were sent to Drake and Fennell to advise.

No documents have been discovered showing any discussions about the two police reports between the initial conference on 29 December 1972 and a conference at Drake's chambers on 1st February 1973. But a remarkable letter was written by Rawlinson during that period, on 25th January. He wrote to the Home Secretary, Robert Carr, advising that charges should *not* be brought:

> The building workers strike last summer produced instances of intimidation of varying degrees of seriousness in which I have had to decide whether or not criminal proceedings should be instituted for an offence against section 7 of the Conspiracy and Protection of Property Act 1875.
>
> A number of instances of this kind have been submitted to me recently in which the intimidation consisted of threatening words and in which there was no evidence against any particular person of violence or damage to property. In the circumstances Treasury Counsel, to whom the cases were referred by the Director of Public Prosecutions to advise on the prospects of securing a conviction, took the view that the prospects were very uncertain, and in the result I agreed with him and the Director that proceeding should not be instituted.
>
> In arriving at this conclusion, we have been considerably influenced by the fact that section 9 of the 1875 Act gives to the accused an unfettered right in a case of this kind to be tried by jury if he wishes. Past experience shows that, if proceedings were to be instituted against these men, they will almost certainly elect trial by jury.
>
> One has therefore to consider the prospect of conviction by a jury, rather than by a magistrates' court, and you will appreciate that accordingly different considerations apply. Firstly, the delay in bringing the case to trial would lead to an air of unreality about the proceedings long after the strike has been settled, and this would be likely to work in favour of the accused. Secondly, juries tend to treat mere words more leniently than actual violence. Thirdly, a jury will be likely to be influenced by the political factor that conviction might revive a strike atmosphere.[369]

[368] Fennell was a Conservative Party member and sought selection as a parliamentary candidate in 1972: http://bit.ly/2vxT5lD .
[369] TNA LAB10/3510

No documents have been discovered at Kew or elsewhere to clarify the ambiguities in this letter e.g. confirmation of the identity of 'Treasury Counsel' to whom the DPP had referred the cases, or of the agreement between Rawlinson, Treasury Counsel and the DPP. There is no copy of the DPP's instructions to counsel or the advice that the DPP received in reply. The 'number of instances' of alleged intimidation Rawlinson referred to are not identified by geographical location, though by 25 January other investigations were either closed[370] or still ongoing.[371] The only instances of picketing known to have been submitted to Rawlinson recently were those involving the North Wales pickets. The two police reports had been sent to him three weeks earlier.

It was not the responsibility of the Home Office to decide whether or not anyone was prosecuted for a criminal offence; that rested with the police, DPP and Attorney General. Rawlinson's letter was not an exercise of his constitutional position as legal adviser to a Government department about a matter within that department's jurisdiction. Rawlinson's letter to Carr was a political communication justifying the decision not to prosecute.

8.4 Carr, the Home Office and Rennie

The letter from Rawlinson to Carr makes no reference to any prior correspondence or meeting between them to explain why Rawlinson was now writing to him.[372] What the letter does indicate is the close involvement that Carr had with the prosecution of pickets. Documents show that the pressure on the police to investigate and prosecute did not come solely from local employers; as we shall now see, the Home Office was behind it from the start.

The police officer at the centre of the investigations was West Mercia Assistant Chief Constable, Alex Rennie. It was unusual for such a high-ranking police officer to lead an investigation of this type. The police inquiries into picketing elsewhere had been led by more junior ranks, typically a Detective Inspector and a Chief

[370] The events at Neap Wharf, London Stock Exchange, various Birmingham sites etc., discussed in the previous chapter.
[371] The West Yorkshire police were still investigating the picketing at the site of J & J Fee Limited in Halifax in August 1972. The Chief Constable wrote to the DPP four days *after* Rawlinson's letter to Carr to report that their inquiries had now been exhausted. (TNA DPP2/5159)
[372] The only reference on the letter is 9/5/479.

Superintendent.[373] A report by an HM Inspector of Constabulary also noted that it was unusual for an ACC to lead such an inquiry,

> …the area is normally law-abiding and police work is not difficult. The 'Shrewsbury pickets' case was very much an isolated incident and the violent activity of the 'flying pickets' took the force by surprise. The vigorous follow-up action was due, to a large extent, to the energy and determination shown by Mr. Rennie who, although Assistant Chief Constable (Administration) at the time, took over personal supervision of the investigation and brought the case to a successful conclusion.[374]

Rennie's involvement can be explained in communications between him and the Home Office from the beginning of the investigation, shown in an exchange of correspondence between Rennie and Miss Green. She wrote on 6 October 1972, "We of course have your general report on the activities of pickets during the building strike…" Green then asked for Rennie's comments on the letter that had been sent to Carr by John Biffen MP. In reply Rennie referred to a second report.[375] He had sent an initial report to the Home Office on 18 September 1972 and a further report, date unknown, to Mr E.D. Wright, Assistant Under Secretary of State at the F4 Division of the Home Office. The functions of the F4 Division included, "Public order and subversive activities."[376] It was responsible for monitoring the Communist Party and 'domestic subversion'.

Rennie informed Green that on 18 September,

> …Chief Superintendent F.R. Hodges, with a team of 12 experienced officers under my cammand, (sic) have been struck off normal duties to investigate all aspects of the complaint and to endeavor to investigate with a view to taking proceedings where appropriate.[377]

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[373] Just two police officers were appointed to the Halifax investigation, a Detective Sergeant and a Detective Chief Inspector. Statements were taken from just ten people including three full time UCATT union officials who had attended the site with the pickets. The three officials were not interviewed until 15 January 1973, though the Home Office had asked for a report into Mr Fee's complaint on 30 October 1972. They were not interviewed individually, but as a group. One of the officials, Arthur Harrison, echoing the praise that Warren had received from Inspector Meredith on departing Telford, pointed out that, "well, we haven't had any complaints about this. In fact, our relations with the police were very good. They even commended us for our behaviour on the sites in that area." (Statement of DS John Boyle, p.2, in TNA DPP2/5159)

[374] Report by Mr R.G. Fenwick of West Mercia Constabulary, 31 December 1974, p.39. TNA HO287/1948.

[375] 10 October 1972 The two letters are in the Appendix File to the Report File (the "Complaints Report") but neither of Rennie's reports to the Home Office have been traced.

[376] Home Office Organisation Chart, June 1972. Obtained as an FOI request 26 May 2017.

[377] Ibid.

Rennie later outlined his detailed involvement into the investigations of the pickets, "I know more about this than anyone else in the county because I read all the reports on a day-to-day basis and co-ordinated every step in the inquiry."[378]

Further information about Rennie's background was contained in his autobiography in which he wrote of his links with the security services during his wartime activity. Whilst training in North America to become an RAF pilot he claimed that he was recruited to work for the British security services and, "…once you were involved in security affairs it was for life." (Rennie 2009:92)

But there are a number of inconsistencies between Rennie's 2009 memoir and contemporaneous documents, highlighting the need to establish the veracity of an account written many years after an event, when an individual may want to enhance his role. Rennie was not present at any of the building sites on 6th September. He visited the sites in Telford several days after the picketing. He claimed that he spoke with several building workers and, "I felt strongly that the perpetrators of the crimes should be brought to justice." (Rennie 2009:227) But this was after local contractors had already made complaints to the police and to MPs. The Home Office had also requested reports from him. It would appear that these were the driving force for any investigation rather than a single-handed crusade by Rennie.

The WMPR also reported the involvement of other police forces in the investigation:

> In the course of those enquiries it soon became apparent that similar problems existed in the Cheshire, North Wales and Staffordshire areas, and throughout this enquiry close liaison has been maintained with those forces.[379]

Glover also referred to this joint activity in a report he submitted after the Shrewsbury trials had concluded:

> Following a conference at Chester on 9th October 1972, a concurrent enquiry was undertaken by Gwynedd Constabulary into similar incidents in North Wales during the same building trade dispute.[380]

[378] Article headed, Ex-officer: Ricky was no political prisoner *Shropshire Star* 8 July 2009
[379] West Mercia Police report p.3
[380] Report of Superintendent C. Glover for the Chief Constable of West Mercia 29 March 1974 following the end of the third Shrewsbury trial (TNA DPP2/5159). See also CR p.16, though no record of the Chester conference has been traced.

The conclusion to be drawn from these documents is that the Home Office were requesting reports from Rennie about picketing in Shropshire from the very beginning, long before the final reports were delivered to the DPP on 18 December 1972, as shown by his correspondence with F4 Division. No evidence has been found that any other police force was liaising with the Home Office in September 1972 about prosecutions in their areas. Hodges' comments about the extent of surveillance and intelligence-gathering by Special Branch and Rennie's communications with F4 indicate that the Home Office was exchanging information about the Charter Group and the political organisations involved with it. Carr's role in pushing the investigation and prosecutions was also revealed by a handwritten comment on the DPP file, opened following the conference on 29 December 1972, "The Home Sec is interested in this case." [381]

Carr repeated his interest in a letter to the Prime Minster on 8 February 1973. "I have taken a close personal interest in this problem since I came to the Home Office and I have myself discussed it with the chief officers of those police forces which have had to deal with the most serious picketing."[382]

This was the background to the letter that Rawlinson sent to Carr on 25 January 1973. Carr was closely involved with the case although, constitutionally, he was not supposed to have any part in the decision-making or influence the Attorney General to proceed with or drop a prosecution. Rawlinson advised against a prosecution of building workers under the 1875 Act but several days later a decision was taken to go ahead nevertheless. Documents in the National Archives show that the senior civil servant in the Attorney General's Department, Tony Hetherington, spoke with Walker at the DPP on 30th January to advise that the AG did not need to be consulted about charges that might be preferred against the North Wales pickets. Rawlinson was, 'content for this to be left in the hands of counsel'.[383] On the same day Carr's diary records that at 12:45 he had lunch with the NFBTE at the Dorchester Hotel, just after a Cabinet meeting.[384]

[381] TNA DPP2/5159.
[382] TNA T357/490
[383] Chronological table of important events – author unknown, TNA DPP2/5159.
[384] TNA HO317/24.

The pickets argued that Government pressure was applied to the DPP to get prosecutions underway. It was noted in a report to the DPP during the first Shrewsbury trial.

> Mr Platt Mills has been asking outrageous questions of certain prosecution witnesses; i.e. that senior police officers had had government pressure put upon them to bring these charges. Mr Drake QC prosecuting felt obliged to make a statement to the court that in fact all the papers had been submitted to him, and that it was as a result of his independent advice these proceedings had been brought.[385]

This was repeated by Drake in a telephone discussion with Tomlinson that was recorded for a BBC programme about his conviction.

> Tomlinson: We said the trial was political; what do you think'?
>
> Drake: From my point of view, the decision to bring the case wasn't political. I got a large bunch of papers from the Director of Public Prosecutions and it simply said, 'Counsel will please look at these papers and advise whether in their opinion there appear to be any and, if so, what offences and, if so, whether any and, if so, who should be charged'. And there was no pressure at all.[386]

In autumn 1972 the DPP had considered the prospects of prosecuting pickets in other parts of the country and decided not to; the Attorney General agreed. But the political pressure on West Mercia Police and on the Government to be seen to be taking some action against picketing was significant. The job of Drake and Fennell was to construct that case. The documents show that the Home Office, including the F4 Division and Special Branch, were involved in gathering intelligence about the pickets and directing the investigation headed by Rennie. The question was whether a successful prosecution could be built from evidence that the West Mercia Police reports had concluded was weak.

[385] Letter C. Hall to Mr Walker 15th November 1973 – TNA DPP2/5159. Charles D. Hall provided continuity for the DPP, attending most of the conferences with counsel and the police in 1973. He also attended many of the magistrates' court hearings and sat through the entire trial at Shrewsbury between October and December 1973.

[386] Extract from *Guilty, My Arse* BBC One Life Series 2007

8.5 Drake's construction of the case

The meeting that planned the legal case against the pickets was a seven-hour conference on 1 February 1973 at Drake's chambers in London.[387] In attendance with Drake were his junior, Fennell; four senior police officers (Rennie, Hodges and Glover from West Mercia and Detective Chief Inspector Salisbury from Gwynedd); and two civil servants from the DPP (Walker and Hall). After the conference Drake wrote an Opinion advising who was to be prosecuted and for what.[388]

The only publicity about the decision to prosecute following the conference was a brief news item

> Charges are to be brought against some of the "flying pickets" who are alleged to have terrorized building sites in Shropshire and north Wales during the building workers' strike last year, Mr Alexander Rennie, Assistant Chief Constable of the West Mercia Police Authority, said yesterday.[389]

This would come as a complete surprise to the pickets as they had no indication that there would be any prosecutions, even after many had been interviewed at home or work by the police in the autumn. John McKinsie Jones, the treasurer of the North Wales Strike Committee, received a letter from the Committee's solicitors at the end of January,

> Further to this matter we have now received your telephone message with regard to this case indicating that the matter has now been completed and accordingly following your instructions we are closing our file of papers.[390]

The six pickets who had been arrested for questioning in November 1972 also had reason to believe that no action would be taken. [391] After questioning, Warren had

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[387] These chambers are now called Hailsham Chambers after Lord Hailsham, formerly Quintin Hogg QC, Conservative Lord Chancellor in the Heath Government 1970-74. Drake joined the chambers in 1950 after his pupillage as a barrister. He succeeded Hogg as head of chambers: http://bit.ly/2vnuKiY Both were freemasons and Drake was President of the Masonic Court of Appeal for 20 years.
[388] Unlawful picketing at Shrewsbury: Opinion – 21 February 1973 TNA DPP2/5159
[389] *The Times* London, England, Saturday, Feb 03, 1973; p. 2
[390] Letter Walker, Smith & Way to J McKinsie Jones 30 January 1973 – WCML Shrewsbury archive.
[391] A Memo from Supt Glover to the West Mercia Chief Constable, 14 March 1975 (TNA DPP2/5159) said that six pickets were arrested in November 1972 and taken to police stations to be interviewed: Des Warren and SR Warburton on 14th, Arthur Murray, Beverley Skinner and J. Bithell on 15th and John McKinsie Jones on 16th. Hodges noted that Skinner, "Refused Charge? (a prosecution witness?) " All received bail letters except Skinner. Bithell and Skinner were not charged subsequently. The other

been bailed to attend Rhyl Police Station on 12 December. He was informed later that he no longer needed to attend and was released from bail.[392]

The legal process began with the swearing of an "information" at Wenlock Magistrates court by Chief Superintendent Hodges on 7 February 1973. The charge was that the six conspired with others between 1 July and 31 October 1972 to intimidate those working on building sites in Shropshire and elsewhere with a view to compelling them to stop. The words, "Contrary to Common Law" were written in hand at the end.[393]

Before the pickets were charged Drake held a further conference with Hodges, Glover, Salisbury and Hall on 8 February. He advised that twenty-four pickets be charged with offences arising from the events at Shrewsbury on 6 September. They would be divided into two groups: six so-called "ringleaders" would face the most serious charges of conspiracy to intimidate and affray; the remaining eighteen would be charged with lesser offences. "A decision was, therefore, made to deal with the 6 by arrest and the 18 others to be summoned, thereby indicating the distinction to the court."[394]

The WMPR had not identified the six as ringleaders; only Warren was highlighted. Two of the six, Carpenter and Llywarch, had not been on the original list of potential defendants when the DPP opened its file on 29 December 1972. The lead name was Barton but he, along with several others, were not charged with any offence and were probably unaware that the police had ever considered taking action against them.

According to Fennell it was Drake's idea to charge six with conspiracy (although it had been canvassed in the WMPR[395]). A DPP note recorded that Fennell, "…agrees that at no time did they see the A/G – Michael Jardine was the highest ranking man – Desmond did not favour conspiracy – it was really Maurice Drake's brainchild."[396]

North Wales pickets were questioned at work, at home or invited to police stations. He noted that many refused to speak to the investigators, "…no doubt, because they had something to hide and were quickly aware that we had nothing to allege against them." (WMPR p.26)

[392] Pro forma for Des Warren

[393] Document in TNA DPP2/5159

[394] West Mercia Constabulary Conclusion Report 29th March 1974 TNA DPP2/5159

[395] West Mercia Police report page 36.

[396] Handwritten note of a discussion with Fennell after the trials, following a query on the subject from BBC *Panorama*, 27.3.75, TNA DPP2/5159.

The WMPR argued that although the police did not have evidence that the 'organisers and ringleaders' had committed particular offences they ought to be made responsible for the actions of others:

> The evidence against several of the second group – the organisers and leaders – is not so strong. It mainly consists of the very act of organising their party's attendance, in circumstances where disorder on a large scale must have been foreseen, and the fact that they were present on the sites with the pickets without trying to restore order (or paying lip-service in that respect). (p.29a)

Drake took up this approach and proceeded on the basis that a jury could infer a conspiracy amongst the organisers of the pickets because they knew or ought reasonably to have known that fellow pickets were intimidating non-strikers and damaging property. Carpenter and Llywarch's names were added for consistency following the 1 February conference as they had organised the coaches from their areas.

The six "ringleaders" were arrested on 14th February, held overnight at the police headquarters at Wellington and then brought before Woodside Magistrates' Court where they were bailed to attend court again in four weeks' time. At the same time summonses were served personally on the other 18 pickets to also attend the court on 15 March 1973 to answer charges. Warren recalled (1982:27-28):

> Two plain clothes officers came for me in Prestatyn around 6.30pm…I was driven to Flint police station, Ken O'Shea from Denbigh and Mackinsie Jones from Connah's Quay were already there. The three of us were taken to Wrexham where Ricky Tomlinson, John Carpenter and John Llywarch were picked up. Then on to Shropshire where we were locked up in separate cells in a police station… The next day was even more bizarre. We were taken to court in a police convoy with motor-cycle outriders. Outside the court, police seemed to be all over the place. There were dogs and a host of press photographers. It was bewildering. Someone remarked it looked like the Kray gang[397] were coming up.[398]

[397] The Krays were twin brothers who organised a violent criminal gang in London in the 1950s and 1960s. They were tried for two murders and convicted in 1969 at a highly publicised Old Bailey trial. They were sentenced to life imprisonment http://bit.ly/2oKpfuk. See also Tomlinson 2003:115.

[398] Platts Mills (2002:538) noted that Tomlinson made similar observations in his speech from the dock before sentence.

In a report to the DPP following the pickets' appearance at the magistrates' court, Jardine noted the "…arrest of six men (including Warren and Tomlinson)".[399] The naming of them suggests that the DPP saw them as the principle targets of any prosecutions.

Tomlinson had not been mentioned anywhere in the WMCR or in the political discussion of the Charter Group in the main Police Report. He had not been an active trade unionist when the strike started. Llywarch recruited him into the T&GWU, along with most other workers on the McAlpine site building the Wrexham by-pass, when it was visited by pickets in July 1972.[400] After the strike, Tomlinson was visited at home by the police and asked to be a prosecution witness against Warren and the other strike leaders. He refused. (Tomlinson 2002:114-115). He later found himself charged as one of the six 'ringleaders'.

8.5.1 Drake's Opinion: Offences disclosed by the evidence

A week after the six pickets were arrested Drake held a further conference and produced a written Opinion on the case.[401] He advised that thirty-two pickets be charged in total, some of them twice: twenty-four for offences at Shrewsbury and fourteen for offences in Gwynedd. He had already advised on the charges against the six "ringleaders". He now advised that all thirty-two pickets be charged with one or more offences of intimidation under section 7 of the 1875 Act. Where relevant, individual pickets should also be charged with assault, damage to property and threats to damage property.

Drake had considered whether some pickets charged under section 7 would be willing to be tried in the magistrates' court as this would reduce the numbers to be tried in the Crown Court with the six 'ringleaders'. But he noted that, "Police information suggests that the 18 accused are likely to elect trial by Indictment"[402] i.e. a jury trial in the Crown Court. As a consequence, "Mr Drake thinks it might be desirable to have

[399] Letter from MJJ to Director 25/3 – TNA DPP2/5159.
[400] Trial transcript vol. AE10 p.942 Shrewsbury Archive, WCML, Salford and Llywarch's unsigned statement (copy in author's papers).
[401] Opinion 21 February 1973 (TNA DPP2/5159)
[402] ibid.

the other 18 defendants to be charged with affray ("as long as we don't lose affray in the Lords"[403])."

Drake advised that if all 24 were charged with affray there would be just one trial, albeit a long one, with witnesses being called just once. The jury would then hear evidence from a lot of witnesses and this would create an overall picture of criminality that might persuade the jury to convict everyone, even where the specific evidence against a particular picket, if heard in isolation, was weak and would not lead to a conviction. Drake concluded:

> We have advised proceedings only against those pickets in respect of whom there is evidence of violent or threatening behaviour: and for the above reasons we advise that all 24 be charged with affray in addition to the charges already made against them. (Ibid. para.4)

The total number of pickets that were identified and selected for prosecution changed over the following months, as the evidence was re-evaluated. Further conference took place with Drake on 22 February and 1 March. One of the considerations was whether there should be just one trial of the twenty-four relating to the events on 6th September or separate trials, one for each of the seven Shropshire building sites at which the alleged incidents occurred. Drake noted that separate trials would create its own difficulties:

> The evidence against many of the accused in respect merely of one individual site is extremely thin. In several cases it amounts only to an identification of the accused on or leaving the site with no evidence whatsoever of the part he played in the intimidation on the site.[404]

If the evidence of intimidation against any picket was "extremely thin" the same applied to the charge of "conspiracy to intimidate". The WMPR had addressed the extent of the planning and intentions of the pickets:

> It was initially felt that the events of "Black Wednesday" were all deliberately planned and organised by the strike leaders at meetings held at Chester.

[403] This was a reference to *R v Taylor* [1973] AC 964. The WMPR had already suggested that every pickets that was present in Shrewsbury and Telford could be charged with affray (p.33).
[404] Opinion 21 February 1973 (TNA DPP2/5159)

> However, the evidence suggests that the events at Kingswood, followed by Shelton roadworks, *were probably spontaneous*, despite the explosive potential already present in the circumstances of the pickets' visit.[405] There was a common intent to close the sites at Shrewsbury, *but there was no clear-cut plan of action in being.* When the men saw work continuing at the roadworks and on the building site, they simply "erupted". (WMPR p.28 added emphasis)

8.6 The Mold trials – a dress rehearsal?

The first open sign of how the prosecution were controlling proceedings to maximise the prospects of convictions was the decision to hold trials at Mold before and not after the Shrewsbury cases. Platts-Mills observed that "in a normal case the chief wrong-doers are prosecuted first." (2002:533). This would be the six pickets charged with conspiracy and affray. Warren (1982:34) described the Mold trials thus,

> These were of great importance and a dress rehearsal for Shrewsbury. What they meant was described to me by one solicitor: 'Like a West End impresario, the Director of Public Prosecutions used the Mold trials to cross out the faults in the production, prior to the Shrewsbury run.'

There was a logic in holding separate trials at Mold involving alleged offences in North Wales.[406] Mold was the nearest Crown Court to the Welsh sites that were picketed, and to the homes of the defendants' and witnesses. But the division of cases was not as simple as that. The West Mercia report pointed out that, "…any proceedings taken must embrace the offences committed in both areas." (p.45) It then discussed trial venues, noting that Mold was Tier 1 and Shrewsbury Tier 2, a reference to the seniority of the courts in dealing with offences. It indicated that Shrewsbury was not categorized as a venue for major criminal trials. This would point to all the trials taking place at Mold.

Seven pickets tried at Shrewsbury were tried first at Mold: Hooson and Murray for Padeswood offences; O'Shea, Pierce, Seaburg, EL Williams and Hughes for Brennig offences. [407] Several other North Wales pickets were only tried at Mold.

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[405] This is a reference to the *Shropshire Star* article discussed in Chapter 7, warning of an anti-strike force that local contractors vowed to mobilise if pickets came to Shrewsbury.

[406] It should be noted that Wales is not a separate legal jurisdiction. The United Kingdom has three separate jurisdictions for criminal cases: England & Wales is one and there are independent ones for Northern Ireland and for Scotland (though the latter does not include appeals to the UK Supreme Court).

[407] See the West Mercia Constabulary Conclusion Report of Supt. Glover, 29 March 1974 TNA DPP2/5159.

The first 'rehearsal' of a case against the pickets came when Peter Westwater was tried at Mold magistrates' on 4th April 1973. He was charged with intimidation under s.7(1) of the Conspiracy and Protection of Property Act 1875 but, "…the examining Justices found "no case to answer"."[408] Westwater, unlike all the other pickets charged with the offence, did not elect to be tried by a jury in the Crown Court. This was a risk because most pickets took the view that magistrates were less likely to acquit than a jury.

Westwater's trial illustrated the close control that Drake took over the proceedings. He tested the charges and the evidence by prosecuting in all the cases against the North Wales pickets. D.A. Jackson, secretary of the 4/1107 Holst Branch of the Transport & General Workers' Union, observed Westwater's trial and reported: "I still look upon these proceedings as anti-Trade Union, for example it is not often a Q.C. (Mr. Drake) is sent to prosecute by the Director of Public Prosecutions before a magistrates' court."[409]

The prosecutions of the other pickets at Mold were dealt with at five separate trials at the Crown Court. The first and most significant involved eight pickets and events at Brennig Reservoir, Denbighshire on 11 September 1972. They were charged with affray and with intimidation contrary to section 7. They also each faced at least one count of damage to property, the most being O'Shea who faced three.[410] O'Shea and Williams pleaded guilty to one count of damaging property whilst Hughes pleaded guilty to one count of attempting to damage property.

The court was subjected to a high level of security when the trial started on 26th June 1973. *The Times* reported that 200 police stood shoulder to shoulder around the court building and a further 100 were on standby inside. [411] The trial lasted for thirteen days and the jury found all eight not guilty of intimidation and affray. O'Shea, Roberts and

[408] Ibid. para 14 TNA DPP2/5159
[409] Letter from Jackson to the T&GWU District Secretary, Shotton, 9 April 1973 (WCML Shrewsbury archives).
[410] See table in the appendix for a full breakdown of charges and outcomes.
[411] 'Defence protest at number of policemen at court' 27 June 1973. David Turner-Samuels QC complained that the police numbers gave jurors the impression that the court was "under siege" but the judge replied that security of the court was not his affair.

Seaburg were found guilty of one count of damaging property to which they had pleaded not guilty. They were fined between £15 and £50.[412]

The second Mold trial started on 11 July and dealt with picketing at a sewerage construction site, Padeswood, near Mold on 7th August 1972. The three pickets, Hooson, Hough and Murray, were each charged with intimidation and two of them with threatening to damage property. On 19th July, the jury found them all not guilty. A similar result followed the third trial on 20th July 1973. It involved a single picket, Peter Moroney, who was charged with intimidation and common assault at a housing estate at Penycae, Denbigh on 7th Sept. 1972. He was found not guilty.

The fourth trial was of Kenneth Thomas who was alleged to have intimidated building workers and caused damage at a site at Penrhyn Beach, Caernarvon on 18th August 1972. He pleaded not guilty to intimidation but guilty to causing criminal damage, which was accepted by the prosecution. He was fined £15.

The fifth trial, of Glyn Davies, did not take place until 2nd April 1974. It had to be adjourned in July 1973 because a prosecution witness was unavailable. The case was not related directly to the other Mold cases because it involved picketing on 28 October 1972, six weeks after the national strike had ended. Drake had considered prosecuting Warren for an offence on 26 October at the same site, Greenfield Sewerage Works, Flintshire, but he decided later not to proceed.[413] Nevertheless, at Warren's trial Drake referred to those events as evidence of Warren's behaviour.[414]

The DPP considered the outcome of the Mold trials to be a setback: "The results of the trials so far are disappointing." [415] The prosecutions for affray and intimidation had all ended in acquittals. Any convictions were for offences of damaging property; many were the result of guilty pleas. The fines ranged between £15 and £50.

[412] £182 and £607 respectively at 2017 prices.
[413] See report from DCI Salisbury of Gwynedd Constabulary to DC Supt. Clarke. (Building Workers' Dispute, TNA – DPP2/5159).
[414] Davies trial was not relisted until Drake, Fennell and Wadsworth had finished prosecuting all the pickets at Shrewsbury. He was found not guilty of intimidation and guilty of common assault for which he was conditionally discharged.
[415] Handwritten note headed A/D Country TNA DPP2/5159

The prosecution was keen to learn the lessons of the Mold cases. A report on 30 July 1973 observed,

> A weakness in the prosecution case, which did not reveal itself until the trial, was that the assistant to the site foreman called the police on 7th August, and three constables attended. They did not report any breach of the peace and did not intervene. This would be typical of the police during an industrial dispute, but so far as this prosecution was concerned the defence relied upon it to show that the pickets did not behave improperly.[416]

The report also highlighted how the judge, Mr Chetwynd Talbot, changed his view about the meaning of the word "intimidation" in section 7 of the 1875 Act. At the first trial he directed the jury that the offence was committed if the act was a threat of *personal violence* towards someone. At the second trial, having listened to submissions from counsel and after reviewing the case law, he ruled that his direction to the jury about the meaning of "intimidation" would include threats to *property,* if it could be shown that such threats were intended to cause a person to stop working.[417] This clarification encouraged the prosecution at Shrewsbury to highlight examples of alleged threats to property by pickets as evidence of intimidation.

A report on the Mold trials was also prepared by Inspector Hayes, "This contained points to watch and other observations."[418] If the Mold trials were a dress rehearsal the prosecution team used it to learn their lines for Shrewsbury.[419] It could be argued that the same was not did not apply to the Defence. Most of the pickets tried at Mold Crown Court were represented by a small firm of solicitors based in Salford, Casson & Co.[420] The lawyer that worked on the case, Campbell Malone, was a junior solicitor and had no experience of cases of this type.[421] He also represented eleven pickets at

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[416] 30 July 1973 TNA DPP2/5159

[417] Ruling on intimidation by Judge Chetwynd Talbot. TNA DPP2/5159.

[418] Hayes' report is referred to in the document 'Matters discussed with Mr. Drake 17th September 1973' TNA – DPP2/5159. His report has not been traced.

[419] The DPP ordered a copy of the transcript of the four Mold trials. (Letter John M. Walker to Lee & Nightingale 20 August 1973 TNA DPP2/5159) and requested the original statements given in the case of *R v Moroney* concerning the incident at Padeswood, Penrhyn Beach - see notes of 24.9.73 and 28.9.73 on counsel's file in TNA DPP 2/5159

[420] The other Shrewsbury picket, Derrick Hughes, was tried at Mold and Shrewsbury. He was represented by Gwilym Hughes & Partners of Oswestry, but they instructed different barristers for his two trials.

[421] When Malone spoke with Tomlinson in 2007 he confusingly said, "You were actually charged under a very unusual piece of legislation, Conspiracy and Protection of Property Act from 1875 and my recollection is that you were the first defendants to have been charged under this legislation in the twentieth century." (*Guilty, My Arse* BBC One Life Series.) As has already been shown, prosecutions

Shrewsbury. Twelve were represented by a Chester firm, Walker, Smith & Way but no-one from this firm attended the Mold trials.

Drake was aware of the risks of losing the affray charge at Shrewsbury. After losing at Mold, he decided to add a new charge against the Shrewsbury 24, unlawful assembly. This proved to be a successful move because twenty-one Shrewsbury pickets were convicted of this offence. For many it was the only offence for which they were convicted.

Although Platts-Mills asserted that the normal practice for a prosecution was to try the most serious offences first, the decision of Drake to try some of the pickets at Mold was of great benefit to him. It enabled Drake to test the evidence and some of the defendants and witnesses before moving to the main cases at Shrewsbury. Arnison (1974:47) reported that at Mold the prosecution made frequent references to Warren and to events in Shrewsbury and Telford on 6th September 1972 even though the charges at Mold only related to events at sites in North Wales. Many of the prosecution witness statements referred to events in both North Wales and Shropshire, allowing them to raise alleged conduct by pickets on 6th September to persuade the jury that the same conduct had occurred in North Wales.

Conclusion

This chapter has shown that, following an extensive investigation by West Mercia police they reported that the evidence for a successful prosecution was weak. This was similar to the results of inquiries by other police forces after the building workers' strike ended in September 1972. But the Government was subject to significant political pressure from employers and Conservative Party members to take demonstrative action against picketing. A trial was necessary regardless of the weakness of the evidence. The documents show that the Home Office oversaw the investigation led by Rennie. When the police reports were sent to the DPP, Robert Carr maintained a close interest in the case.

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under the Act had happened on a number of occasions in the twentieth century, including in the 1960s. The unusual charges were in fact the three common law offences, affray, unlawful assembly and conspiracy to intimidate. Both Drake and Judge Mais, considered the latter charge to be a common-law offence that could be laid even if the 1875 Act did not exist (see Chapter 9).

The lead counsel, Drake, claimed that the charges and prosecution were non-political but the evidence in the WMPR and Complaints Report, the discussions involving the DPP, Drake and the police, show that the trials were organised to satisfy a political need. Warren was a crucial target, as a supporter of the Charter movement in North Wales and as an effective leader, that the employers wanted to remove. Offences were applied to the evidence that had not been used against pickets for a century – affray, unlawful assembly and conspiracy to intimidate.

The employers had demanded prosecutions, win or lose. The state used its control of the resources of the criminal justice system, the police, the prosecutors and the court, to invest heavily in making a case against the pickets.

The next chapter will examine the conduct of the prosecutions at Shrewsbury. It focuses upon the features of the three trials that illustrate how the prosecution was able to use its control of the process to achieve convictions. This will complete the discussion of the documents and other data that has been obtained before summing up the thesis in the concluding chapter.

Chapter 9. The trials at Shrewsbury and appeals

This chapter is an analysis of the prosecution of the North Wales pickets at Shrewsbury Crown Court. It is outside the scope of this thesis to analyse in detail the evidence that was given at each trial.[422] Instead, a number of key features of the preparation for and conduct of the trials are discussed. These are central to the argument that the trials were a political miscarriage of justice. The chapter will show how the state used various instruments, including the police, the prosecution and the court service, to maximise the prospects for guilty verdicts.

The chapter is divided into the following sections:

1. The imbalance between the two sides
2. Selection and presentation of the charges
3. Trial venue
4. Policing of the court
5. Selection of jurors
6. *The Red under the bed*
7. Witness evidence
8. The judge, mis-directions and the court usher
9. Sentencing
10. The second and third trials
11. Appeals

9.1 The imbalance between the two sides

On paper, there appeared to be an imbalance between the prosecution and the defence when the first trial opened on Wednesday 3rd October 1973. The Crown was represented by a Queen's Counsel, Drake and two junior barristers, Fennell and Wadsworth. They faced twelve counsel on the other side. Each of the six pickets was represented by a senior barrister, usually a QC, and a junior barrister. This may appear to have favoured the defence, but it disguised the greater resources available to the prosecution in planning every aspect of the trials.

The prosecution had significantly more resources for gathering and evaluating evidence. The WMPR showed that Rennie set up a team of 12 officers soon after the

[422] The transcript of the first trial is held at the Working-Class Movement Library (WCML), Salford. It is not the entire proceedings but only those sections that the defence and prosecution requested for use at the appeal in October 1974.

strike to work full-time on interviewing witnesses. This was increased to 22 officers. The police had "authority" and, if necessary, could arrest someone for questioning.

At the end of the trials Glover reported[423] that between them the West Mercia and Gwynedd police had interviewed, "well in excess of 700 persons" including:

	Interviewed	Statements
On sites (workers)	466	158
Misc. Householders, press etc.	38	27
"Not involved" pickets	74	33
Police Officers on sites	73	73

The pickets' lawyers were funded through state legal aid, which placed a limit upon the amount of time that a solicitor could spend interviewing witnesses. The two main solicitors' firms representing the pickets also had limited resources. They were both small general practices and, unlike the police, did not have a large pool of staff to draw from to work on the case.

Drake and Fennell, unlike their opposite numbers, had been involved with the cases from the very beginning, when they advised the police and DPP in conference on 1st February 1973. They appeared for the Crown at the committals and the prosecutions of the earlier cases at Mold. The lessons they learned from the Mold trials allowed Drake to make important changes in his approach at Shrewsbury.

This contrast in resources between prosecution and defence qualifies the abstract principle of due process discussed in chapter 2. Although the burden of proof is on the prosecution and the accused has a presumption of innocence, this is circumscribed when the state has much greater resources to prosecute compared with those available to the defence. It is compounded when, as shown later, the police do not disclose all

[423] Conclusion Report of Supt. Glover 29 March 1974.

the material that it obtained during their extensive inquiries. The two lengthy reports by West Mercia and Gwynedd police were not disclosed to the defence.

9.2 Selection and presentation of the charges

The second example of the power of the prosecution was its selection and presentation of the charges against the pickets. The legal document setting them out is called an indictment. It states exactly what offences the pickets were alleged to have committed and could be tried for at court. The prosecution did not finalise the indictment until the month before the first trial started. When the twenty-four pickets attended court together for the first time, on 15 June 1973, they faced a total of 190 charges between them.[424] Six were charged with conspiracy to intimidate and all 24 with affray. They also faced varying numbers of charges of intimidation, damage to property and other minor offences. The prospect of a trial of twenty-four defendants was thought to be unmanageable:

> Immediately prior to the summer vacation, Counsel decided to split the panel and make the indictment more manageable by reducing the number of counts to go before the jury. He decided to try only the six leaders and to adjourn the 18 to a second occasion. He also decided to reduce the 42 counts (92 verdicts) to 3 counts (18 verdicts).[425]

Although Hodges noted that Drake had decided, 'prior to the summer vacation', [426] to split the pickets into two trials and proceed with only three of forty-two counts against the six ringleaders, the defence were not informed of this until September. Casson & Co. complained to the DPP on 4th September that it had been a year since the alleged offences had occurred and they were still unaware whether the prosecution intended to proceed against six pickets first or all twenty-four, and which of the many charges they would face in court.[427] This deliberate lack of co-operation by the DPP and Drake prejudiced each defendant. Until the pickets' lawyers knew the exact case that they had to face in court they did not know the extent of the preparations that had to be made for the trial on 3rd October.

[424] West Mercia Constabulary Conclusion Report, 29 March 1974 para. 16 TNA DPP2/5159.
[425] Ibid. para.21
[426] The summer vacation for the law courts started at the end of July and lasted for two months.
[427] Letter Casson & Co. to DPP 4 September 1972 TNA DPP2/5159

The pickets' solicitors did not receive the signed indictment from the court, containing forty-two counts, until 14th September.[428] Each count accused one or more of the six pickets with the specific offence contained in the count. Table 9.1 gives a breakdown of the charges each picket faced.

	John Carpenter	John McKinsie Jones	John Llywarch	Ken O'Shea	Eric Tomlinson	Des Warren	Total of each offence
Offence							
Conspiracy to intimidate	1	1	1	1	1	1	6
Affray	1	1	1	1	1	1	6
Unlawful assembly	1	1	1	1	1	1	6
Intimidation (s.7 of the 1875 Act)	6	6	6	7	9	12	46
Damaging property		3		1	5	8	17
Attempting to damage property						2	2
Common assault					2	2	4
Threatening to damage property				1	1	1	3
Assault occasioning ABH					1		1
Using threatening words				1			1
Totals	9	12	9	13	21	28	92

Table 9.1: Summary of the type and number of charges against each picket in the forty-one counts of the first indictment[429]

All six were charged with counts one to three. Count 1 alleged a conspiracy to intimidate, specifically that they,

> …on divers days between the 1st day of July 1972 and the 31st day of October 1972 in the County of Salop and elsewhere conspired together and with others not before the Court wrongfully and without legal authority to intimidate those working on building sites in the County of

[428] Letter Shrewsbury Court clerk to Casson & Co. WCML – Shrewsbury archive
[429] Table compiled from the Indictment, TNA J182/9

> Salop and elsewhere with a view to compelling them to abstain from their lawful work.

Count 2 alleged that they,

> together with others not before the Court on the 6th day of September 1972 in the County of Salop unlawfully assembled with intent to carry out a common purpose in such a manner as to endanger the public peace.

Count 3 alleged that they

> Together with others not before the Court on the 6th day of September 1972 on divers building sites in the County of Salop unlawfully fought and made an affray.

A contrast can be made between those three common law offences and the statutory offences alleged in the other thirty-nine counts. For example:

> Count five charged Tomlinson and Warren with *damaging a road roller* belonging to J. Parry & Sons Limited at *Kingswood building site* on *6th September 1972*.
>
> Count nine charged Carpenter and Tomlinson with *assaulting Ian James Fletcher* at *the Mount building site* on *6th September 1972*.

The key phrases in these two counts have been italicised to emphasise the specific facts upon which the allegations in the count are based. It allows a defendant to understand exactly what they are being accused of doing. The prosecution did not proceed with any of these thirty-nine counts at the first trial, but they are an example of over-charging by the prosecution as a tactical device. As discussed in chapter 2, it can pressurise a defendant to plead guilty to some of the offences (Baldwin and McConville, 1977). It conveys a picture of major criminality to a jury, even though the accused is only tried for a small number of the counts, leaving the rest on the file

As has been discussed in chapter 5, the wording of the conspiracy charge in the first count was so broad that it allowed the prosecution to introduce a wide range of evidence. The count alleged that the conspiracy lasted for up to four months (1st July to 31 October 1972) and took place in an ill-defined area, "the County of Salop and elsewhere". Effectively, the wording was an allegation that, potentially, all the activity of the six to build support for the strike and to persuade non-strikers to stop work was unlawful. It was taking trade union activity back centuries.

The essential act of the crime of conspiracy is an *agreement* but contradictory views were expressed about the place, time and nature of that agreement. The police believed that the offences committed on 6th September were planned at a meeting of the Chester Area Strike Committee in the Bull & Stirrup pub. The WMPR stated:

> …the Chairman, LLYWARCH, raised the matter at Chester on Thursday, 31st August, 1972. At the same time, he produced and read a press item from the local "Shropshire Star" newspaper in which it was said that 300 workmen at Shrewsbury were "ready and waiting" to oppose any attempt by pickets to close the site.
>
> A vote was taken and the outcome was unanimous – that as many pickets as possible from the constituent Strike Action Committees would attend at Oswestry on Wednesday, 6th September 1972, to picket Shrewsbury and "stop the sites". Telford does not appear to have been mentioned at that stage….
>
> This resolution – and the vote taken on it – proved to be the blueprint for the serious disorder and widespread fear which subsequently took place on 6th September 1972.[430]

The police had no evidence that the pickets had hatched a plan at the weekly Chester meetings or anywhere else to intimidate non-strikers in Shropshire over a four-month period. The WMPR concluded that the, "decision to go to Telford appears to have been equally spontaneous and neither a majority of pickets nor the coach operators knew of this beforehand."[431]

The West Mercia Police report had discussed the law of conspiracy:

> The only other main consideration again concerns the party leaders, and it is whether a charge of conspiracy should lie. It is a possibility, but evidence concerning the meeting at Chester is not strong and there are no admissions about it from those responsible. There were also many other persons at the meeting, as shop stewards on various sites – many of whom did not visit Shropshire on 6th September 1972. For these reasons, and taking account of the spontaneous element in the disorders, *conspiracy is not strongly recommended.*[432]

It was argued for McKinsie Jones that he could not be guilty of conspiracy to intimidate because he did not attend the meeting in the *Bull & Stirrup* pub. Drake

[430] Taken from West Mercia Police Report paragraphs 94-97.
[431] West Mercia Police report p.29
[432] West Mercia Police report p.36. Emphasis added.

dealt with this objection in his opening speech to the court, when setting out how the prosecution intended to prove a conspiracy

> The prosecution in this case will not bring before you any evidence of these six men, or any of them, sitting down or being present at some meeting where a formal agreement to terrify, to intimidate other workers was worked out. But you are entitled to see what happened to judge their actions and conduct and ask yourselves at the end is there not a compelling inference here that these men did at some time join together in one common accord?[433]

The case Platts-Mills put forward for Warren was that there was no planned violence and that any incidents were spontaneous and episodic by just a few pickets. This, as we have seen, was in line with the assessment of the WMPR (p.28), though Platts-Mills had not seen a copy. He contrasted the alleged actions of the pickets, for which they now faced charges of conspiracy to intimidate, affray and unlawful assembly, with the actions of building employers that caused the industry to have the highest rates of fatalities and serious injuries in the UK economy.[434]

On the opening day of the trial the defence applied to have the count of conspiracy to intimidate struck out because all 24 pickets were charged with at least one count of actual intimidation. Judge Mais dismissed the application. The trial of the six pickets on the three charges opened on 4 October. The remaining counts, four to forty-one, were to be considered at the end of the trial.

The decision to prosecute for conspiracy, despite the reservations in the West Mercia Police report about the weakness of the evidence, shows that Drake wanted a trial of pickets for serious offences, not simply obstruction or breach of the peace. As shown in Chapters 7 and 8, this was precisely what the NFBTE and other employers had demanded, win or lose. It would be a warning to building workers that might want to use the flying picket tactic again.

Drake's comments also illustrate the advantage that a conspiracy charge gave to him. He did not have to prove that the six 'ringleaders' had committed any specific act other

[433] Trial Transcript, page 10 para C. Shrewsbury Archives, WCML, Salford.
[434] Hall's letter to Walker 15 November 1973 noted that Platts-Mills had put these points "and has received some dusty answers from our witnesses."

than an agreement. Drake could introduce evidence about the behaviour of dozens of other, unidentified pickets on 6th September and attribute their conduct to the six. At the start of the trial Drake made a lengthy opening address to the jury. A report in *The Times*[435] was headlined "Terrifying display of violence by 'flying pickets' at building sites, prosecution says." According to Drake, the pickets moved across Shropshire like an "expeditionary force". He told the jury that witnesses would describe the pickets as like, "a mad horde, a bunch of Apache Indians – a frenzied mob." Once Drake had painted this colourful picture he would argue that the six leaders were responsible for the 'mob', even if it was not their intention to create a 'terrifying display of violence'.

9.3 Trial venue

The venue for the trials was crucial. Willison highlighted it when he submitted the police reports to the DPP: "The venue may be thought important. Mold is a first tier court but there is considerable unemployment in the district and Chester or Shrewsbury might be better alternatives."[436]

Juries drawn from working class towns and cities, particularly where unemployment was higher than average, were more likely to be sympathetic to pickets. Rawlinson had made the point at a meeting of the Conservative Party Home Affairs Committee. He claimed that the difficulty in obtaining a conviction of pickets included biased juries, "…for instance in a recent case in Liverpool the jury came from a dock area and gave an acquittal."[437]

The decision to try the North Wales pickets at Shrewsbury was opposed by their lawyers. On 27th July 1973, an application was made by the defence to move the trials from Shrewsbury to either Mold, Chester or Liverpool. The application was heard by Mais, to whom the trial had been reserved.[438] The defence put forward several grounds for moving the venue:

[435] *The Times* 5 October 1973
[436] Letter 18.12.1972 - TNA DPP2/5159
[437] Reported in a letter from the Chief Whip, Francis Pym to Robert Carr, 29 November 1972. TNA HO 325/103
[438] Letter from Deputy Circuit Administrator, Midland and Oxford Circuit to the DPP 19 July 1973 (TNA DPP2/5159).

- The jury would be influenced by the adverse local press reporting in Shrewsbury of the events on 6th September 1972.[439]

- Shrewsbury was approximately 50 miles from the pickets' homes in North Wales and they would incur significant daily travelling expenses at a time when they would not be working. Lodgings would be expensive and Social Security would not cover these costs.

- The trial could be held in Birmingham where suitable overnight accommodation could be found. The defendants had to be in court every day whereas witnesses need only attend on 1, 2 or at most 3 days.[440]

In reply Fennell argued that the principle was that, unless there were very good reasons, a trial should be heard in the area in which the offence occurred. He claimed, without any evidence, that the passage of time meant that jurors drawn from the Shrewsbury area would not be prejudiced. He pointed out that the recent pickets' trials at Mold resulted in acquittals on the most serious charges, demonstrating that jurors were not biased. [441] Willison and Rawlinson had argued the exact opposite.

However, jury prejudice cuts both ways. A trial can be held away from the area in which the alleged offences occurred if a local jury may be prejudiced against defendants. The Central Criminal Court Act 1856 was passed to allow provincial cases to be heard at the Old Bailey in London to avoid any potential bias. Every decision to hold a trial at an alternative venue is based on the possible, rather than the actual prejudice that may exist.

The DPP's note of the hearing on 27 July ended simply, "Without hesitation Mr. Justice MAIS then said, "I am not persuaded that there have been any good reasons advanced for changing the venue." Application refused".[442]

A note written after the hearing stated that, "Mr. Justice Mais wants transcript of summing up and sentences in the two trials at Mold, together with the copy

[439] A front-page article in the weekly *Shrewsbury Chronicle* 28 September 1973, gave details of the upcoming case. It referred to six pickets facing 42 charges, 250 witnesses were to be called during a trial that was expected to last for nearly five months and highlighted the estimated cost. This painted a picture of a major criminal trial.
[440] TNA J182/26
[441] Report in Memo of Supt. Glover to West Mercia Chief Constable 14 March 1975 (TNA DPP2/5159).
[442] Note in TNA DPP2/5159.

indictments and court records."[443] As noted in Chapter 8, the summing-up contained multiple references to picketing at Shrewsbury and of Des Warren in particular. These documents would not be seen by the jurors at Shrewsbury because of their potentially prejudicial effect. The jury had to decide the case solely on the evidence presented in court. On that basis, it is questionable why Mais wanted to see such documents.

9.4. Fortification of the court

The police were able to shape the jury's perception of the six pickets through the preparation of the court. Warren (1982:38) recalled that, "All ground floor windows were boarded up and the police line surrounding it was three deep." Arnison (1974:51) described it as a massive show of police force, "…as if spies, mass murderers or train robbers were on trial." This was a continuation of the political manipulation of the presentation of the case from the beginning. At the first committal hearing, at Shrewsbury Magistrates Court on 15 March 1973, there were 800 police officers in attendance for 400-500 demonstrators. Similar steps were taken at the Mold trials.

At a pre-trial conference with Drake on 17th September 1973 the police discussed the issue of security for the opening of the trial on 3rd October and did not expect any problems

> The question of intelligence was mentioned but there was nothing to add to what was already known. It was felt that after an initial demonstration on the opening day any further activity would be ill-supported and sporadic.[444]

Despite this assessment the police ensured a large daily presence. Platts-Mills (2002:538) recalled

> Counsel, judge and jury had a similar experience, for ground-floor windows and doors near the courthouse entrance were all boarded up and remained like that throughout the two and a half months of the trial…The idea can only have been to suggest to the jury that the accused and their friends were uncontrolled hooligans likely at any moment to hurl stones at every piece of glass in sight, or stink bombs at the judge and jury.

[443] Note of telephone conversation with Mr. Lewis (D.C.A.) on 30.7.73 (TNA J182/26).
[444] Matters discussed with Mr. Drake 17th September 1973 TNA – DPP2/5159

9.5. Selection of jurors

The right to trial by a jury of one's peers in England is a longstanding principle for serious crimes, dating back to the thirteenth century. The *Magna Carta* referred to the 'lawful judgment of their equals'. But the unpredictability of trial by someone's equals has led the state, through the centuries, to restrict jury trials, the category of persons that could sit on a jury and the right of the defence to challenge potential jurors (Hain 1985:137-144).

The defence had a long-standing right to object to up to seven jurors without giving an explanation.[445] At the Mold trials the pickets' lawyers had objected to any juror that listed their occupation as "building contractor" because they were likely to be hostile to pickets.[446] This policy may have contributed to the pickets' success in being acquitted of the more serious charges of affray and intimidation.

In preparation for the Shrewsbury trials Casson & Co. wrote to the court on 13 September to request a copy of the jurors' list so that they could identify jurors that they might want to challenge before the jury was sworn in. Unbeknown to the defence the rules on juror lists had just changed. In July 1973 the Lord Chancellor, Hailsham, issued a direction under the Courts Act 1971.[447] His direction stated that, in future, the occupation of a juror was not to be published alongside the juror's name.

This Direction was criticised when news of it finally emerged. There was no prior consultation with the legal profession and other interested bodies; it was issued at the start of the long vacation in July when, traditionally, the higher courts do not sit and many judges and lawyers who might have questioned it were away. The pickets' saw it as a deliberate step by a Conservative Lord Chancellor to change court rules so that

[445] This right, of peremptory challenge, was abolished by the Criminal Justice Act 1988 s.118(1)
[446] Arnison (1974: 46); Platts-Mills (2002:532-3)
[447] Section. 31(2) states: The arrangements to be made by the Lord Chancellor under this Part of this Act shall include the preparation of lists (called panels) of persons summoned as jurors, and the information to be included in panels, the court sittings for which they are prepared, their division into parts or sets (whether according to the day of first attendance or otherwise), their enlargement or amendment, and all other matters relating to the contents and form of the panels shall be such as the Lord Chancellor may from time to time direct.

the defence could not identify potentially hostile jurors, which they had done to great effect at Mold.[448]

Hailsham's decision was the subject of a critical editorial in the *New Law Journal*.[449] It questioned his motives when he changed the procedure without public consultation, "…the Home Secretary, the Attorney-General and a number of judges being the only repositories of the Lord Chancellor's confidence in this matter". Although the journal did not state the source of its information it is another example of Robert Carr being involved in decisions that related to the prosecution of the pickets.

The editorial noted that the Government claimed that the right of peremptory challenge was being abused but,

> The fact that a part, at least, of the Government's disquiet arises from "some cases with political overtones"[450] will do nothing to lessen public concern or, more particularly, lawyers' concern in this matter.

Hailsham's Direction was also the subject of questions in the House of Commons on two separate occasions during the trial. Douglas Mann asked the Attorney General,

> …will he publish the terms of the administrative arrangement made by the Lord Chancellor in July under Section 32 of the Courts Act which deprives the defence of information relating to juror's occupations but leaves it available to the police and, consequently, counsel for the prosecution?

Rawlinson replied,

> …if the direction has not been published – I think that it has – I shall see that it is published. However, it is wrong to think that information is denied to one side and not to the other. Neither the prosecution nor the defence now knows the occupation of jurors.[451]

The following month Stanley Clinton Davis MP took up the issue. In reply Rawlinson repeated that, "This information is now denied to both prosecution and defence. What

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[448] Platts-Mills, op cit

[449] NLJ 11 October 1973 pp. 918-919. [Hain mentions a reference to *Daily Telegraph* 5 October 1973]

[450] One of those cases was the "Mangrove Nine", a group of Afro-Caribbean men and women who, in August 1971, were charged with incitement to riot. Some defended themselves and demanded a jury composed exclusively of black people. This was refused but they challenged 63 potential jurors between them to get a jury closer to their peers than the initial twelve that were called. They were all acquitted of incitement and five of them were acquitted of all charges: http://bit.ly/2opTaZ2 .

[451] HC Deb 12 November 1973 vol 864 c25

the hon. Gentleman says may equally affect the prosecution."[452] Notwithstanding Rawlinson's pledge to lodge a copy of the direction in the Commons library it is not available.[453] It was not published in the law reports (the *Weekly Law Reports* or the *All England Reports*[454]). There is no copy in the papers of Lord Hailsham at the Cambridge Churchill Archive or within the LCO series at the National Archives. There was no reference for the direction in *Archbold* and the only a brief mention of the change in the supplement to the 38th edition.[455]

Rawlinson stated that the effect of the direction was that the list of potential jurors given to the defence and the prosecution excluded a juror's occupation. Yet the prosecution papers at the National Archives included the names of all twelve jurors empanelled on 3rd October 1973 and against each name was their occupation.[456] Platts-Mills (2002:533) concluded, "…for all we know our jury list could have been fixed so that every juror was a contractor."[457] (The prosecution had the same advantage at the second trial. A list showed the seating placements of the twelve jurors in the jury box together with their names and occupations, which included a civil engineering maintenance worker, a pipe layer and a building contractor.)

To summarise the position so far in this chapter, the documents that have been discussed above show the various steps taken before the trial began to strengthen the prospects of convictions. They show the inequality between the prosecution and the defence. The former, with the assistance of the police and court authorities, were able to prepare the trials to favour the prosecution. There was no limit on the number of charges that the prosecution could apply, nor on the number of witnesses that it called. They selected charges that were notable for their vagueness and duplication. The

[452] HC Deb 03 December 1973 vol 865 c909

[453] A request was made to the Commons library and the Cabinet Office but neither of them could locate a copy.

[454] Other directions are included in these reports e.g. a "Practice Direction (Jurors)" made by Lord Widgery C.J. on 12 January 1973 dealing with excusal from jury service, [1973] 1 W.L.R. 134.

[455] *Archbold Criminal Pleading, Evidence and Practice in Criminal Cases* supplement to the 38th edition (1973), section 4-274, page 459. It simply states: "In 1973 the Lord Chancellor issued a directive stating that information contained in jury panels should no longer include the particulars of prospective jurors' occupations." Archbold is the leading textbook on procedure in the criminal courts in England & Wales and has been published since the 19th century.

[456] TNA DPP2/5159

[457] The *Shrewsbury Chronicle*, 5th October 1973, stated that the Defence objected to eleven jurors and the prosecution to two.

pickets were tried in a hostile environment that was strengthened by the siege-like arrangements of the court. The attempts by the defence to overcome some of the potential unfairness were blocked: Judge Mais refused the application to move the trial to an alternative venue; the Lord Chancellor issued a direction removing information about a juror's occupation that could have assisted the Defence in identifying jurors that might be prejudicial to trade unionists.

The next sections look at issues that arose during the trials that illustrated the further manipulation of the process by the state.

9.6. The Red under the Bed

In previous chapters, it was shown that the Government was keen to use the media to shape attitudes towards industrial disputes and picketing.[458] An example of such propaganda occurred when the prosecution case concluded on Tuesday 13th November 1973. On that day, the television listings section in the local daily newspaper for Shrewsbury, the *Shropshire Star*, highlighted a programme that was to be shown on ITV that evening, *The Red Under the Bed*.[459] It was made by Anglia TV and presented by former Labour MP, Woodrow Wyatt. The film argued that the Communist Party and various Trotskyist organisations were trying to win influence within trade unions and workplaces to achieve their strategic goal of the overthrow of the Government.

The programme was broadcast at 10:30pm and included footage of picketing during the building workers strike and other disputes. At the end of the programme most ITV regions broadcast a 30-minute studio discussion of the film, chaired by Richard Whiteley. The panel of five included Wyatt, Alan Fisher (General Secretary of the National Union of Public Employees), Lord McCarthy (an industrial relations academic) and two MPs, Barbara Castle (Labour) and Geoffrey Stewart-Smith (Conservative). The latter, publisher of the anti-communist *East-West Digest*, was

[458] See *Daily Telegraph* 14 November 1973; *London Evening News* 13 November 1973. Immediately after a Cabinet meeting on 31 January 1974 to discuss contingency planning for the miners' strike Lord Carrington sent a memo to Heath headed "Picketing". Carrington suggested that a sub-committee headed by Carr should consider, "Whether we should or should not seek to have scenes of intimidation from 1972 reshown on TV in advance." (TNA PREM15/2117)

[459] "Reds in industry" *Shropshire Star* p.7, Tuesday, November 13, 1973. See also, the Television Guide of the *Daily Mail*, p.34, 13 November 1973.

given the last word in the discussion. He made explicit reference to the involvement of communists in the area action committees of the building workers' trade unions.[460]

The Defence were unaware that the Foreign Office-based Information Research Department (IRD)[461] was involved in the making the documentary. The day after it was shown the defence made an application for Wyatt and two television companies to be summonsed to court to answer a charge of contempt, as the programme was an interference with the proper course of justice. The application claimed that the programme prejudiced the fair trial of the case and wrongfully influenced the jury because sections of the programme showed:

> (a) Warren and Carpenter
> (b) the Shrewsbury Crown Court
> (c) violence and damage alleged to be caused by pickets on building sites during the National Building Strike of 1972
> (d) violence and damage alleged to be caused by pickets during a recent coal strike and during a recent dock strike
> (e) commentary containing allegations of a communist conspiracy to infiltrate a number of Trade Unions including the Building Trades unions
> (f) commentary containing allegations that official strike Action Committees formed for the purpose of the said building strike were all controlled by communists.[462]

A copy of the film was summonsed from Anglia for Mais to view in his room. Afterwards he dismissed the defence's application. The jury were not asked whether they had seen the programme. According to Glover, Mais was annoyed at the application, "The film was shown in chambers and the Judge expressed some displeasure at this action of the Defence."[463]

The witness statement in support of the defence's application had ended, "There followed an uneventful discussion about the programme described above."[464] That was not the view of some of those behind the making of the programme. The Cabinet

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[460] The film is available to view at the British Film Institute, London.
[461] This was also discussed in Chapter 7.
[462] Defence application – WCML Shrewsbury archives. The application was accompanied by a witness statement in the name of one of the six, Carpenter. It gave more detail of scenes from the programme that were considered to be prejudicial.
[463] March 1974 report, para.25(d) TNA DPP2/5159
[464] Witness statement of John Carpenter para. 2(xx) – WCML Shrewsbury archives. His statement exhibited the television page of the *Shropshire Star* for Tuesday 13th November 1973 and claimed, "On page 7 the programme is referred to as a Star spot and described in a special article."

Office had a file of documents[465] about it beginning with an internal IRD memo from TC Barker to Mr Reddaway:

> We had a discreet but considerable hand in this programme…In February Mr Wyatt approached us direct for help. We consulted the Department of Employment and the Security Service through Mr Conrad Heron's group[466]…With their agreement, Mr Wyatt was given a large dossier of our own background material. It is clear from internal evidence in the programme that he drew extensively on this…[467]

The significance of Wyatt's programme was noted at the highest level of government. The Prime Minister's Principal Private Secretary, Robert Armstrong wrote to Heath, "You may like to glance through this transcript of Woodrow Wyatt's "Red under the Bed" TV programme." Heath's scribbled response said, "We want as much as possible of this."[468]

On 21 January 1974 Armstrong repeated Heath's comments in a memo to the Cabinet Secretary, Sir John Hunt and ended, "He hopes that the new Unit is now in being and actively producing." Hunt replied, "A good deal of discreet help was given to Mr Wyatt in preparing this programme. I confirm that the new Unit is in being and is actively producing material."[469]

An attempt was made to rebroadcast the programme during the final week of the trial. The head of Anglia Television, Aubrey Buxton, wrote to the heads of the regional television companies on 17 December 1973, "It would seem highly opportune to repeat Red under the bed this week. Hope you agree."[470]

The documents discussed in this section showed the importance that the Government attached to programmes like *The Red under the bed* in shaping public opinion about

[465] TNA PREM15/2011. Ordinarily the file should have been released to the National Archives 30 years later. When it was identified in their online catalogue in 2013 it said, "Retained by Dept." and was not released until an FOI Act request was made by the writer.
[466] Sir Conrad Heron KCB, OBE was a Permanent Secretary at the Department of Employment 1973-1976.
[467] Memo Red Under the Bed TC Barker to Mr Reddaway 21 November 1973 – TNA PREM 16/2111
[468] Handwritten notes on compliments slip headed '10 Downing Street Whitehall', 17 January 1974 TNA PREM15/2011
[469] Memo from John Hunt to Robert Armstrong 25th January 1974 TNA PREM15/2011. The 'Unit' was a new propaganda unit of the IRD to disseminate Government propaganda in the UK.
[470] IBA archives, Bournemouth University.

picketing. It was actively involved in the making of the programme through IRD. The broadcasting of the programme at any time during the pickets' trial would be prejudicial to the defence. It made explicit references to picketing during the building workers' strike as part of Wyatt's theme, that militant extremists were destroying British democracy. Yet Judge Mais dismissed the programme as irrelevant to the jury's consideration of the evidence. He would not hold the television companies in contempt or order a retrial with a fresh jury.

9.7. Witness evidence

Chief Constable Willison had already highlighted the difficulty that witnesses would have in remembering faces: "The officers are in no doubt that there may be some difficulties in identification after this lapse of time."[471] Platts-Mills (2002:535) believed the length of the trial and the large number of witnesses was due to the contradictory character of the evidence. But this missed the point. Drake tried to disguise the contradiction and weaknesses of identification evidence through sheer weight of numbers. 220 witnesses were called to paint a general picture of fear and intimidation.

Two aspects of the prosecution's handling of witness evidence are noteworthy in showing its manipulation of the evidence. Firstly, the police revised the witness statements that had been taken originally during their investigations in autumn 1972.

> So that Counsel would be aware it was mentioned that not all original hand written statements were still in existence, some having been destroyed after a fresh statement had been obtained. In most cases the first statement was taken before photographs were available for witnesses and before the Officers taking the statements knew what we were trying to prove.[472]

The destruction of original handwritten statements was improper as it deprived the Defence of sight of the initial recollections of witnesses.[473] The police stated that statements were amended after they knew, "what we were trying to prove". This indicates that the police, after their initial evidence-gathering, did not have a case

[471] Letter West Mercia Police to DPP 18.12.72. TNA DPP2/5159
[472] Matters discussed with Mr Drake 17th September 1973 TNA – DPP2/5159
[473] Re-writing of witness statements was a central theme of the Hillsborough case. Scraton (2016:448) noted that the IPCC had reported that 240 police officers' statements appeared to have been altered.

against any of the pickets, just like their counterparts in other parts of England discussed in chapter 7. The police therefore decided to construct a case by re-interviewing witnesses and steer their evidence with the use of photographs taken by *Shropshire Star* journalists and by police photographers.[474] The police put numbers and arrows on the photographs and then questioned the witnesses again. According to Warren (1982:44), "Platts-Mills later succeeded in getting James to tell how police had shown him photographs of myself and other pickets and pressurised him to make allegations against us."[475]

The second manipulation of witness evidence occurred just before each witness entered court to give evidence. Glover noted that they were shown the marked photographs to "refresh" their memories:

> The Judge allowed, indeed directed, that witnesses should be shown their statements (following R v Richardson 1971) and also that they should see photographs, which they had earlier seen for identification purposes, before entering the Court to give evidence.[476]

In *R v Richardson*[477] the Court of Appeal had stated that prosecution witnesses could, if they asked, see a statement that they had made shortly after the events in question. In the case of the pickets it would mean that witnesses, *if they requested*, could be shown the initial statement that they gave to the police. However, the principle would not apply to marked photographs that the police showed to witnesses later, nor to the revised statement that the witness made weeks or months later after being shown the photographs.[478] Mais' direction supported Warren's contention that the prosecution witnesses were coached to identify him, to support the police narrative that he was the leader of pickets terrorising non-strikers.

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[474] The *Shropshire Star* received information to their office on the 6th September 1972 alerting them to go to the Brookside site. They sent a reporter and a photographer. The WMPR states that the photographs taken, "…were shown to all the witnesses with a view to identifying persons involved in the disorderly picketing…The task would have been virtually impossible without press photographs." (WMPR p.24) None of the photographs showed scenes of violence.

[475] The evidence of Henry Vivien James, a North Wales striker who picketed in Shrewsbury and Telford on 6 September 1972, is at pp.552-598 of the trial transcript.

[476] Conclusion Report of Supt. Glover 29 March 1974, TNA DPP2/5159

[477] *R v Richardson* [1971]2 W.L.R. 889

[478] In any event the police would not have been able to show a number of initial statements to witnesses because they had been destroyed (see footnote 471).

9.7.2 Clifford Growcott

The allegations of Clifford Growcott were central to the case against the pickets. He featured in articles in the *Shropshire Star* and the *Daily Mail* in September 1972.[479] Subsequent newspaper reports and speeches by Conservative MPs would often make reference to a building worker who variously lost an eye, lost the sight in one eye or suffered damaged vision.[480] The claim was repeated by the President of the EEPTU, Tom Breakell, when speaking at the TUC Congress in September 1975.[481]

Prosecution photographs of the Brookside site showed police standing at the back of a meeting of pickets and non-strikers that was addressed by Warren and others. Growcott is pictured standing in the crowd listening to the speakers, along with many others. The scene appears peaceful, a typical outdoor mass meeting at a workplace.

In Growcott's statement and his evidence in court he could not identify that any of the six pickets on trial were the persons that had hit him.[482] The West Mercia police report read, "Struck on head with brick and assaulted – requiring in-patient treatment for 7 days. (Thomas Brian WILLIAMS)."[483] But count 23 of the indictment charged Tomlinson, not TB Williams, with assaulting Growcott, 'thereby causing him actual bodily harm'.

The *Shropshire Star* article of 7th September report noted that Growcott, "…has been told that damage to his eye, which was hurt when he was hit on the head with a brick and then kicked, is not permanent." Growcott was quoted as saying, "I was getting very worried, and although I may have to wear glasses for a while it's better than not being able to see out of the eye at all." These reports were not supported by the medical evidence. The doctor that treated Growcott, House Surgeon Julia Garden,

[479] The *Daily Mail* article was headlined – "Terror ordeal of a man who defied a strike" and said, "The attack has left Mr Growcott temporarily blinded in one eye and only partly sighted in the other."
[480] Clutterbuck also peddled these inaccurate claims, "Though there were no really serious casualties (one man lost the sight of one eye) there were many minor injuries…A photograph by a news cameraman of this meeting shows the bricklayer who had already received injuries which were to result in the loss of the sight of an eye standing at the back of the crowd..." (1980:88)
[481] "…there is one member of a union who is now partially blind based on the fact that he was kicked off the scaffold". Extract shown on *Guilty, My Arse* BBC One Life Series 2007. Growcott was not a union member.
[482] Trial transcript page 619 para C.
[483] WMPR Appendix VI is a list of all the workmen that allegedly suffered injuries that day.

stated that, "An ophthalmic opinion was obtained but it was said that there was no clinical abnormality and his condition improved over the next week".[484] In the evidence Growcott gave at trial he stated. "I have been told that my sight will return. I am nearly sure that I am registered 5% disabled. "[485] He was not asked why he was only "nearly sure" about such a factual matter, nor whether any registered disability of 5% was for vision or some other disability.

The evidence about Growcott indicates that he suffered a temporary disturbance to his vision from which he was expected to make a full recovery. Yet this was not the conclusion of Conservative MPs or press reports, which instead spoke of someone suffering loss of sight. [486]

9.7.3 John Llywarch as 'prosecution' witness

Perhaps the most important witness that the prosecution relied upon was one of the six, Llywarch. According to Arnison (1974:61), "His statement to the police…was one of the most damaging pieces of evidence against Warren and Tomlinson." According to Warren (1982:45) Llywarch had been interviewed on 3 November 1972 as a potential prosecution witness. DCI Glover then prepared a nine-page witness statement, but when Llywarch returned to the police station on 30 November he refused to sign it.[487]

Llywarch had not been cautioned before his interview with the police and was not advised of his right to have a solicitor present. He was not aware of the risk of self-incrimination when discussing the events of 6 September.[488] However, he was not listed as a possible defendant when the DPP opened its file in December 1972. This

[484] Statement in Shrewsbury pickets' archive, WCML Salford
[485] Trial transcript page 618.
[486] A picket who suffered far more serious injuries than any reported case involving a non-striker was Mike Shilvock, chairman of the Birmingham Builders' Action Committee. He was attacked in his home by masked men on 21 September 1972. They broke his arm and toe, crushed his ribs and smashed up his face. (Brum builders' leader is 'beaten up' *Morning Star* 21st September 1972 in TNA LAB10/3510) No-one was ever caught for this assault.
[487] Copy of Llywarch's police statement with hand-written comment at the end by Glover, "He agreed with its accuracy but refused to sign." Item G in a bundle of trial documents headed "Exhibits" in author's possession.
[488] Llywarch's evidence is in the trial transcript, vol. AE10, pp.941-1014. Shrewsbury archives, WCML, Salford.

was reconsidered at the conference with Drake on 1st February 1973, when he decided that Llywarch should be charged.

At the start of the trial Drake had Llywarch's unsigned statement distributed to the jury so that Drake could refer to it in his opening speech. It was like a ticking bomb in court throughout the trial because it stated that Llywarch had been terrified by the behaviour of the pickets on 6th September and had tried, in vain, to calm them down. In answer to questions by Drake, Llywarch admitted that, "95% of it is true."[489]

Although the statement was damaging to Llywarch the greater threat was to his co-accused. In the grounds of appeal drafted by Tomlinson's barrister, David Altaras, he criticised the judge for the way that Llywarch's unsigned statement was presented,

> The statement subsequently formed part of the Prosecution's case against Llywarch, was exhibited at the trial, and copies were distributed to the Jury. In the witness box, Llywarch adopted part, though not all, of the statement. The part which he did not adopt related to the Appellant's actions on 6th September.[490]

Altaras argued that Judge Mais should have made clear to the jury that the parts of the statement that Llywarch said were inaccurate could not be used as evidence against Tomlinson.

The use of Llywarch was one of the most manipulative acts of the prosecution at the trial. By placing him in the dock next to his five co-accused the jury were given a daily reminder of the statement that the police claimed that he made. It did not matter whether Llywarch was convicted as he was not the main target of the prosecution, and there was no authority or means to stop Drake prosecuting him. The WMPR did not identify any evidence that Llywarch had committed specific offences. In the report, he was accused of affray and unlawful assembly simply because of his presence with the pickets on the building sites. The report acknowledged that all 250 pickets could be charged with those two offences (p.33).

[489] Ibid. p.973.
[490] Supplemental grounds of Appeal for Tomlinson drafted by David Altaras. TNA DPP2 5185/2

9.8. The judge, mis-directions and the court usher

The conduct of the trial by court officials was another opportunity to interfere with the outcome. Just as the prosecution considered the venue to be important, so too was the right judge. Superintendent Glover commented after the trials had concluded, "It was appreciated at an early stage that there would be difficulty in obtaining a judge, the decision having been made that a senior red-robed judge was required for the case of this magnitude and with the obvious political undertones involved."[491]

Mais was a surprising choice for a case that was expected to last three months and, if it had included all 24 pickets, six months. He was not a 'senior red-robed judge' of the criminal courts, despite his age (he was 66). He had been appointed to the High Court in 1971 but had not been awarded the customary title for senior, distinguished barristers, of Queen's Counsel. Mais had appeared mainly in the lower courts throughout his career and his specialism had been ecclesiastical law, not crime.[492]

At the first appeal hearing Platts-Mills referred to Mais' attitude during the trial,

> in this case he conceived a personal dislike for my client Warren and he expressed it in the plainest terms. The jury responded to it in a manner I hope never to see again.[493]

Later, Platts-Mills (2002:533) observed, "…Mais was the ideal choice for a trial of active trade unionists for he showed a deep dislike for them all and clearly had no real understanding of the trade union movement…(Mais)…declined to believe that bad conditions of work could affect the quality, and when I insisted that they did, he sulked. I have not before seen a judge sulk."[494]

Tomlinson's counsel, Altaras, formed a similar impression. In a statement to the CCRC submitted by the pickets' solicitors, Altaras recalled:

> Given the fact that I regularly adjudicate criminal trials myself I have no hesitation in saying that, during the trial, the Judge's conduct towards the defence frequently crossed the line between permissible and impermissible

[491] Conclusion report re. trial of "Flying Pickets" Supt. C. Glover 29 March 1974 - TNA DPP2/5159
[492] *Who's Who* (1973) London: Adam & Charles Black. Mais, like Drake, was a freemason.
[493] *R v Jones, Tomlinson and Warren* Notes of proceedings, before Lord Justice James, 11 January 1974, p.11 para. E (WCML Shrewsbury archive).
[494] Mais' biased attitude to Warren was part of the grounds of appeal, 'Appeal against conviction settled by AA Rumblelow'. Shrewsbury archive, WCML, Salford.

> behaviour and amounted to a display of obvious hostility towards the Defendants. He took particular exception to John Platts-Mills…and to Des Warren himself. I vividly recall an occasion when Mr Platts-Mills was cross-examining a witness (probably a police officer) and the Judge took off his wig and threw it on the bench in irritation. I recall occasions when he threw his pen down and turned to face the wall when either a defendant was giving evidence or the defence were adducing evidence in cross-examination.[495]

A further example of conduct by Mais that sent a signal to the jury was his decision to withdraw bail in the final few days (Warren 1982:62). There was no indication that the pickets would have absconded as they had attended court each day for eleven weeks. It was a matter of presentation: a prisoner brought up to the dock from the cells gives a greater inference of guilt than one that arrives with everyone else.

9.8.1 Misdirection

Mais made a serious error in his direction to the jury on Tuesday 18th December. After almost eleven weeks of evidence, speeches from the various barristers and a summing-up, the jury was sent out to consider its verdicts. By late afternoon the jury reported that it could not agree unanimous verdicts for four of the pickets on the first count, conspiracy to intimidate.[496] They had found Carpenter and O'Shea not guilty of the charge.[497] Judge Mais informed the jury that he would accept a majority verdict. As it was late the jury had to be sent to a hotel overnight before returning to court the next day. Before sending them away Mais said,

> I think the court should now adjourn and that you should go to the accommodation which has been prepared for you. Arrangements will be made for your reception, *and I suggest that possibly you continue your deliberations there*."[498] (Emphasis added)

His comments were improper. He had failed to direct the jury *not* to continue its discussion about the case; instead he did the opposite. The principle was emphasised in the case of *R v Thakaran*:[499]

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[495] Statement of David Altaras with letter from Bindmans to CCRC,14 November 2013 (copy in author's papers).

[496] "Note received from Jury 4.20pm 18/12/73 Howell. Clerk of the Court". Handwritten note, TNA DPP2/5159. The jury were split 8 to 4 for a conviction.

[497] *The Financial Times* 19 December 1973.

[498] Trial transcript 18 September 1973 p.218.

[499] [1995] 2 Cr. App. R. 368 at 374. Although this case post-dated the Shrewsbury trials the principle was longstanding. "On the facts which we have related, it is...quite clear that there is abundant room for

> The dangers inherent in deliberations continuing in a hotel…are obvious. Unless the jurors are all together in one room, rival camps may be formed. If a jury is divided then obviously some are taking one view and the remainder are taking the other view. There is a clear danger that pressure may be brought to bear on individual jurors in the opposite camp at a time when they are not acting as a collegiate body.
>
> One of the strengths of the jury system is that they do act as a body, and if there is disagreement then individual jurors can look to others of the same view for support. If they continue their discussions outside the jury room, then those of a weaker disposition may be open to persuasion without having the support of others of the same mind.

Like the jurors in *Tharakan*, the Shrewsbury jury returned majority verdicts within an hour of returning to the court after their overnight hotel stay, suggesting that there had been discussions at the hotel. They announced that a sufficient majority, 10-2, had found McKinsie Jones, Tomlinson and Warren guilty of conspiracy to intimidate.

9.8.2 The intervention of the usher

A further disturbing claim about the treatment of the jury was an allegation that the court usher informed them that if the jury found the pickets guilty they would only be fined £50 each and their unions would pay these. After the verdicts had been reported to the judge and the sentences had been handed down Warren's wife, Elsa, recalled that a juror approached her outside the court, "He told me that the jury had been told that the defendants would be fined, would not receive a custodial sentence and if the jury had taken any longer over the verdicts "they would be there over Christmas."[500]

Platts-Mills also recalled the discussions recounted by Elsa Warren:

> Outside court, the distressed foreman told the wives of the defendants what had happened. The jury wanted none of the accused to go to prison, but one juror claimed to know the law and had insisted that this could not possibly be the outcome. They were eight/four for nearly twenty-four hours. Finally, two gave way on the basis of the argument, "You can't

speculation that the jurors, or some of them in this case, did continue their deliberations in the hotel. It is quite impossible for the Court to conclude that if there were further deliberations, all 12 of the jurors were there together. As James L.J. said in *Goodson (1974) 60 Cr.App.R. 266*: "… where there is room for speculation there is … room for possible injustice."

[500] Statement of Elsa Warren to CCRC 14 May 2015. See also letter from Elsa Warren to UCATT, 24 March 1974 (UCATT archives). "The two jury men walked out before the sentence was passed and had to be called back before the judge finished his sentencing. I was there at the court – when sentence was passed and spoke with these men – who were disgusted with the men being found guilty of these trumped up charges."

> keep us here forever." The jury bailiff confirmed a lot of this to counsel. The foreman had stood firm throughout against the conspiracy charge and was crying as he spoke to the wives. (2002:539)

When Mais handed down custodial sentences the foreman of the jury stood up and struck another jury member before storming out of the court.[501] Platts-Mills (2002:539) recalled:

> At this point, the foreman of the jury shouted, "I'm leaving this court." We all turned to look and there he was, forcing his way out past the crowded knees in the jury box. He shouted, "It's disgraceful," and kept on shouting until he disappeared through the jury door. Another juror followed, showing his anger by slamming the door of the jury box. Everyone was astounded. I had never seen the like, and I don't think any of us had.

The incident was also noted in a report to the DPP:

> It was a majority verdict 10-2 – whilst sentences being passed 2 jurors left the Jury Box – the foreman and one other – believed to be the dissenters – and one (?the foreman) remarked he was annoyed that custodial sentences were being passed. Judge did not refer to this outburst but indicated that they should return to the Jury Box and this they did.[502]

Three of the pickets, Warren, Tomlinson and McKinsie Jones, had been found guilty of all three counts. The other three, Carpenter, Llywarch and O'Shea were found guilty of unlawful assembly and acquitted of the other two charges.

The evidence from Platts-Mills, police and court documents discussed above show that a judge had been selected for the trial who was hostile to the defence. Mais made a number of rulings against the pickets, dealing with the venue, the counts to be tried and the showing of *The Red under the bed*. He showed his dislike for pickets and was hostile to Platts-Mills when he attempted to raise issues relating to the employers, whether it was their record on health and safety and the tax evasion of the lump or the threatening use of a shotgun by Parry.[503]

[501] See letter, Norman Atkinson MP to Labour colleagues, 9 April 1974, listing five questions to be put to a meeting with the Attorney General including, "(e) Why did the Foreman of the jury protest after sentence?" TNA DPP2/5185; see also Cox (1975:48).
[502] Note headed "John Gasson 405/7641 Ex. 3417" TNA DPP2/5159
[503] Mais said Parry was free to take his shotgun anywhere as he had a license for it (Platts-Mills 2002:534)

9.9. Sentencing

A final allegation of Government interference in the prosecutions was a claim that a telephone call was made to the court from London asking that the judge did not impose custodial sentences. Drake, speaking in 2007, recalled.

> The only thing of course that I knew was political occurred at the very end of the trial. I didn't know it at the time but someone from the Government rang up, spoke to my junior Desmond Fennell, and said we don't want any of these pickets sent to prison. It would be undesirable for us if there was anyone sent to prison so would you make that known to the judge.
>
> Of course, that was quite improper and my junior, Desmond Fennell, being the man he is, he ignored it until after the trial and then he told me about it. He said, 'I wasn't going to pass something so improper on to you to embarrass you in any way.'[504]

Drake did not name the caller, but Gasson of the Attorney General's Department later wrote, "My recollection of this case is that the first this Department knew of the matter was when I rang up after the accused had been convicted but not sentenced, with a view to finding out what had happened."[505]

Carpenter, Llywarch and O'Shea were each sentenced to nine months' imprisonment, suspended for two years. Before Warren and Tomlinson were sentenced they made speeches from the dock in which they stated their belief that the trials had been politically stage-managed by the state.[506] Mais sentenced Warren last,

> So far as you are concerned, you took part in violence, and violence is far too prevalent in this country today…. I regard you as arrogant, vicious, and prepared to impose your views upon others by violence if need be. You have the power of speech and the power of leadership which you apparently used to ill purpose.

The sentences passed on Warren, Tomlinson and McKinsie Jones varied considerably although they had all been found guilty of the same offences. McKinsie Jones was

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[504] Extract from *Guilty, My Arse* BBC One Life Series 2007.

[505] Letter JGH Gasson to JM Walker, DPP Office 25 April 1974 TNA DPP2/5185. Gasson had written to Walker to discuss a letter from Norman Atkinson MP to the Labour Attorney General, Sam Silkin. Atkinson had asked whether the DPP was influenced by the speeches of Carr and Rawlinson when he decided to bring charges under the 1875 Act. Gasson informed Walker that this was not the case. He claimed that the first the Law Officers' Department knew of the matter was when he made the phone call. The files DPP2/5159 and 5185 show that Gasson had a number of communications with Hall, the DPP's representative at the trials, about the case.

[506] The speeches are reproduced in Warren 1982:62-68

sentenced to nine months in prison on each count, Tomlinson to two years and Warren received three years; all sentences to run concurrently.

The day after the six pickets were convicted the Law Lords upheld the conviction of a UCATT official, John Broome, for obstructing the highway.[507] The Government and its supporters welcomed the outcome of both cases. The *Sunday Telegraph* reported,

> Resolute action to curb the menace of violent strike picketing can be expected from the police, with Government encouragement, following last week's gaoling of three members of a flying picket for conspiring to intimidate building workers into joining the national stoppage a year ago.
>
> Police powers for dealing with peaceful pickets were also strengthened last week when the Law Lords ruled that strikers have no right to delay people entering strikebound premises if they wish to do so.
>
> The verdict in the "violent picketing" case swept away fears that existing laws were not strong enough to deal with terror tactics in strikes. It also followed Government pressure on Chief Constables to abandon their reluctance to act in industrial disputes because of anxiety about the political consequences.[508]

The article also vindicated the position taken by the Government during the past two years: "The jury's verdict demonstrated that, contrary to what many people believed, new laws do not seem necessary to deal with violent picketing."

The discussions within the Government afterwards showed that they regarded the trials as a great success. Carr wrote to Heath to discuss the public statement that he had been due to make about the Government's review of the law on picketing. It had been delayed pending the outcome of the decision in the *Broome* case. Carr suggested that if he was questioned in Parliament about the review he should state, "…that the Government has no intention of proposing any change in the law on picketing in present circumstances." Heath agreed and advised Carr to draw attention to the House of Lords judgment and the reference in Carr's letter to, "the heavy sentences recently

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[507] *Broome v Director of Public Prosecutions* [1973] UKHL 5. (Also known as *Hunt v Broome* [1973] Q.B. 691in the court below.) Broome was a UCATT official and had persuaded a lorry driver to stop at the picket line so that he could talk to the driver about the building workers' strike. After several minutes a police officer told him to move away. Broome refused and was arrested for obstruction.

[508] 23 December 1973

passed at Shrewsbury on some of the organisers of the picketing during the building strike..."[509]

Rawlinson also saw the opportunities that the two cases presented:

> In discussion, it was suggested that the police should be encouraged, like other public organisations, to forward to the Director of Public Prosecutions any evidence, in the form eg of leaflets, which suggested that a serious criminal offence, *such as conspiracy*, might have been committed.
>
> The police should also be readier than they had been in the past to ensure by immediate arrest and prosecution that pickets who infringed the law were seen to suffer the consequences, even though this might be difficult if pickets were present in large numbers. Summary proceedings were desirable – procedure by way of indictment was much slower, and would lead the public to think that no action was being taken. (emphasis added)[510]

9.10. The Second and Third Trials

After the convictions and sentencing of the first six pickets, Drake rethought his approach to the charges facing the remaining eighteen. The pickets were split into two groups and tried before Judge Chetwynd Talbot. Drake used the same tactic as he had at the first trial. If the pickets pleaded not guilty they would be tried on just two counts, unlawful assembly and affray.[511] Drake required all eighteen to attend court together and plead to the charges. Any that pleaded guilty would be dealt with later.

The jailing of three pickets after the first Shrewsbury trial had a chilling effect upon many of the eighteen pickets.[512] At the second trial of nine pickets, 14th January - 13th February 1974, Clee, Hughes and Morris pleaded guilty to a charge of unlawful assembly (Morris at the start of the trial, the other two at the close of the prosecution case). They were sentenced to four months' imprisonment, suspended for two years. Not guilty verdicts were entered on all the other counts against them.

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[509] Letter from R.C. to the Prime Minister, headed Picketing, 18 January 1974. TNA PREM/15/2117.
[510] Minutes of Cabinet committee meeting, 4 February 1974. TNA CAB130/716. As noted earlier, only one of the North Wales pickets accused of a section 7 offence, Peter Westwater, decided to be tried summarily, by magistrates. The rest elected for a trial by jury in the Crown Court. (See *fn* 546.)
[511] Counsel for Thomas Brian Williams asked that Williams be tried on counts 41 (criminal damage of a motor car) and 42 (assault occasioning actual bodily harm to Albert Blackham) but this was refused by the judge.
[512] Barker (2008:274) claimed that KB, GR, PS, BT and BW all pleaded guilty to UA at the third trial so that other charges would be dropped.

Murray, Pierce and Thomas Brian Williams were found guilty of affray and unlawful assembly. They were each sentenced to 4 months' imprisonment for the former and 6 months for the latter, to run concurrently. Warburton and James were found guilty of unlawful assembly but not guilty of affray. They were sentenced to four months imprisonment, suspended for two years. Gary Davies was found not guilty on both counts.

At the third trial, 26th February to 22nd March 1974, Roberts, Sear, Thomas and Thomas Bernard Williams pleaded guilty to unlawful assembly and also received a four-month prison sentence, suspended for two years. Butcher pleaded guilty to using threatening behaviour and was given a sentence of three months' imprisonment suspended for one year.

Only four of the nine listed for the third trial pleaded not guilty: Hooson, Renshaw, Seaburg and Edward Leonard Williams. No evidence was offered by the Crown against Hooson and he was discharged as the prosecution thought the case was too weak.[513] The trial proceeded against the remaining three, who were charged with separate counts of unlawful assembly at Brookside and unlawful assembly at Woodside. They were also charged with affray at Brookside and "…an extra count was added in each case in respect of Renshaw" (affray at Woodside).[514]

Renshaw and Williams were found guilty of one count of unlawful assembly (at Brookside) and not guilty on the other counts. They were given suspended prison sentences of four months. Seaburg was convicted of both affray and unlawful assembly but, unlike his fellow pickets found guilty of both these offences at the second trial (Murray, Pierce and Williams), he received a suspended sentence of six months and four months' imprisonment on each count. There was no explanation for the inconsistency in the sentencing between the pickets in the second and third trials.

[513] Conclusion Report of Supt. Glover para.30, TNA DPP2/5159
[514] ibid.

Drake secured convictions for affray at the second and third trials because he acknowledged the strength of the defence arguments that were being raised in the appeal of Warren, Tomlinson and McKinsie Jones. Glover noted,

> In the Law Courts, one of the grounds of appeal mentioned was on the question of duplicity[515] and, accordingly, the counts of Affray and unlawful assembly were restricted in this second trial to one site – Brookside, Telford. Two additional counts alleging Unlawful Assembly at Kingswood and Shelton sites were also added." [516]

Drake's judgment was correct, because their convictions for affray were quashed by the Court of Appeal in March 1974. Drake restricted the count of affray against the remaining eighteen pickets to specific sites instead of occurring, 'on divers building sites', uninterrupted, throughout the day.

Overall, the various tactics adopted by Drake, the police and the DPP were a success. The enormous resources that the state put into the trials of twenty-four building workers resulted in the conviction of all the pickets, except two. Six were jailed and the remainder received suspended prison sentences. The failures at Mold had been reversed because the trials at Shrewsbury were built upon the lessons of the earlier cases. Drake's inventive use of conspiracy, affray and unlawful assembly showed the availability and flexibility of the criminal law to weaken trade union action. But nothing was left to chance and, as has been shown above, every aspect of the trials that could be influenced in favour of the prosecution was manipulated in its favour.

9.11. Appeals

This final section considers the issues raised by the appeals of the six pickets after the first trial. It is divided into four parts: the first and second discuss the appeals on points of law relating to conspiracy and to affray and unlawful assembly; the third covers the appeal against the conviction for conspiracy, largely based upon factual issues relating to Judge Mais' summing up; finally, the issues over sentencing.

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[515] 'Duplicity' relates to legal procedure. It was an argument that the wording of a 'count', setting out details of the offence that was alleged to have been committed, improperly contained details of two or more offences. Each one should be set out as a separate count. The six 'ringleaders' charged with affray and unlawful assembly claimed that the evidence to support the charges suggested that there was more than one affray and more than one unlawful assembly. The defence said that each incident had to be particularised separately and precisely e.g. where and when exactly did the affray start and stop.
[516] West Mercia Constabulary Conclusion Report 29 March 1974 TNA DPP2/5185

9.11.1 Improper count of conspiracy

The first appeal was heard on 19 and 20 February 1974 before three appeal court judges headed by the Lord Chief Justice, Widgery. The main grounds of appeal were:[517]

1. It was improper for the judge to allow the prosecution to bring a count of *conspiracy* to intimidate when each of the six men had at least one count laid against them of the substantive offence of intimidation contrary to section 7 of the Conspiracy and Protection of Property Act 1875.
2. There was duplicity in relation to the count alleging affray.
3. There was duplicity in relation to the count alleging unlawful assembly.

Judgment was given on 4 March.[518] Widgery rejected the appeal against the inclusion of a charge of conspiracy to intimidate when there were a number of charges of the substantive offences:

> The question whether a conspiracy charge is properly included in an indictment cannot be answered by the application of any rigid rules. Each case must be considered on its own facts. There are however certain guiding principles. The offences charged on the indictment should not only be supported by the evidence on the depositions or witness statements, but they should also represent the criminality disclosed by that evidence. It is not desirable to include a charge of conspiracy which adds nothing to an effective charge of a substantive offence. But where charges of substantive offences do not adequately represent the overall criminality it may be appropriate and right to include a charge of conspiracy.[519]

Widgery's expression, '*overall criminality'* was highly ambiguous.[520] The criminality that was alleged was that of intimidation of non-strikers. Parliament had legislated to criminalise such conduct in section 7 of the 1875 Act. Widgery's comments illustrated the creativity of the prosecution and the judges in using the common law to circumvent the limits that Parliament had placed upon a particular offence. The 1875 Act imposed

[517] Several separate grounds of appeal were prepared by the various barristers representing the pickets. After they were lodged with the court the defence teams collated them into eight agreed points. Copies are at the Shrewsbury Archive, WCML, Salford.

[518] At the end of the hearing on 21 February the court immediately rejected the appeal on ground 1 but needed time to consider grounds 2 and 3. It reserved its judgment on them and gave full reasons for rejecting ground 1 at the resumed hearing on 4 March (*R v Jones and others* CACD, 21 February 1974 Appeal No.'s:54, 111, 112, 171-173/R/74 unreported).

[519] *R v Jones & others* [1974] IRLR 119 para.14.

[520] The *Criminal Law Review* observed that it was, "the meaning of that expression which is in doubt." [1974] Crim L.R. 665

a maximum penalty of three months' imprisonment for intimidation whereas there was no statutory limit on a sentence for conspiracy.[521]

Clutterbuck (1980:90) rejected this criticism, though on the grounds of practicality rather than of law. He argued a trial of the six pickets involving ninety-two charges would have been too unwieldy for a jury. He rejected the argument that a conspiracy charge was used by the prosecution to give larger sentences: "If, for example, Warren had been sentenced to three months' imprisonment on each of twenty charges he could have spent five years in prison." This assumed that the sentences would be served consecutively rather than concurrently. More importantly, it assumed that he would have been convicted of each of the 12 counts of intimidation and of other offences. Yet, as we have seen, every picket tried for a section 7 offence at Mold was found not guilty. The rolled-up charge of conspiracy was due to the weakness of the direct evidence against the six, as highlighted in the WMPR and by Drake. But the conspiracy charge could only be justified by accusing the six of a large number of individual counts of intimidation.

Widgery said that it was necessary as, otherwise, "…the Crown case could not be adequately presented in the interests of justice by preferring a small number of charges of substantive offences of intimidation…No material misdirection, confusion or unfairness resulted from the inclusion of this count"[522] The unfairness for the defence was, as Platts-Mills argued, that the Crown had a much lower threshold to overcome to prove a conspiracy than to prove the individual counts of intimidation against any of the six pickets.

[521] See the discussion of the Shrewsbury pickets case in the Law Commission's 'Draft report on Conspiracy' (TNA BC3/228) It noted that their case, "…furnishes another example of the imposition of a higher penalty for conspiracy than would have been available for the substantive offence (albeit of the same length as that imposed for the offence of unlawful assembly)."(p.42) The report quoted from the speech of the Lord Chancellor, Lord Cairns, when the 1875 Bill was debated in Parliament: "A particular punishment had been assigned to individual acts, and then the clause prevented the general law of conspiracy from enlarging the criminal character of those particular acts." HL Deb 26 July 1875 vol 226 cc32-42

[522] *R v Jones & others* [1974] IRLR 117, para15. Note Widgery's use of the phrase the, "interests of justice". Nowhere is this phrase defined. It is whatever the courts decide it to mean. To state that the Crown's case could not be adequately presented simply by prosecuting the pickets on the many counts of intimidation was to make an indirect criticism of Parliament's 1875 Act. This was not acceptable to the (unelected) judges.

The Court of Appeal's upholding of a count of conspiracy, when all six pickets had been charged with a number of counts under section 7, was an example of the subversion of the intention of Parliament by the prosecution and the courts. It was also the potential punishment that Drake, Mais and Widgery considered to be insufficient. The *elasticity* of the English common law system allowed the prosecution and the courts to ignore the statutory offence that had been created and instead use judge-made law to apply a more draconian punishment.[523]

9.11.2 The appeals for duplicity

The appeals against unlawful assembly and of affray were based upon the same point of law, duplicity. The defence argued that an allegation that the pickets' behaviour throughout the whole day, lasting six hours or more, was one long continuous affray and one long continuous unlawful assembly was wrong and not supported by the evidence. But the way that the defence argued the appeal was not to deny that there had been affrays or unlawful assemblies that day.

> It is submitted that there was more than one affray on the 6th September,1972, in Shrewsbury and Telford, and that the Learned Judge was wrong to allow a multiplicity of alleged offences to be dealt with in only one count. Similar considerations apply to unlawful assembly…. It is submitted that the dispersal of men over an area, their re-congregation into coaches, and, after transport by coaches, their re-dispersal over another area, occurring several times, is not one unlawful assembly but several unlawful assemblies."[524]

The court accepted this argument and quashed the conviction for affray on the grounds of duplicity:

> …there were clearly defined and separate places at which the affray was said to have taken place; the separate places were situate some distance apart; the "times" of fighting and making affray referred to in the particulars did not form a continuous period.[525]

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[523] The point was made by Stan Thorne, Labour MP for Preston South, when moving a 10-minute rule bill on 25 February 1975: "It is an insult to the authority of Parliament that any outside body, even the judges, should be able to pass heavier sentences for attempting to commit a crime if that crime was alleged to have been part of a conspiracy, when Parliament has fixed a maximum penalty for the crime itself." HC Deb 25 February 1975 vol 887 cc300-10

[524] Grounds of appeal settled by Keith McHale QC (barrister for Tomlinson) WCML Shrewsbury archive

[525] *R v Jones & others* [1974] IRLR117 para35

The single count of affray in the indictment wrongly covered a number of activities rather than one activity. The pickets visited several sites and therefore, "the affray ceased on the withdrawal of the pickets from that site." In other words, the Court of Appeal accepted that the evidence suggested that the pickets went to one site, made an affray with the workers there, left and moved peacefully to a different site where they made an affray with a separate group of workers. Each affray should have been charged separately, as occurred in the second and third trials.

It was open to Drake to allege seven separate affrays – one at each site. The quashing of the convictions of Warren, Tomlinson and McKinsie Jones for affray were based upon a legal technicality. It explains why the pickets convicted of this offence at the second and third trials did not appeal.

The Court of Appeal acknowledged that the same argument might apply to the appeal against unlawful assembly, but it held that the criminal activity was different. The *actus reus* of affray was "fighting or the showing of force," which clearly had not been happening all day. The court decided that, for unlawful assembly, the two requirements of the offence were:

> (i) the actus reus of being or coming together – the assembly, and (ii) the mens rea involved in the intention of fulfilling a common purpose in such a manner as to endanger the public peace.[526]

The contrast between the two activities is clear; one involved fighting and the other involved assembling. The court held that 'at no time during the day did the pickets cease to be one assembly', "or ceased to have *the intent of making the assembly unlawful*...The evidence was of one activity of assembly, though the evidence was of different acts at different times and different places by those forming the assembly."[527] (emphasis added)

The Court of Appeal had decided that the pickets had assembled in Shropshire that day and they had an unlawful intent - to picket in such a manner as to 'endanger the

[526] Ibid. para33.
[527] Ibid.

public peace'.[528] This interpretation of the meaning of an unlawful assembly could be applied to any gathering of trades unionists or protestors where it was alleged that the 'common peace was being endangered' by a crowd. It could allow the prosecution to bring forward a mass of general evidence about events on a particular day and use it to convict someone who had merely attended.

This discussion of the issues raised by the first appeal also shows how one set of alleged facts – intimidation of workers on 6 September - could have three separate charges applied to them. It gave the prosecution three chances of a conviction and amplified the seriousness of the alleged offences.

9.11.3 The October appeal against conviction – the bias of Mais

The second appeal was heard in October 1974 and involved only Warren and Tomlinson. They argued that Judge Mais had displayed bias, particularly towards Warren, had failed to put the defence case to the jury and gave partial and confusing interpretations of the evidence and the law. It was further argued that Mais equated the organising of picketing on 6 September by Warren and others with a conspiracy, simply because it happened. Mais had said,

> There must be some organisation behind the managing of 300 men back into 5 or 6 coaches…. The prosecution say here that in effect it is not credible that all this should have happened with no planning, no organisation, no leaders, nobody in charge, and they say that the conclusion is irresistible that this was a conspiracy as alleged in the indictment.[529]

Mais had not made clear to the jury the distinction between the mere organising of coaches to take people picketing at Shrewsbury with a conspiracy to intimidate builders still working, even if there was evidence from some of those builders that they had felt intimidated by some of the pickets.

In giving judgment on 29 October, Lord Justice James accepted that in the summing up of such a lengthy trial, "some room for criticism" of Mais was inevitable. But James

[528] An application for permission to appeal to the House of Lords against the unlawful assembly conviction was heard on 22 March 1974 by Widgery, and two others. It was rejected. (*R v Jones and others* CACD 22 March 1974 unreported. Copy in author's papers.)
[529] Quoted by Lord Justice James, *R v Tomlinson & Warren* [1974] IRLR 348 para.13

concluded that Mais had not been in error because, "Looking at this summing-up as a whole, the defence was put time and time again."[530]

9.11.4 The appeals against sentencing

McKinsie Jones had appealed, unsuccessfully against the length of sentence in March but decided not to pursue an appeal against conviction alongside Warren and Tomlinson in October. He had been released from prison in June, having served two thirds of his nine months sentence. [531]

Warren and Tomlinson's barristers, Platts-Mills and McHale, argued that, since the convictions in December 1973, there has been no further mass picketing in the building industry and that things had quietened down, thereby reducing the need for a deterrent sentence. Widgery gave the obvious answer: that industrial peace had existed since that time precisely because of the deterrent sentences. To reduce them now on appeal would send out the wrong message. Widgery ruled,

> We are of the opinion that this was a classic example of the type of case in which the punishment inflicted must be such as will actively discourage others from following suit.[532]

An editorial in the *New Law Journal*[533] considered the sentences to be of 'swingeing severity' and pointed out that they had not been imposed to reflect the *conduct* of Warren and Tomlinson but to deter others. It argued that at the time of the appeal, two years after the strike had ended, there was no evidence of intimidatory mass picketing that needed to be deterred.

[530] *R v Tomlinson & Warren* [1974] IRLR 346 para.34
[531] When appeals were lodged in January 1974 one ground was that, "A sentence of the same period for unlawful assembly and affray, if the sentence for conspiracy was unlawful, was outside the permissible range on the basis of the degree of criminality for such offences and the previous convictions, or lack thereof, of each defendant." (Copy of grounds of appeal in author's papers.)
[532] *R v Tomlinson and* Warren [1974] IRLR 350 para.49.
[533] Vol.125 No.5681 9 January 1975 pp.25-26. A critical comment on the editorial was contained in a paper about the trials by a Conservative lawyer, Ivan Lawrence MP, "…the crisis may have only been temporarily averted because of these deterrent sentences and a reduction of the sentence might lead to a reactivation of the crisis." (The Shrewsbury Pickets 16.1.1975, paper by Ivan Lawrence MP, Churchill Archives Centre, Churchill College, Cambridge)

Conclusion

The appeals underlined the political character of the charges, the trials and the sentences. The use of a charge of conspiracy allowed the prosecution to overcome the weakness of the evidence against the pickets, especially the 'ringleaders', which the West Mercia police report had highlighted. When other police forces produced reports of picketing in their areas their conclusions were similar. As a consequence, no trials resulted in Leeds, Birmingham, Sheffield etc. But the employers in Shropshire had demanded a trial of North Wales pickets, regardless of the result. The Conservative Government needed such an event to satisfy its supporters that it was taking a tough line against picketing.

The weakness of the evidence was overcome by prosecuting the leading pickets with three overlapping offences. Although all twenty-four had been charged with offences of intimidation, none of them were tried for it. Instead, it was easier for Drake to prove conspiracy, affray and unlawful assembly by calling over 200 witnesses to paint a picture of fear and intimidation, even though those witnesses did not need to identify any defendant. Drake just needed to persuade the jury that the pickets' behaviour on 6th September 1972, in the vague words of public order laws, 'endangered the public peace', 'created fear amongst the public' or 'reasonable people might be frightened or intimidated'.

Conservative ministers such as Carr and Rawlinson had made speeches arguing that a mass picket of any kind was intimidation. The message from the trials was that trade unionists could not demonstrate their collective strength without the risk of being declared an unlawful assembly. The organisers of any such picket could be tried for conspiracy if a non-striker claimed that they were intimidated from going to work because of the number of pickets, even if those pickets stood silently at the side of a workplace.

We have seen how the Government, police and DPP used their control of the criminal justice system to strengthen the chances of a conviction. The twenty-four pickets faced hundreds of charges. Over 200 prosecution witnesses were used during a twelve-week period. These are examples of the category of miscarriage of justice that Walker (1999) described as the oppressive application of the law. The comments of

Conservative MPs, the judges and newspapers show why it happens. It was a political act as a means to crush militant trade unionism.[534]

Widgery's endorsement of deterrent sentences was a threat to trade union activity because he was justifying prison terms that were not subject to any limit set by Parliament. The sentences were judge-made law. The offences for which Warren, Tomlinson and McKinsie Jones were imprisoned were also judge-made. This sidestepped the statutory limits of the 1875 Act. As Ewing (2007) has argued, the courts in the 1970s were continuing a tradition going back to the beginning of the century, using the common law to circumvent the intentions of Parliament.

The final chapter will draw together this analysis of the Shrewsbury trials with the discussion of the use of the criminal law by the state and the approach taken to the concept of a miscarriage of justice discussed in chapter 2.

[534] Widgery referred to the remarks of Mais when sentencing McKinsie Jones, "I think you wished to be observed. I think you wished to be regarded as a militant, and an ardent supporter of this mass picket, and I think that may very well be how you regarded it." (*R v Jones & others* [1974] IRLR117 para40.)

Chapter 10. Conclusion

This final chapter summarises the research and discusses the conclusions of this thesis. It begins by rehearsing the research questions that were identified in chapter one, followed by a second section discussing the methodologies that have been employed, showing the challenges in researching the behaviour of the state and its criminal justice component.

The third section summarises some of the main research findings. These are considered in the fourth section in the context of the Marxist theoretical approach that has been adopted in this thesis.

Finally, the conclusion of the thesis is considered from two perspectives. Firstly, the relevance of the issues to trade unionists today: how the criminal law can inhibit the ability to organise and to act against the effects of austerity in the workplace and more widely. Secondly, the future research areas identified by this work that will deepen an understanding of the trials and similar miscarriages of justice.

10.1 Revisiting the research question

The thesis set out to analyse a series of criminal trials of North Wales building workers at Shrewsbury Crown Court in 1973-74. It sought to answer whether their convictions could be described as a politically motivated miscarriage of justice? The charges and trials had a number of unusual features including a charge of conspiracy and the lengthy prison sentences imposed on trade unionists for picketing during a strike. These features raised concerns about the justness of the convictions. The research into the case has been a means to develop a historically grounded understanding of miscarriages of justice.

The research has explored the meaning of a miscarriage of justice. It argues that it is more than the simple dichotomy, “an innocent person being convicted or a guilty defendant being acquitted” (Runciman 1993:1). The thesis did not start from an acceptance that the convicted pickets had committed a crime. The research has therefore not been a quest to find evidence that would prove that the pickets were “innocent”.

The discussion of miscarriages of justice in Chapter 2 showed how the focus is not solely on the form of a law and issues of evidence that might prove that it had been broken. The rights-based framework of Walker (1999) has been considered to allow wider considerations to be brought into play, including cases where the conviction has been achieved through an abuse of process by the prosecuting authorities and cases where the content of the law is 'inherently unjust'. The thesis has considered and gone beyond Walker's approach by analysing law and the criminal justice system in class terms, drawing from critical criminology. The approach that has been adopted counterposes 'crimes' committed *by* the working class with those committed *on* the working class. It was demonstrated in the defence put forward at the first Shrewsbury trial by Warren's barrister, Platts-Mills, as discussed in Chapter 9.[535] He contrasted the alleged intimidation of non-strikers by pickets on 6th September 1972 with the daily intimidation of building workers by employers through dangerous, sometimes deadly, working conditions, low rates of pay and insecure employment, all of which was accentuated by the growing use of illegal, 'lump' labour.

10.2 Methodological and theoretical issues

The analysis of the trials was aided by the methodological position adopted in this thesis, discussed in chapter three. The Marxist approach that has been used sees conflict as inherent within a socio-economic system where the means of production are owned and controlled by a minority class. As Hyman (1989) has shown, strikes are a normal and open form of such conflict, even though the frequency varies.[536] This theoretical, class-conflict approach has enabled the thesis to analyse the features of the trials discussed in chapter 9. They were not a set of random, unconnected acts but were part of a clear class strategy by the state to ensure the conviction of militant trade unionists, thereby curbing flying pickets and reassuring capital. The selection of common law charges like conspiracy and affray, the late addition of unlawful assembly after the experience of the Mold trials, the choice of judge and trial venue, the policing of the court, the shaping of the jury and the attempt to influence it through

[535] Trial Transcript vol. AE12, WCML, Salford and Platts-Mills (2001:534).
[536] In 1972 the number of working days lost through strikes reached a post-war peak that was only exceeded twice in the next forty-five years, 1979 and 1984 (ONS figures 1891-2014: http://visual.ons.gov.uk/the-history-of-strikes-in-britain).

the broadcast of *The Red under the bed* during the trial, were the exercise of class power.

The television programme broadcast during the trial has been discussed as part of the Government's attempt to maintain a narrative about strikes and picketing that portray these acts as alien to British culture and part of a communist plot to undermine parliamentary democracy. In this regard, reference has been made in Chapter three to Gramsci's theory of hegemony to explain the importance for the state of using its influence over, or control of, the 'ideological means of production' to construct a view of the world that is accepted as 'common sense' by the majority.

The impact of this ideological domination was not limited to one television programme, broadcast midway through the proceedings, but came from a daily recitation of a narrative that demonised militant trade unions and shop stewards in contrast with the sympathetic portrayal of the owners and managers of capital. The message that is conveyed also portrays the law and the institutions of the state as neutral, devoid of any class content.

Nobles & Schiff highlighted the class interests at the heart of the criminal justice system:

> How can one believe that criminal justice is about truth, or due process, when it is so obviously about power, expediency, control, class, and has little, if anything, to do with justice, or any other values which might claim to lie beneath that epithet? (2000:18)

This echoes the Marxist approach that has been adopted in this thesis to explain the persistence of miscarriages of justice. The popular view reduces them to a simple guilty-innocent dichotomy. This is part of an hegemonic construction of the criminal justice system that attempts to show that 'mistakes' are rare and are limited to the occasional conviction of the innocent, as well as the acquittal (or failure to prosecute) the guilty. It assists the legitimacy of the state to arrest, detain, prosecute and punish.

Walker's rights-based approach has been used as a starting point to explore more expansive meanings of the term. He identified several examples of miscarriages of justices including, "…whenever suspects, defendants or convicts are treated by the

State in breach of their rights, whether because of, first, deficient processes or, second, the laws which are applied to them or third, because there is no factual justification for the applied treatment or punishment" (1999:35-62). Walker's category of 'inherently unjust laws' opened up a discussion about the very nature and content of laws.

The limitations of Walker's definition have been identified, where the focus is on the *form* rather than the *content* of a miscarriage of justice. It ignores the socio-economic relations upon which law and the criminal justice system are founded. Whilst some of the causes have been identified as, "…first, to false confessions; secondly, to unsatisfactory forensic evidence; and, thirdly, to mistaken identification",[537] there has been no satisfactory explanation of *why* they occur beyond suggesting that an otherwise healthy system is occasionally tainted by a few bad apples, for example the Birmingham Six case in which police officers had lied.[538] This only addresses a part of the problem.

The documents that have been obtained and presented in this thesis supports a conclusion that the prosecution of the North Wales pickets was a miscarriage of justice in a conventional sense i.e. the type caused by an abuse of process. But the analysis also allows for an interpretation in a Marxist, political sense i.e. that the behaviour of the state in manipulating the prosecution of the pickets, from the first communications between Rennie and the Home Office in September 1973 to the dismissal of the appeals in October 1974, was an exercise of class power. This is the dimension that is missing from Walker's framework. His approach is valuable in breaking the debate out of the innocent-or-guilty divide, but a more satisfactory analysis has been advanced at the end of chapter two by drawing from the ideas of critical criminology; this situates the police, the courts and the law within a class-based framework. The function of these state institutions is to preserve the existing unequal relations between capital and labour whenever there is a fundamental challenge to it. Using such a framework opens up an alternative approach to the understanding of miscarriages of justice. It provides an explanation for the breaches of due process that occur routinely

[537] Lord Alexander, speaking in the parliamentary debate on the Runciman Commission report (HL Deb 26 October 1993 vol 549 cc777-842 at 793).
[538] *R v McIlkenny and others* (1991) 93 Cr. App. R. 287 at 317.

in the criminal justice system. The thesis has used the phrase *political miscarriage of justice* as a concept to challenge the existing framework within which much of the debate is located. It implies that miscarriages of justice are systemic in capitalist society because laws and the machinery for enforcing them have arisen and been developed to preserve, ultimately, capitalist property relations and the continuing accumulation of capital.

The review of the economic and political situation in Britain discussed in chapter six, the response of the Conservative Government and the challenges by strategic groups of workers, coalminers and dockworkers, has been essential to set out the context in which the state acted against pickets. The Marxist approach that has been adopted informs the behaviour of the people that occupy positions within the criminal justice system and explains why they acted as they did during the investigations and prosecutions of the North Wales pickets.

A Marxist approach is also able to explain the occasional decisions of the courts that appear to conflict with the needs of capital. Chapter 3 discussed the work of Poulantzas (1973), following Gramsci (1971), who rejects the crude notion of the state and its criminal justice system as an inflexible direct instrument of the dominant class to repress subordinate classes. The state plays an indispensable unifying and leading role for capital that is not achieved through the economic sphere, where capital dominates over labour. The state provides the strategic thinking and policies that will maintain such domination even though it sometimes requires concessions to the dominated class.

Judges have developed a body of laws and principles that have been shaped by changing economic conditions and class pressures, none more so than trade union laws (Ewing 2007). Thompson (1975:262) emphasised that, "…the law…may be seen instrumentally as mediating and reinforcing existent class relations and, ideologically, as offering to these a legitimation." This accounts for its expediency and elasticity, as when the five imprisoned London dockers were released following the intervention of the Official Solicitor in 1972, or when the courts decide that "guilty" people must be released, to uphold the integrity of the whole system of due process (*R v Mullen*).

The research has combined history and law, which has required a balance to be struck between them. The study of the trials was an exercise in constructing a history of the events but also required a discussion of the nature of the laws and the criminal justice system under which the pickets were tried. This thesis has focused on the concept of a miscarriage of justice, more so than other accounts of the trials (Arnison, Warren, Darlington & Lyddon) but, like them, has placed politics at the centre of it. This work should be seen as complimentary to and a development of those earlier studies rather than a critique of them, particularly as a result of the documents that have recently become available.

The gathering of data has been assisted by the writer's position as the researcher of an active campaign that is working to overturn the convictions of the pickets. This has revealed documents that may otherwise have remained closed (the West Mercia Police reports and *The Red under the Bed* file have been noted in Chapter 4). A partisan action research approach also attracted individuals who were involved in the strike or trials. They were able to provide documents from their personal archives that added to an understanding of some of the processes and behaviours of those involved in the events. Particular note must be made of the assistance of investigative journalist Laurie Flynn.

10.3 What the research found

The documents that have been obtained allowed an analysis of the trials that is far deeper and informed than earlier accounts. This research, as has been stated, was not an attempt to discover evidence that would prove that the pickets were "innocent". It has been focussed upon an inquiry into the nature of the prosecutions and the means by which they were carried out, to widen our understanding about the class nature of the state. The discovery of a large part of the first Shrewsbury trial transcript at Salford, along with the court documents in the J182 series at the National Archives, can enable further, separate research to be undertaken about the actual evidence given in the trials.

The documents that have been obtained and discussed in chapters 7 to 9 show the measures that were adopted to secure the conviction of the pickets. The West Mercia Constabulary report showed that it began with a police investigation of a size and

duration that exceeded any other known to have taken place into picketing in 1972. Assistant Chief Constable Rennie headed an initial team of 12 West Mercia police officers for three months, Gwynedd police had its own team; there were nine Crown Court trials lasting a total of 21 weeks. Other UK police forces received complaints about miners' and dockers' picket lines but they did not pursue extensive inquiries or prosecutions even though the picketing was widespread.[539]

As we saw in chapter 8, the decision to investigate alleged offences and to prosecute was ordinarily the responsibility of the police, though for more serious offences it involved the DPP and the Attorney General. A careful study of documents from a variety of sources has revealed the intervention of the Home Secretary, Robert Carr. His department was in contact with West Mercia police immediately after the picketing on 6th September. Rennie wrote reports about the events for the counter-subversion, F4 Division of the Home Office. In autumn 1972 Carr made a widely-reported speech on picketing and later met chief constables to encourage them to investigate and prosecute pickets. This was part of a chorus of similar demands, publicised by the media, from Conservative ministers and backbench MPs. This ideological offensive was an example of the hegemonic influence that the dominant class organises and exercises over society.

There remain unanswered questions about the origins of the advice of the Attorney General, Peter Rawlinson to Carr on 25 January 1973, not to prosecute building worker pickets. That advice appeared to have been over-ruled when the DPP instructed Maurice Drake to advise on charges against the pickets. It was discovered that the Midlands NFBTE and individual building contractors in Shropshire had demanded a prosecution, win or lose, if they were to refrain from making formal complaints against West Mercia Police. The full extent of the involvement of the national civil engineering firm, McAlpine, with its close links to the Conservative Party, remains undetected.

The documents in the DPP files at Kew showed the tactical changes made by Drake, both in who was charged and with what offences. The West Mercia Constabulary

[539] The Government file TNA COAL 31/372 contains many police reports of picketing by miners e.g. "A summary of Picketing Selection of Incidents" 26 January 1972.

report had highlighted the weaknesses in the evidence and Drake acknowledged, in the opinion he wrote for the DPP, that the evidence of intimidation by any individual picket was extremely thin.[540] The use of the law of conspiracy overcame this. It allowed Drake to present evidence from a significant number of witnesses (220) about threats of violence and damage to property generally, without having to prove that the six pickets charged with conspiracy had committed any of those acts. Drake simply had to show that the six were responsible for it.

Documents were also discovered at Kew that covered the prosecution of fourteen North Wales pickets at Mold, the first eight for intimidation and affray. Up to now there has been very little written about their trials. These pickets were all acquitted of the more serious charges, indicating that the grounds for prosecuting them were weak. But it gave the Crown valuable experience so that, as Warren (1982:33) saw it, the main production at Shrewsbury would avoid the evidential weaknesses revealed during the 'dress rehearsal' at Mold. That Judge Mais asked for all the main documents relating to the Mold trials in advance of hearing the first Shrewsbury trial supported Warren's claim.

Mr Justice Chetwynd-Talbot's 93-page summing-up of the evidence for the jury at the first Mold trial contained 34 pages referring to picketing at Shrewsbury or to Warren, based upon the case advanced by Drake.[541] Yet Warren was not on trial at Mold and the charges related only to picketing in North Wales. This, and the specific references to Warren in the police report and DPP memos, demonstrated that Warren was one of the main targets of the prosecution. The West Mercia report referred to Special Branch surveillance of Warren when he worked at the Barbican site in the 1960s and the *People* newspaper article featuring him during the strike headlined, 'The Wrecker'. Convicting Warren would remove an effective, active rank and file trade unionist from building sites in North Wales and beyond.

Chapter 9 showed how the research has brought into the open further features of the Shrewsbury trials that were unknown at the time or whose significance was not understood. Mention has been made of the showing of *The Red under the bed*. A

[540] Opinion of Maurice Drake, 21 March 1973, TNA DPP2/5159
[541] *R v. Derrick Hughes & Others*, summing up 10th-12th July 1973, TNA, J302/40.

related file that was opened at the National Archives through my intervention has shown the close involvement of the Government in the making of the film and the importance that it attached to the film and similar programmes (PREM 15/2011). The secretive changes by the Lord Chancellor that removed 'occupation' from the details on the jurors' lists, the absence of any reference to the Lord Chancellor's practice direction in law reports, or any documents showing how the decision came about, has been noted. So has the discovery in a DPP file of a list of the jury and their occupations for the first and second trials, despite Rawlinson's statement to Parliament that neither side had such information following the Lord Chancellor' direction in July 1973.

The discovery of the West Mercia Constabulary Report and the related Complaints Report have provided new insights into the policing of pickets on 6th September 1972. The reports have also revealed the involvement of Special Branch, including in the North Wales county of Gwynedd, in monitoring trade unionists during the strike. The Complaints Report authored by Glover contains previously unknown correspondence between Rennie and the counter-subversion department of the Home Office, F4, immediately after the picketing on 6 September 1973. The police reports reveal that intelligence from F4 and Special Branch, combined with that from Scotland Yard, was used to identify Warren as a Communist Party member and trade union activist before, during and after the national strike.

Documents have shown how a combination of the employers, the Conservative Party and the Conservative Government used the various instruments at their disposal to ensure that the pickets were convicted and jailed. A close analysis of articles in *East-West Digest* and the *News of the World*, alongside the subsequent police reports requested by the DPP, has highlighted the false narrative promoted by journalists about the strike and picketing. This gave ideological support for the steps taken by Government ministers to ensure that the police and the DPP would bring charges. Every instrument available to the Government, DPP and prosecution was used to shape the course of events. This abuse of process vindicates the pickets' claim that the trials were a miscarriage of justice in the state's own terms. This has been the foundation of the pickets' application to the CCRC.

This thesis has also argued that the arbiter of the question, were the convictions a miscarriage of justice, cannot simply be the CCRC and the Court of Appeal. The latter has developed a highly subjective test of whether a conviction is 'safe' or 'unsafe'. The CCRC will only refer a case to the Court of Appeal if there is 'fresh evidence'. The difficulties in obtaining evidence proving that the state's acts amounted to an abuse of process have been discussed in chapter 2. A number of miscarriages of justice continue to occur when evidence has been held back from defence lawyers by the police and prosecution which, when finally discovered, formed the main plank of an appeal.[542] It remains an ongoing quest.

The research for this thesis has contributed to a body of work that does not limit a miscarriage of justice to the conviction of the innocent or even cases involving the most egregious instances of abuse of process. It puts class power at the centre of its analysis and methodology, where injustice is systemic in a society of gross inequality. That power is legitimated and normalised through a judicial system that reflects and protects the unequal distribution of wealth and power in that society. This thesis therefore argues that the actions of the pickets have to be judged politically. The strikers organised, not only to improve pay and hours of work, but also to challenge the growth of a form of employment that encouraged illegality. The 'lump' promoted tax evasion and a disregard for health and safety on building sites. The employers benefited from this and the state failed to police these unlawful practices. The strikers' actions in picketing out sites that continued to work was a stand against it. It is from this perspective, the collective interests of building workers for lawful, safe employment, that their actions during the strike are judged.

The conclusion of this thesis is, therefore, that the prosecution and conviction of the Shrewsbury pickets was a miscarriage of justice *sui generis*; it was a political miscarriage of justice. The documentation that has been obtained and analysed has led to the conclusion that the pickets' case is a paradigm of the class character of the state

[542] This was a central ground of the pickets' application to the CCRC. Another example was the withholding from the Defence for 17 years of diaries of Paula Gilfoyle, who was found hanging in her garage. They showed her previous suicidal tendencies. Her husband was convicted of her murder. See May (undated), p.42.

and the way that the law is used to criminalise trade union action that poses a serious challenge to capital.

The thesis opened with Platts-Mills' claim that the prosecution was undertaken, "…in defiance of the advice of senior police and prosecution authorities." (2002:532) We can now see that this was wrong on two counts. Firstly, there was no question of any 'defiance'. The evidence showed the operation of various arms of the state and of tactical discussions amongst them about the most effective way to halt the growth of mass picketing.

His second error was to suggest that the senior police and the prosecution authorities were opposed to prosecutions. The West Mercia police advised the DPP that pickets should be prosecuted, and it rehearsed the arguments for and against possible charges. The police report cautioned against the use of a conspiracy charge, but it was that report that had suggested conspiracy in the first place. The DPP sought advice from the Attorney General who agreed to refer the case to Counsel (Drake and Fennell). Rawlinson's letter to Carr suggested that Rawlinson was against a prosecution but he left it to the DPP, to be guided by Drake. None of this indicated defiance.

The thesis has also shown the enormous flexibility of the criminal justice system when dealing with picketing. The police and prosecuting authorities had a wealth of statutes and common law offences to draw from, as shown in chapter 5. Whether they charged and what they charged was entirely discretionary. There were several criminal offences that could be applied to pickets, many of which overlapped – intimidation, assault, affray, unlawful assembly and conspiracy to intimidate. There was no restriction on the number of charges that the prosecution could lay against the pickets. The indictments at Mold and Shrewsbury contained over 250 counts, creating an impression of major criminality. Some pickets felt threatened by this and pleaded guilty to lesser counts, such as unlawful assembly, to avoid a more serious sentence if convicted of a charge like affray.

Hain (1985:256) summed up the importance of police and prosecution discretion:

> …the law on public order is political law *par excellence*, designed and enforced to exercise political control, and applied in a discretionary way according to the prevailing balance of political forces. If these forces are

> more powerful than the agencies of the state (as in Saltley for instance), then the law can be flouted with impunity…. But if the state is confident of being able to enforce public order then it does so, assisted by police manipulation of their powers and judicial manipulation of the law itself.

By examining the prosecuting decisions of the state according to the 'prevailing balance of political forces' it is possible to explain why different police forces took different approaches to picketing in 1972. Some arrested, some didn't; some investigated, some didn't; some charged, some didn't. The flexible and tactical way that the state used the criminal law against trade unionists may have appeared to some of the Government's supporters as weakness. But such a criticism underestimated the careful calculation involved in using the law to deal with the challenges to Government policy and to employers' interests in 1972.

In a discussion of the use of the law against pickets the solicitor at the Department for Trade and Industry observed,

> In reading the opinion, I was constantly reminded that each case will have to be decided on its own facts, in the light of the political climate of the time, and on consideration of other extraneous factors.[543]

The selection of North Wales building worker pickets was therefore calculated. They were an easier target than other groups, just like the agricultural labourers of Tolpuddle in 1836 (Groves 1981:16-23). North Wales did not contain any significant urban centres that had nurtured an organised working class during the twentieth century and from which a strong opposition to any trials could be built. If pickets from London, Birmingham, Liverpool or Leeds had been charged the response may have been similar to the jailing of the five London dockers in July 1972 or the miners' appeal for support when picketing the Saltley Gates earlier that year.

10.5 Relevance and further research

This final section of the conclusion addresses two issues: firstly, what is the relevance today of the prosecution of the North Wales pickets; secondly, what further areas of research have been identified by this study.

10.5.1 Relevance for today

[543] Letter WC Beckett to A.L. Wright, CEGB 16 April 1973, TNA FV62/110

The discussion in chapters 7 to 9 has added to our knowledge of the decision-making processes involved in prosecuting the pickets, as an illustration of the operation of the state. It has also corrected a number of misunderstanding about the trials and the laws that were used. The demand for the repeal of the 1875 Act (Arnison 1974:81) has been shown to have been misplaced, both because it would have removed the limited protections for trade unions in section 3 and because the convictions were not based upon the 1875 Act.

There has been a significant decline in trade union membership in Britain and an even greater fall in the number of strikes since then.[544] The governments led by Margaret Thatcher, learning the lessons of the Heath years, adopted a "stepping stones" approach towards restrictions on trade union power (Dorey 2016). Instead of a single overarching law, like the Industrial Relations Act 1971, the Conservatives introduced a succession of laws in the 1980s that, as McIlroy has argued, incrementally meant that, "Britain now had the toughest labour laws in the western world" (1991:113).

Notwithstanding this position, the Conservative Government considered that further legislation was required. The Trade Union Act 2016 amended the law on industrial action. For picketing to remain lawful a trade union must now appoint a 'picket supervisor' who must notify the police of the date and place of the picketing. The supervisor has to have a letter of authority from their union, which must be shown to the employer if requested. This adds to earlier changes to picketing law in section 16 of the Employment Act 1980,[545] that picketing of a workplace is lawful only by those employed at that workplace who are taking action in contemplation or furtherance of a trade dispute.

Instead of industrial action, trade unions have relied upon legal action to protect rights, through claims in the Employment Tribunals. Many of the claims are based upon, or have been strengthened by, European Union-derived laws on equality, working-time,

[544] Strike days per thousand workers have dropped from an annual average of 482 in 1971-77 to just 29 in 2000-2009 (Gumbrell-McCormick & Hyman 2014:105).
[545] Re-enacted as s.220 of the 1992 Act. This is supplemented by a Code of Practice that includes a provision (para.56) that a maximum of six pickets should be present at any entrance to a workplace: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/594788/Code_of_Practice_on_Picketing.pdf

employment status and transfers of employment. Recent successes have involved blacklisting litigation, the so-called gig economy cases against Uber and agency worker status (Pimlico Plumbers) etc..[546]

The Rail Maritime and Transport Union (RMT) has argued that the economic framework of the EU, from which these laws derive, is one of a liberalised free market of capital, goods and labour, which is against the interests of working people.[547] This was shown in two decisions of the European Court of Justice, *Laval* and *Viking* (Ewing 2012), which threatened the terms and conditions of employment of RMT members. Rather than rely upon the courts to protect members the RMT has a strategy of recruitment and of industrial action. This has brought us full circle: a local RMT representative, Mark Harding, was prosecuted on 2 June 2014 for alleged intimidation whilst picketing. He was charged under the successor to section 7 of the 1875 Act[548] though he was found not guilty by the magistrates.

The thesis has shown that the vagueness in the meaning of many public order offences allows the courts to apply laws that had not been considered applicable to picketing. The common law offences used against the Shrewsbury pickets have been replaced by statutory equivalents. Affray and unlawful assembly were abolished by section 9(1) of the Public Order Act 1986 and replaced with similar statutory forms. They give similar discretion to the police and to the courts in defining phrases such as, 'likely to be caused alarm or distress'. Part 4 of the Serious Organised Crime and Police Act 2005 titled, "Public order and conduct in public places etc." also has sections that might be used creatively by the Crown Prosecution Service against protestors.

Another part of the 1875 Act, section 5, lives on as section 240 of the TULRA 1992, 'Breach of contract involving injury to persons or property'. A civil servant, writing about this section in 1974, observed:

> The effect of this appears to be that anyone who breaks a contract of employment (or a contract to provide plant etc. on hire) and whose

[546] Reports on these cases and latest developments in employment law can be found on the websites of the TUC https://www.tuc.org.uk/ and the Institute of Employment Rights http://www.ier.org.uk/.
[547] http://www.tusc.org.uk/press150513a.php
[548] Section 241 of the TULR(C) Act 1992, amended to make it a summary-only offence and punished by a maximum of 6 months imprisonment or a level 5 fine. The case is reported at: http://www.rmtlondoncalling.org.uk/mark.

> employment is essential to the community (e.g. Doctors, nurses, gas and electricity workers, miners, oil suppliers, food supplier's, and so on) is in fact committing a crime (but not a tort) by going on strike; and hence is open to a criminal conspiracy charge also.[549]

When strikes do occur they bring into the focus the strengths and weaknesses of both sides of the conflict, as was noted in the report of the Royal Commission on Trade Unions in 1869 (see section 5.1.4 above). For trade unions, their strength lies in stopping work. Everyone in a workplace who does not do so weakens and prolongs the action. This is the reason for picketing. The conflict that can arise in this situation was recognised in the West Mercia Constabulary report as, "…two sharply contrasted fundamentals of our established democratic way of life: the right to strike and the right to continue working." (para.136)

The primacy of the 'right to work' was emphasised by Margaret Thatcher during a Commons speech on the industrial situation a few months before she became Prime Minister in June 1979. Whilst addressing the issue of picketing she commended, as was noted in chapter 7, Rawlinson's 1972 speech:

> He also pointed out what few other people have said - that every person in this country has a right to go about his daily work or pleasure free from interference by anyone else. That right is not being exerted or exercised at the moment.[550]

But this lacked credibility from a Prime Minister that allowed three million people to lose their right to work when her Government's monetary policies caused massive job cuts and the closure of factories, steelworks, coalmines and shipyards.

Walker, in discussing rights, peremptorily dismissed the idea of collective rights when defining a miscarriage of justice. For him it was a question of individual rights only. This thesis, by adopting a Marxist approach of class and class conflict, situates the prosecution of the North Wales pickets within the response that a ruling class makes when facing an acute challenge to its ability to rule and to restructure capitalism to allow for further accumulation. Judgments about a miscarriage of justice are therefore not based upon the rights of individuals in the abstract but on a political, class basis.

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[549] Note headed 'TUC resolution on picketing and conspiracy laws', TNA LAB10/3510
[550] HC Deb 16 January 1979 vol 960 cc1524-641

Contrary to Walker's idealised approach to rights, that he presents as independent of conflicting class interests in society, this thesis judges actions that are labelled as crimes according to the class positions of the protagonists. Whilst Walker's rights-based framework for identifying miscarriages of justice usefully takes the discussion way beyond factual disputes about guilt and innocence it fails to develop this teleologically. This is most evident in his category of 'inherently unjust laws', for which he provides no theoretical foundation. The thesis has adopted this category and given it a theoretical content to explain the prosecution of the North Wales pickets by situating it within a Marxist approach to an understanding of law and the state in capitalist society. The appropriation of the term *political miscarriage of justice* is designed to present an alternative understanding of the behaviours of those who have been criminalised for resisting the effects of capitalist domination and exploitation.

10.5.2 Further research

This thesis has made an original contribution to our understanding of the trials of the North Wales building workers in 1973-74. It has uncovered some of the links between the Government, employers and police to bring about the prosecutions through a forensic analysis of documents that were previously unavailable or completely unknown to researchers.

This brings us conveniently to the final issue, the further research that has been identified by this thesis. The bibliography lists documents about the North Wales pickets that can be interrogated and re-assessed by other researchers, particularly when further evidence comes to light. Many documents relating to the trials are still retained by the Government under section 23 of the Freedom of Information Act 2000. The writer has been instrumental in persuading the Labour Party to include in its 2015 and 2017 General Election manifestoes a commitment to release all the documents when they gain power.

The author has written to the Prime Minister, Theresa May and requested that the Government preserve all documents and does not allow any to be routinely destroyed under the Public Records Act 1958 or by 'accident', both of which have occurred in

the past.[551] When these documents do get released it will afford an opportunity for a reappraisal of the arguments in this thesis, deepen the analysis of the processes and considerations of the main actors in the prosecutions, and the development of our understanding of the state.

It is nearly a quarter of a century since the publication of the Runciman Report. This would be an appropriate time to revisit the issues of the operation of the criminal justice system starting, as JUSTICE suggested, from the moment of arrest right through to the workings of the Court of Appeal. A fresh approach to appeals, like those suggested by Mansfield (1993) should be considered. But whatever reforms might be proposed to the criminal justice system, they will not address the enduring miscarriages of justice that working people experience in a globalised market economy driven by the quest for profit.

[551] Letter 21 March 2016 from Mike Penning, Minister of State at the Home Office.

Appendix A. The Shrewsbury 24: names and charges

(Table compiled from information taken from prosecution forms in the documents provided by Laurie Flynn, now in the author's papers.)

Picket	Trial	Charges and Outcome	Sentence
1. **Butcher,** Patrick Kevin	**3**	**Unlawful assembly (UA) - 3 counts** **Affray - 1 count** **Intimidation – 1 count** **Using threatening behaviour – 1 count.** Pleaded G to using threatening behaviour and NG to the rest; court ordered NG verdicts to be entered against them.	3 months imprisonment suspended for 1 year
2. **Carpenter,** John James	**1**	**Conspiracy to intimidate - 1** **Affray - 1** **UA - 1** **Intimidation - 5** **Common assault - 1** Pleaded NG on all counts. Tried for conspiracy and affray (NG), and unlawful assembly(G). Remaining counts to lie on the file.	9 months' imprisonment suspended for 2 years
3. **Clee,** John Malcolm	**2**	**UA - 3** **Intimidation - 3** **Attempting to damage property – 2** **Affray – 1** **Damaging property – 1** **Common assault -1** Pleaded NG on all counts. Tried for one count of UA (found G) and for affray (where a NG verdict was given by direction of the judge); NG verdicts recorded by order of the court on all others counts.	4 months imprisonment suspended for 2 years
4. **Davies,** John Gary	**2**	**UA – 3** **Affray – 1** **Intimidation – 1** **Damaging property – 1** Pleaded NG on all counts. Found NG of one count of	Discharged

		UA and of affray; NG verdicts recorded by order of the court on all others.	
5. Hooson, William Charles Leslie	**3**	**UA - 3** **Intimidation - 2** **Affray – 1** **Damaging property – 1** **Attempting to damage property - 1** Pleaded NG on all counts. No evidence offered by prosecution and NG verdicts entered by order of the court.	Discharged
6. Hughes, Derrick	**2**	**UA - 3** **Intimidation - 2** **Affray – 1** **Damaging property – 1** **Common assault -1** Pleaded NG on all counts. Tried for one count of UA (found G) and for affray (where a NG verdict was given by direction of the judge); NG verdicts recorded by order of the court on all others counts.	4 months imprisonment suspended for 2 years
7. James, Alfred	**2**	**UA - 3** **Intimidation - 1** **Affray – 1** **Damaging property – 1** Pleaded NG on all counts. Tried for one count of UA (found G) and for affray (where a NG verdict was given by direction of the judge); NG verdict recorded by order of the court on count of damaging property; all others counts to lie on the file.	4 months imprisonment suspended for 2 years
8. Jones, John McKinsie	**1**	**Conspiracy to intimidate - 1** **Affray - 1** **UA - 1** **Intimidation – 6** **Damaging property - 3** Pleaded NG on all counts. Tried for conspiracy, affray and unlawful assembly.	9 months' imprisonment on each count, to run concurrently; released on 18 June 1974.

		Found G of all three (conspiracy by a 10:2 majority verdict). Remaining counts to lie on the file.	
9. Llywarch, John Elfyn	**1**	**Conspiracy to intimidate - 1** **Affray - 1** **UA - 1** **Intimidation - 6** Pleaded NG on all counts. Tried for conspiracy and affray (NG), and unlawful assembly(G). Remaining counts to lie on the file.	9 months' imprisonment suspended for 2 years
10. Morris, Dennis	**2**	**UA - 3** **Intimidation – 3** **Common assault -2** **Affray – 1** Pleaded G to two counts of UA and NG to all other counts, on which the judge ordered NG verdicts to be returned.	4 months imprisonment suspended for 2 years
11. Murray, George Arthur	**2**	**UA - 3** **Intimidation – 2** **Damaging property -2** **Affray – 1** Pleaded NG on all counts. Tried for affray and one count of UA and found guilty of both. Remaining counts ordered to lie on the file.	6 months imprisonment for affray and 4 months for UA, to run concurrently.
12. O'Shea, Kenneth Desmond Francis	**1**	**Conspiracy to intimidate - 1** **Affray - 1** **UA - 1** **Intimidation – 7** **Damaging property - 1** **Using threatening words – 1** **Threatening to damage property -1** Pleaded NG on all counts. Tried for conspiracy and affray (NG), and unlawful assembly(G). Remaining counts to lie on the file.	9 months' imprisonment suspended for 2 years

13. Pierce, William Michael	**2**	**Intimidation – 5** **Damaging property – 4** **UA - 3** **Common assault -2** **Affray – 1** **Threatening to damage property – 1** **Using threatening words - 1** Pleaded NG on all counts. Tried for affray and one count of UA and found guilty of both. Remaining counts ordered to lie on the file.	6 months imprisonment for affray and 4 months for UA, to run concurrently.
14. Renshaw, Terence	**3**	**Intimidation – 3** **Damaging property – 1** **UA - 4** **Affray – 2** **Attempting to damage property – 1** Pleaded NG on all counts. Tried for two counts of affray and two counts of UA. Found G of one count of UA and NG by direction of the court on the other three counts. Remaining counts ordered to lie on the file except one count of intimidation and attempting to damage property where NG verdicts entered by order of the court.	4 months imprisonment suspended for 2 years
15. Roberts, Graham	**3**	**UA - 3** **Affray – 1** **Intimidation – 1** **Damaging property – 1** Pleaded NG on all counts but subsequently changed plea to G of one count of UA. Verdicts of NG by order of the court entered on all other counts.	4 months imprisonment suspended for 2 years
16. Seaburg, John Kenneth	**3**	**UA - 3** **Affray – 1** **Intimidation – 1** **Attempting to damage property – 1**	6 months imprisonment for affray and four months for UA, both sentences suspended for two years

		Pleaded NG on all counts. Tried for one count of UA and of affray. Found G of both. Two counts of UA to lie on the file and NG verdicts entered by order of the court on the other two counts.	
17. Sear, Peter Alfred	**3**	**Damaging property – 4** **UA – 3** **Intimidation – 3** **Affray – 1** **Common assault - 1** Pleaded NG on all counts but subsequently changed plea to G of one count of UA. Verdicts of NG by order of the court entered on all other counts.	4 months imprisonment suspended for 2 years
18. Thomas, Bryn	**3**	**UA – 3** **Intimidation – 2** **Affray – 1** **Common assault - 1** Pleaded NG on all counts but subsequently changed plea to G of one count of UA. Verdicts of NG by order of the court entered on all other counts.	4 months imprisonment suspended for 2 years.
19. Tomlinson, Eric	**1**	**Conspiracy to intimidate - 1** **Affray - 1** **UA - 1** **Intimidation - 9** **Common assault – 3** **Damaging property – 5** **Assault occasioning actual bodily harm - 1** Pleaded NG on all counts. Tried for conspiracy, affray and unlawful assembly. Found G of all three (conspiracy by a 10:2 majority verdict). Remaining counts to lie on the file.	2 years imprisonment on each count, to run concurrently. Released from prison on bail, June to October 1974, whilst further appeal pending; returned to prison 29 October 1974 and released July 1975
20. Warburton, Samuel Roy	**2**	**Intimidation – 3** **Damaging property – 5** **UA - 3** **Common assault -2**	4 months imprisonment suspended for 2 years

		Affray – 1 **Assault occasioning actual bodily harm -1** **Attempting to damage property – 1** Pleaded NG on all counts. Tried for affray and one count of UA; found guilty of the latter. Remaining counts ordered to lie on the file (7) or verdict of NG by order of the court (7).	
21. Warren, Dennis Michael	**1**	**Conspiracy to intimidate - 1** **Affray - 1** **UA - 1** **Intimidation - 11** **Damaging property – 8** **Threatening to damage property – 2** **Attempting to damage property – 2** **Common assault – 2** Pleaded NG on all counts. Tried for conspiracy, affray and unlawful assembly. Found G of all three (conspiracy by a 10:2 majority verdict). Remaining counts to lie on the file.	3 years imprisonment on each count, to run concurrently. Released from prison on bail, June to October 1974, whilst further appeal pending; returned to prison 29 October 1974 and released August 1976
22. Williams, Edward Leonard	**3**	**UA – 3** **Intimidation – 1** **Affray – 1** **Damaging property – 1** Pleaded NG on all counts. Tried for affray (NG) and one count of UA (G). Remaining counts ordered to lie on file.	4 months imprisonment suspended for 2 years
23. Williams, Thomas Bernard	**3**	**UA – 3** **Intimidation – 1** **Affray – 1** **Attempting to damage property – 1** Pleaded NG on all counts but subsequently changed plea to G of one count of UA. Verdicts of NG by	4 months imprisonment suspended for 2 years

		order of the court entered on all other counts.	
24. Williams, Thomas Brian	**2**	**Intimidation – 3** **Damaging property – 3** **UA - 3** **Assault occasioning actual bodily harm - 1** **Affray – 1** Pleaded NG on all counts. Tried for affray and one count of UA and found guilty of both. Remaining counts ordered to lie on the file.	6 months imprisonment for affray and 4 months for UA, to run concurrently.

Trial 1: 3 October -19 December 1973
Trial 2: 14 January-13 February 1974
Trial 3: 26 February-22 March 1974

Additional names and possible offences listed in Appendix A of West Mercia Police Report submitted to DPP on 18 December 1972, but not charged:

BITHELL, John - affray, Brookside
KIELKOWICZ, Jan - affray Severn Meadows and Brookside
SCRAGG, Barry - affray Kingswood and Brookside, and an unknown offence at Gwynedd
WALKER, Frederick – affray Kingswood, Severn Meadows and Brookside.

Named in DPP file opened in January 1973 but not charged:

BARTON, Henry
HARVEY, James
JONES, Robert
SCRAGG, George Barry

Appendix B. Mold 14: names and charges

(Table compiled from the Mold indictments -TNA J301/29 and J302/39)

Picket	Trial	Counts	Outcome
1. Davies, Glyn	5	1. Intimidation 28.10.72 Greenfield 2. Common assault ″	1.NG 2.G – conditional discharge
2. Hooson, WCL*	2	1. Intimidation 7.8.72 Padeswood 2. Threat to damage property ″	1. NG 2. NG
3. Hough, W.	2	1. Intimidation 7.8.72 Padeswood	1. NG by direction of judge
4. Hughes, D.*	1	1. Affray 11.9.72 Brennig; 2. Intimidation 11.9.72 Brennig 3. Criminal damage. Oil rig ″ 4. Attempted crim dam dumper ″	1. NG 2. NG 3. NG by direction 4. Pleaded G - £15 fine
5. Kelly, C	1	1. Affray 11.9.72 Brennig; 2. Intimidation 11.9.72 Brennig 3. Criminal damage. Oil rig ″	1. NG 2. NG 3. NG
6. Moroney, P	3	1. Intimidation 7.9.72 Cefn Parc 2. Common assault	1. NG 2. NG
7. Murray, GA*	2	1. Intimidation 7.8.72 Padeswood 2. Threat to damage property ″	1. NG 2. NG
8. O'Shea, KDF*	1	1. Affray 11.9.72 Brennig; 2. Intimidation 11.9.72 Brennig 3. Criminal damage. Oil rig ″ 5.. Crim dam. Phone wires ″ 6. Crim dam. Window ″	1. NG 2. NG 3. G damaging property - £50 fine 5. Pleaded G - £15 fine 6. NG
9. Pierce, WM*	1	1. Affray 11.9.72 Brennig; 2. Intimidation 11.9.72 Brennig 3. Criminal damage. Oil rig ″ 6. Crim dam. Window ″	1. NG 2. NG 3. NG by direction 6. NG
10. Roberts, Gwyn Edward	1	1. Affray 11.9.72 Brennig 2. Intimidation 11.9.72 Brennig 7. Crim damage, window ″	1. NG 2. NG 7. G - £15 fine
11. Seaburg, John Kenneth*	1	1. Affray 11.9.72 Brennig 2. Intimidation 11.9.72 Brennig 3. Criminal damage. Oil rig ″	1. NG 2. NG 3. G - £50 fine
12. Thomas, Kenneth	4	1. Intimidation 18.8.72 Penrhyn Beach 2. Criminal damage, Wall 18.8.72	1. NG plea accepted on judge's direction 2. Pleaded G - £15 fine
13. Williams, Edward Leonard*	1	1. Affray 11.9.72 Brennig; 2. Intimidation 11.9.72 Brennig 3. Criminal damage. Oil rig ″ 6. Crim dam. Window ″	1. NG 2. NG 3. NG 6. NG
14. Williams, Gwynfor	1	1. Affray 11.9.72 Brennig; 2. Intimidation 11.9.72 Brennig 3. Criminal damage. Oil rig ″	1. NG 2. NG 3. Pleaded G - £50 fine

* Seven of the fourteen pickets tried at Mold were also tried at Shrewsbury.

Appendix C. A to Z of principal people

ATKINSON, Norman - Labour M.P
BARKER, TC – member of IRD G 3/3. Wrote memo to Reddaway praising their role in *The Red under the Bed*.
BIFFEN, John – Conservative MP for Oswestry/Shropshire North 1961-1997
BROWN HP - DTI civil servant – involved in working party drafting leaflet on picketing
BUXTON, Aubrey – farmer, equerry to Prince Philip and member of the consortium that was awarded the ITV franchise for Anglia TV. Became Chief Executive.
CAIRNCROSS, Neil - ex-Northern Ireland Office; in late 1972 became deputy Under-Secretary of State at the Home Office to spend a year examining "violence" in British society.
CARR, Robert – Conservative MP; Secretary of State for Employment 1970-72; Home Secretary 1972-74
CLARKE, A.A. - Gwynedd Det. Chief Supt. – attended con. with Drake 21.2.73
DRAKE, Sir Maurice – QC, 4 Paper Buildings (Hailsham Chambers). Chief prosecutor.
FENNELL, Desmond – junior prosecution counsel, 4 Paper Buildings
GASSON, John G.H. - Att General's Dept.; Secretary to the Law Commission 1982-85.
GLOVER – West Mercia Detective Chief Inspector – later Supt. Co-authored West Mercia Police report with Hodges. Attended conferences with Drake 1.2.73 and 21.2.73)
GOODWIN, Clive - former BBC producer and IRD asset who became DG of the Institute for the Study of Conflict
HAILSHAM (Quintin HOGG) - Conservative Lord Chancellor 1970-74
HALL, Charles D. - DPP office. Attended conferences with Drake 1.2.73 and 22.2.73 and Shrewsbury trials
HANLEY, Michael – DG of MI5 1972-78.
HANNAM, T. – Chief Security Officer for Robert McAlpine & Sons (wrote to Metroplitan Police Commissioner, Robert Mark 26.2.73)
HARNETT, M.A.P. – Press Officer, NFBTE – authored 20.9.72 letter
HAYDON, Robin – Heath's Press Secretary 1973-74
HAYES, Insp. – Gwynedd Police; prepared report on Mold trials
HEATH, Edward – Conservative Prime Minister 1970-74
HERON, Sir Conrad KCB, OBE: Permanent Under-Secretary, Department of Employment 1973-1976 (involved in making RUTB).
HETHERINGTON, Tony – Head of the Law Officers Dept. 1967-1977
HILARY, DHJ – Home Office F4 Division - involved in working party drafting leaflet on picketing
HODGES, Fred Raymond - West Mercia Detective Chief Superintendent, later ACC. Co-authored the WMPR with Glover, attended conferences with Drake on 1, 8 and 21 Feb, 28 March and 12 April 1973
HOWELL, G. – court usher at Shrewsbury
JAMES, Arthur – Lord Chief Justice of Appeal 1973-1976
JARDINE Michael J – DPP office (A/D(C))
KERR, Michael – High Court judge; sat on Court of Appeal 1974 hearings of pickets' appeals. Promoted to Court of Appeal 1981-89.
LEWIS, Kenneth – Conservative MP. Spoke in December 1972 debate.

MAIS, Sir Robert Hugh– Shrewsbury trial judge.
McKEOWN, Andrew – Director of IRIS Limited
MEREDITH, Det. Insp. – senior officer at Telford 6 September 1972
MYERS, Philip – Deputy Chief Constable Gwynedd Police 1967-73. Joined Shropshire constabulary in 1950 and left in 1967 as a Chief Superintendent to join Gwynedd.
O'DAY, P. – General Secretary of the FCEC
PLATTS-MILLS, John QC – Des Warren's senior barrister
RAWLINSON, Sir Peter – Conservative MP and Attorney General 1970-74
REDDAWAY, G.F. Norman – Foreign & Commonwealth Office, Assistant Under-Secretary (Information and Cultural Services) – head of IRD.
REGAN, Simon – *News of the World* journalist.
RENNIE, A. - Asst. Chief Constable, West Mercia police
RENNIE, Sir John Ogilvy – Director of the Secret Intelligence Service (MI6) 1968-1973 and previously director of IRD.
ROBERTS, Christopher W. – 10 Downing St civil servant
SALISBURY – Detective Chief Inspector, Gwynedd. Attedned conferences with Drake, 1.2.73 and 23 March in Ruabon
SKELHORN, Sir Norman QC – DPP 1964-1977
SMITH, Philip – Regional Director NFBTE
STEWART-SMITH Geoffrey – Conservative MP for Belper 1970-74 and editor of *East-West Digest*
SYMONS, Ronald - appointed Deputy Director-General of MI5 in 1972 and assumed temporary charge between December 1973 and March 1974.
THOMAS, RLD (Ryland) - DPP office
TURNER-SAMUELS QC - defence counsel at Mold and Shrewsbury.
WADDELL, JH – Home Office civil servant
WADSWORTH, JP – prosecution second junior counsel.
WALKER JH – C(4) Division of the Home Office
WALKER, John M. – (JMW) DPP office. Attended conference with Drake 1.2.73.
WARREN – Detective Inspector in West Mercia. Attended conference with Drake 12.2.74 and acted as Liaison Officer during trials.
WIDGERY, John – Lord Chief Justice of England & Wales 1971-1980
WILLISON, John - Chief Constable of West Mercia Police 1967-1974
WOOLMER - civil servant involved in Inter-Departmental Committee on picketing.
WRIGHT, E.D. - Asst. Under-Secretary of State, F4 division Home Office
WYATT, Woodrow – journalist and producer of *The Red Under the Bed*

Appendix D: Police timeline of picketing in Shropshire, 6th September 1972

(Table compiled from the West Mercia Police Report)

Time	Site	Comment
11:00	Kingswood – AH Woodhouse & Sons Ltd. (+ J. Parry & Sons)	A shotgun was produced by a foreman, T.A. Parry. Pickets took it from him and broke it before handing it to the police, who later listed it amongst the property damaged by the pickets, (cost £20).
11:25	Shelton roadworks – Wrekin Construction Limited	The pickets' coaches passed these roadworks before parking up to picket Kingswood. Afterwards the pickets walked up to the roadworks and picketed the men off the site.
11:45	The Mount – Maurice Graham Limited	Maurice and Graham Galliers attended a meeting that night at Watkin's home. The latter had invited the police so that they could hear the builders' complaints about police inaction on the day.
12:30	Severn Meadows – Watkin, Starbuck & Jones Limited (+ Fletcher Estates Limited)	Watkin and his co-directors, Starbuck and Jones attended the evening meeting with the police at Watkin's house on 6th September
12:45	The Weir – Tarmac Construction Limited	It was alleged that a small group of pickets broke away from the main body at Severn Meadows and smashed up the workmen's hut on this site.
13:00-14:00	Lunch at Severn Meadows	"One of the coaches left the area to return to Chester but the remaining coaches stayed in the Severn Meadows locality for almost an hour, during which time the pickets purchased fish and chips from a shop nearby. These were consumed, some on coaches and some as the pickets strolled about." (Complaints Report para.35) During this period, the decision was made to travel to Telford.
14:25	Brookside, Telford – Sir Alfred McAlpine & Son Limited	This was the largest site to be picketed and workmen were spread over a large area. A local newspaper photographer took pictures of the pickets. These showed many policemen were present, watching a mass meeting that was being addressed by Warren. The events on the site, including the case of a lumper called Growcott, featured at the trial.
15:35	Maxwell Homes, Stirchley Lane (nr. Brookside)	A small number of pickets went on the site and were informed that the contractor was paying the rate in the unions' pay claim, so they left.
15:45	Woodside – Morris & Jacombs Limited.	The police were in attendance whilst a meeting was held, addressed by Warren and Tomlinson. The pickets left the area between 16:25-16:40 to return to North Wales

Appendix E. Searching archives

Practical information is set out below about the gathering of evidence from the archives and libraries that were visited.

1. The Modern Records Centre, University of Warwick

The Centre holds one of the largest archives of documents of trade unions and employers' associations. They date back more than a century and include the records of the T&GWU and the NFBTE. Access to the Centre is open to anyone but current requirements for first registration should be checked on its website before a visit. Some archives can only be seen with the approval of the depositing organisation. This applies to the T&GWU but permission was readily granted to the author by the union's Director of Education, whom I had known for forty years.

The papers of Sir Robert McAlpine Limited were very limited and did not reveal anything about its attitude to the 1972 strike or the prosecution of the pickets. It had been hoped to discover a full copy of a letter that the company had sent to the Metropolitan Police in 1973, and related correspondence. It was not there. The letter was one of the items requested from the Home Office in December 2015 but they could not supply a copy. The Metropolitan Police is answerable to the Home Secretary.

2. The National Archives, Kew

The National Archives at Kew holds public records that have been released by government for public scrutiny under the Public Records Act 1958. The Archives allow the visitor to handle and read the original documents and therefore has a strict system for admission to the reading rooms.

A visitor must register for a reader's ticket, which is only issued after the visitor has completed a 20-minute training exercise and then a test to demonstrate that they understand the importance of and methods of handling the archive material with the utmost care. The credit card sized reader's ticket must be carried at all times as it allows a reader to order material and enter the reading room.

There are restrictions on the materials that can be taken into the reading room. Only lead pencils (without erasers on the end) are allowed. Pens and highlighters are prohibited. Laptops, cameras and audio recording devices are permitted but can only be used if they do not disturb other readers.

The huge volume of archives that are held mean that it takes staff up to 40 minutes to retrieve documents that have been requested. The catalogue of the National Archives is available online at http://discovery.nationalarchives.gov.uk/SearchUI. Valuable time can be saved by searching for documents and obtaining the references in the days before making a visit. It is possible for holders of a reading ticket to pre-order up to six files online so that they are available on arrival when the building

opens at 9am. The staff place the ordered files in a numbered compartment that corresponds with the number of the desk that has been allocated to the reader in the reading room.

A reader is allowed to have up to 24 files in their compartment. Further time can be saved by ordering additional documents so that they are being obtained by the staff whilst you are reading files that were pre-ordered. A reader is only allowed a maximum of three files at their reading table at any one time.

A number of files were identified that contained documents with a direct relevance to the strike and the subsequent trials in 1973-74. There were many more files that contained one or more documents that had an indirect relevance. Time is particularly precious for researchers who have to travel long distances to Kew and have the expense of paying for overnight accommodation. The National Archives have a facility to allow researchers to make copies of documents using a mounted digital camera.[552] There are eight available just outside the first-floor document reading room. The file can be taken to the camera area and each document can be photographed digitally. At the start, when the reader swipes their reader's card to use the camera, the reader is asked to identify the file that is being photographed. A list appears on screen of the files that have been ordered and placed in the reader's compartment. The appropriate file can be selected on screen. This is important so that the file reference is linked to the particular document that is being photographed.

After each photograph has been taken the reader can choose to take another as part of that batch or end the session. When a session is ended there are two alternative ways to obtain copies of the photographs so that they can be read at leisure away from Kew. They can either be printed on the National Archive's photocopiers or they can be e-mailed to the reader's e-mail inbox. The address is linked to the reader's card and is the one supplied by the reader on first registration.

The photocopiers print each document onto A3 paper, which is often unnecessarily large. After taking digital photos of the documents with the digital camera, and selecting the option to print rather than email, the reader has to go to a photocopier and log on with the reader's ticket. A list of the digitally photographed documents will appear. It can be costly to print them, though prepaid cards may be purchased at the information desk. The photocopied document is usually darker and less legible than it was when it was previewed before making the digital copy. The NA file reference is printed on the bottom of each document.[553]

[552] Researchers are also free to use their own digital camera or tablet to take photographs of items in the reading room.

[553] When logging on to the digital camera the list of ordered files that the reader has in their compartment also includes "Bulk order". This can be selected if, as happens occasionally, the file that is being copied is not listed. It means that the file name will not be printed automatically on a photocopy made at TNA or appear on the emailed link for that document. In the case of emailed links to documents I would advise that the first photograph of a batch is the front of the file that has the TNA reference or includes the bright yellow small card that accompanies each document when it is placed into a reader's compartment.

Sending copies of the digital photographs by e-mail has several advantages. If a file contains a large number of potentially relevant documents, it is a more productive use of time to take a digital photo of them all and send them by e-mail. The documents can then be reviewed at a later date in the researcher's own room. Those that are particularly useful can be printed onto A4 paper. The e-mail that is sent from Kew arrives with a list of links, each corresponding to an individual document.

It is easier to manage the e-mail, and print the documents, if a limit is placed on the number of documents that are photographed and sent with each e-mail. Twenty is a reasonable number.

Unfortunately, the links to each document in the email are not listed in the order in which the photographs were taken. If the documents are printed out from the email they will not be in the order that they were photographed at Kew. The National Archives file reference needs to be handwritten onto the back of each document that is eventually photocopied in the event that it's source needs to be cited. This process may seem time consuming but the most effective if there are a large number of documents that need to be considered.

The National Archives have records from several government departments that considered picketing in the early 1970s or were concerned with the Shrewsbury trials.

NA prefix	**Government Department**	**Type of material**
CAB	Cabinet Office	Cabinet discussion papers about industrial relations and the economy in the early 1970s
DPP	Director of Public Prosecutions	Correspondence with the courts, counsel and police about the trials.
FCO	Foreign and Commonwealth Office	Papers relating to European politics, the 'cold war' and the work of the Information Research Department
FV	Department of Trade and Industry	Papers relating to industrial relations
HO	Home Office	Papers about picketing and policing
J	Supreme Court of Judicature	Original court documents of the prosecution at Mold and Shrewsbury including the indictments and witness statements
LAB	Departments responsible for labour and employment matters	Discussion papers about picketing and strikes in 1972-74.

LCO	Lord Chancellor's Office	Records of the Lord Chancellor and the administration of the courts.
PREM	Prime Minister's Office	Correspondence and policy documents involving Edward Heath
T	HM Treasury	Papers about strikes and the impact upon the economy.

The records produced by these departments relating to the building workers' strike and the trials were only discovered through searching the National Archives catalogue, *Discovery* using a variety of search terms. The files could not be discovered by simply using "Shrewsbury pickets" as a search term. Some search terms had to be refined to narrow down the results. For example, "Shrewsbury" produced 18,064 records. "Shrewsbury picket" produced one, file number J182. This was a reference to files from Shrewsbury Crown Court between 1966 and 2006. The J182 series included 43 that related to the pickets' trials (J182/9-J182/51).

Variations on a search term would be tried because the pickets that were imprisoned were variously known as the "Shrewsbury 2", "Shrewsbury 3" and "Shrewsbury 6". The former term produced a reference to file DPP2/5185.

Other search terms that were used included, "Des Warren" and "Eric (Ricky) Tomlinson" which identified one file, PREM 16/947.

Two other terms that generated a significant number of results were "picket*" and "intimidat*". The former produced 1,498 results but these could be narrowed down by listing them in date descending order. The files that contained documents covering the period 1970-76 were ordered, reviewed and, in many cases, photographed and e-mailed. An example of a file that was identified by searching for "picket*" was:

Reference:
LAB 10/3743
Description:
The law on conspiracy in relation to industrial disputes and picketing

Date:
1974 Jan 01 - 1977 Dec 31
Held by:
The National Archives, Kew
Former references:
in its original department: 1/IR 1689/1974
Legal status:
Public Record
Access conditions:
Closed Until 2005
Record opening date:
04 January 2005

Other search terms included "DPP", "Gwynedd", "West Mercia", "NFBTE", "McAlpine", "Build*".

3. Trades Union Congress Library Collections, London Metropolitan University

The TUC archives are extensive but contained very little about the pickets' case or the strike. The sole reference was HD 5637 B9 which was a collection of leaflets.

4. Hull History Centre

This Centre holds papers from many prominent individuals and organisations involved with the trade union movement. It has the main archive of John Platts-Mills QC but it had not been catalogued fully. The Centre staff said that there were access restrictions but they had not been able to separate papers relating to the Shrewsbury trials from those dealing with other clients' cases. Permission would be required from all of them. A letter from Platts-Mills to Frida Knight revealed that he had given a copy of the trial transcript to Ruth and Eddie Frow for their Salford library (see below).

5. Working Class Movement Library, Salford

This is an essential library for anyone researching British trade unions. It began as the personal library of two political activists, Ruth and Eddie Frow, but eventually outgrew their Salford home which had welcomed researchers for many years. The City of Salford Council agreed to provide accommodation and staff for the library, which is now housed in a prominent building on Crescent, Salford.

The library holds a large amount of primary historical data including books, pamphlets and collections of newspapers of trade unionists and left-wing organisations throughout the 19th and 20th Century. The cataloguing of the material is ongoing because the library has only a small paid staff and they rely upon volunteers. All the staff are helpful in identifying boxes that contain relevant material but the description of the contents of each is variable.

There are thirty document boxes containing material about the trials and the work of the North Wales Defence Committee that was established to gain support for the pickets and their families. There are some papers of Platts-Mills including his notebooks of the evidence, and of another trial barrister, Anthony Rumblelow.

Documents can be photocopied but this is undertaken by staff on an old machine at a cost of 12p per sheet. This can be time consuming and expensive. It is permissible to use a personal digital camera and study the documents at a later date. Staff allow a researcher to use the kitchen and help themselves to tea, coffee and biscuits, for a small donation.

6. Shropshire Archives, Shrewsbury

These local history archives contain copies of two local newspapers that were published at the time of the trials. The *Shropshire Star*, had three daily editions in the 1970's: the Town edition, the Early Edition and the Late Edition. The *Shrewsbury Chronicle* is a weekly newspaper. The newspaper coverage of the building strike, picketing, the charges brought against the pickets, committal appearances and the actual trial was extensive.

This is a small archive. The staff are helpful but have their own set job descriptions. If the person who obtains the documents or papers from the archive is having a break there is no-one else to get further material. Requests must therefore be planned carefully to take account of staff availability.

7. UCATT Head Office, London

The archives of UCATT were held at its head office in London. Permission was given to visit and read through those relating to the strike and trials. I was also allowed to make copies of important documents. This access was granted because of the Campaign's reputation and the support that it has received from the union. Since the visit the union has amalgamated with Unite the Union and a decision will be made about the integration of UCATT's archives.

8. The British Film Institute London. 26th September 2013

A file was discovered at the National Archives that referred to a television programme, *The Red under the Bed*. It had been made by Anglia TV and broadcast on the ITV network on 13 November 1973, the day that the prosecution case against the pickets concluded. There had been no mention of the programme in Warren's book or in the trial transcript.

The National Archives catalogue stated that the file was "Retained by the Department". I made an FOI request and the file was released. The documents in it showed the Government's involvement in the making of the programme. An extensive search was then conducted on the internet to discover a copy of the film, starting with the archives of Anglia TV.

A copy of the film was eventually located at the British Film Institute, London. It was catalogued under Yorkshire Television as that company had taken over Anglia TV. The BFI copy was on cine film, which deteriorates with age, so it was copied onto a DVD to enable me to view it at their premises.

9. Churchill Archives Centre, Churchill College, University of Cambridge

This Centre holds the papers of many prominent Conservative MPs including Robert Carr and Peter Rawlinson, and the Conservative Lord Chancellor, Lord Hailsham (Quintin Hogg). It is open to the public but advance notice needs to be given of a visit and identification is required to register. The staff were helpful in highlighting the papers of other Conservatives, including the Party's special advisor during the Heath Government, Michael Wolff.

Special permission was required to view Rawlinson's papers and this was obtained from his widow by a member of the staff, Andrew Riley

The procedure for ordering and viewing documents is slow. The reader is allowed just one file at a time. Digital photographs are allowed but each one must have a copyright strip of paper by the document when the photograph is taken. A list of all photographed documents must be completed. Notes can only be taken with a pencil.

10. City of Westminster Archives Centre, London

This holds the archives of the FCEC. They had been rescued from destruction and donated to the centre by auctioneers. It includes Council minutes, 1919-1973; committee minutes, 1944-1970; and a weekly bulletin, 1946-1990. The reference is 2035.

11. The Bodleian Library, University of Oxford

The Bodleian Library has the archives of the Conservative Party, including the backbench 1922 Committee of Conservative MPs. Access to the latter required written consent from the current Chairman of the Committee.

The Bodleian is not open to the general public. Students at non-Oxford University institutions must obtain a reader's card. The application must be supported by the student's head of department stating the nature of the research and the reason that the particular information can only be seen at the Bodleian.

The Conservative Party Archive contains material relating to the Government of Edward Heath between 1970-74. It needed to be investigated to discover what debates, if any, took place within the party about industrial relations and the means to deal with the trade union challenge to government policy during this period.

The 1922 Committee documents could not be photocopied so written notes had to be relied upon. Only pencils are allowed in the reading room.

12. The Marx Memorial Library London

This library holds the archives of the Communist Party and a large collection of other material relating to the trade union and socialist movements. It has a collection of the communist party's daily paper the *Morning Star* including issues from 1971 through to 1976.The articles in the paper provided a contemporaneous account of the many industrial disputes during that period, which could be cross-referenced with accounts of disputes described in books and journals.

13. The British Library London

Research revealed that the previous occasion on which trade unionists had been tried for conspiracy occurred in 1951. Seven dockworkers from London and Liverpool were prosecuted at the Old Bailey by the Labour Attorney General, Sir Hartley Shawcross, for conspiracy to induce their fellow dockers to absent themselves from work and to obstruct the employers in the conduct of their business. An account of the trials was written in *Socialist Leader*, the newspaper of the Independent Labour Party.[554] The British Library holds copies of all books, newspapers and other items published in the United Kingdom and this gave access to the newspaper

[554] Article by Jenny Morel, volume 43 1951. The dockworkers were successfully defended by Rose Heilbron QC who was a Liverpudlian and was to become the first female judge to sit in the Old Bailey (Heilbron 2012:119-128)

14. West Mercia Police

This police force had been asked for documentation by Home Official, Simon Marsh, as part of the compendious request that I had made following the Westminster Hall debate on 9 December 2015. The police discovered crucial documents a year after this request. I met the West Mercia force solicitor and two senior officers who allowed me to view the documents and then provided me with copies. She responded promptly and co-operatively to requests for missing pages and replacements for those that had not been scanned fully. When I had reviewed the documents, I was able to visit police headquarters to check them all against the originals.

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Criminal Cases Review Commission: annual reports and other publications are available on its website: https://ccrc.gov.uk/publications/ccrc-casework-policies/

Newspapers

The sources of newspapers are discussed in Chapter 4. Access is restricted as most UK national newspapers are only available at a charge through sites such as Gale publishing. Local libraries may have copies on microfiche e.g. Shropshire. Online sources of left-wing papers from the 1970s are limited; only the *Morning Star* is available in its entirety at the Marx Memorial Library. It has incomplete runs of *Socialist Worker* and other papers.

Archives

These are set out in Chapter 4. The main sources of information are in the National Archives, Kew, the Working Class Movement Library, Salford, the Modern Records Centre, Warwick and the Churchill Archives Centre, Cambridge.

Updated details of the case of the Shrewsbury 24 and further information about the history of the pickets is available on the Shrewsbury 24 Campaign website: www.shrewsbury24campaign.org.uk

TV Programmes and films

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