

The Birmingham pub-bombs

People in the case

Paddy Hill		Dr Hugh Black	defence forensic consultant
Gerry Hunter		Douglas Higgs	Home Office forensic
Richard (Dick) McIlkenny	jointly charged with	Donald Lidstone	scientists
William Power	Birmingham pub-bombings		
John Walker		Dr Arthur Harwood	doctor at Winson Green
Hugh Callaghan			prison (B'ham)
Mr Justice Bridge	judge	Thomas Watt	prosecution witnesses
		Hilda Wickett	
James McDade	IRA activist, killed on 14	Julia Vines	barmaid at New Street
	November 1974		station
Harry Skinner QC	prosecuting counsel	David Owen	assistant chief constable of
			Lincolnshire
Michael Murray	jointly charged with	Dr David Paul	defence witness at prison
Michael Sheehan	explosives offences		officers' trial
James Kelly (Woods)		Mr Justice Swanwick	judge at prison officers' trial
Dr Frank Skuse	Home Office forensic		
	scientist		

A telephone call from an alert booking-clerk at Birmingham's New Street station seems to have given police the vital information that a group of five Irishmen had purchased tickets to Heysham a little while before the bombs in the Mulberry Bush and the Tavern in the Town exploded.

On arriving at Heysham, the men left the train and made their way to the ferry. One, Paddy Hill, had his luggage checked and was waved through ahead of the others. He boarded the boat, went to the bar and bought himself a drink. The other four, thinking him behind them, idly chatted to a Special Branch detective while waiting to embark. When asked the purpose of their trip, each said he was visiting relatives; none mentioned that he was going to the funeral of an IRA man.

They were joined by another detective, who'd received the phone call and news of the Birmingham bombings. The men were asked if they would mind giving forensic tests so that they could be eliminated from inquiries. They offered no objection. Hill was brought back off the boat, and they were all taken to Morecambe police station.

The men had all lived in the Birmingham area for some considerable time. Gerry Hunter came to England in 1963, and married a local girl, Sandra, in 1966; Dick McIlkenny arrived in the

country in 1956, Paddy Hill in 1960, William Power in 1963, and John Walker, who came from Derry and had attended the same school as John Hume, the much-respected SDLP MP, in 1952. A sixth, Hugh Callaghan, who had not taken the train from Birmingham, had been in England since 1947.

Unlike Annie and Paddy Maguire, who were vehemently anti-Republican, some of these men probably did have Republican sympathies. Nevertheless, none was especially interested in politics, and all deprecated the methods of the IRA. They were all married, with children.

Gerry Hunter was very friendly with James McDade. The two had attended St Gabriel's Secondary School, in Crumlin Road, Belfast, and had met again when both lived in Birmingham. Hunter had on one occasion got McDade a job with the firm he was working for. Their wives, too, knew and liked each other.

Power also went to the same school, but he knew neither Hunter nor McDade well until he came into contact with them in Birmingham in the early seventies. They lived close together in the Aston district, sometimes worked on the same painting jobs, and often went drinking together. Hill had also been at the same school.

He, Walker and McIlkenny were all drinking companions at the Crossways

public house.

In 1973 Hunter and Walker tried to organise a pub team to play Don in a local Sunday league. (Don, alternatively called Dom Pedro, is a card game.) This scheme fell through, but Hunter and Walker had already begun organising a raffle to raise funds to get the team under way. They decided, therefore, to run the raffle anyway, and send the proceeds to the Prisoners' Dependents' Fund, a charity which helped the relatives of internees in Northern Ireland. Hill and McIlkenny both helped to sell tickets. (Two of McIlkenny's brothers had been interned; he did not know why, and they never faced any charges.) This straightforward humanitarian gesture inevitably took on a malevolent political character at the men's trial.

The death, on 14 November 1974, of James McDade shocked the Hunters. They knew him very well, and they also knew that his brother had been shot in Belfast four years earlier while engaged in IRA activities. Nevertheless, they had not suspected either that he was involved in terrorism, or that he was an IRA member. Other friends were equally astonished. McDade, an Irish folk singer who performed regularly at local dances, had been a popular and well-known figure.

Hunter decided to go to Belfast for the funeral. It seemed the right thing to do. In any case, he had another reason

for going. The previous month his father had died, and he wanted to bring his mother back with him so that she could enjoy a break and be with her grandchildren. His only problem was that he had been out of work for a few weeks and had no spare cash.

'Funeral-going is part of the ghetto culture of Northern Ireland,' wrote Michael Farrell in the *Sunday Tribune*. 'It does not necessarily imply support for the deceased's political views.' Power, Walker and McIlkenny all confirmed that they too would try to go to the funeral. In McIlkenny's case, this was out of respect for McDade's parents, whom he had known well in Belfast. Power had put up the McDade family at his home in late 1973, though they had moved to different parts of the city after that, and hadn't seen each other since January 1974. Hill, too, thought that he would probably attend the funeral, though, like Hunter, he had an additional reason for travelling. He wanted to visit a sick aunt in Belfast.

After the shock of McDade's death, the Hunters put up three members of his family for a few days, and Power's wife took in his infant son. Gerry Hunter tried to organise a collection for Mrs McDade (as is traditionally done in such circumstances), but it proved difficult since everyone was so short of money. They did, though, arrange to take Mass Cards with them. They purchased these

from the shop in St Chad's Cathedral, and during the week took them to the Crossways so that everyone could sign them.

On Thursday 21 November Walker and McIlkenny collected their week's wages from Forgings & Pressings Ltd (part of the GKN group) in Witton. Walker had agreed to lend Hunter the money for the fare. At 4 o'clock, Hugh Callaghan, another patron of the Crossways, walked round to Dick McIlkenny's house to repay a trifling debt, and stayed playing with the children. He couldn't afford to go to Ireland (he was on social security, a stomach ulcer kept him off work), but decided to see McIlkenny and the others off at the station.

At 6.00 p.m. they both went round to Walker's house and, twenty minutes later, the three called on Hunter. They all then set off. As they were walking towards the bus-stop, two of Hunter's children came running after him with an extra pound that Sandra had managed to find for him.

They caught a bus to Colmore Row, hurried down past New Street, and discovered Power waiting for them at the station. He had been the only one to arrive in good time. At that instant the 6.55 train they had intended to catch was just leaving the station.

This wasn't a serious problem. Providing the 7.55 was running on time,

they would still be able to make the connection with the Heysham boat.

With an hour to wait, they adjourned to the Taurus, the station bar. Hunter made a couple of phone calls to ensure that someone would be able to meet them off the boat. They did not believe it was safe to be without transport for the journey across Belfast.

At about 7.45, Hill turned up. At the last minute he had managed to borrow enough money for the trip from the nuns at the Convent of the Little Sisters of the Assumption.

The train left on time, with five of them aboard and Callaghan left behind on the platform. They changed at Crewe. Paddy Hill risked a British Rail steak-and-kidney pie, which crumbled in his hands. They all played cards, and reached Heysham without incident.

Once in Morecambe police station, they were all put in separate rooms. At about 3.00 p.m. the Birmingham police arrived, and later on Dr Frank Skuse carried out the forensic tests.

In view of what happened later, the situation in which the police found themselves needs to be fully understood. The bombs which had gone off in the two pubs a few hours earlier had been horrific.

The investigating officers had been to the scene and witnessed for themselves the bloodshed. Such wanton murder, such appallingly

dreadful violence, must have seemed the quintessence of evil.

While waiting to be swabbed, Hunter and the others were naturally nervous. As Walker subsequently explained, however, this was due not to feelings of guilt, but merely to the apprehension which anyone forced to spend several hours at the dead of night in a police station is bound to experience.

The men's accounts of their movements could have seemed suspicious. They had waited for an hour at New Street Station, just a couple of minutes' walk away from both the pubs. They could have slipped out of the station bar for a few moments, planted the bombs, and returned almost before anyone had noticed they had gone. By the time the bombs exploded, they would be twenty miles away.

Moreover, the police, so it was later claimed at the trial, already had Walker and McIlkenny earmarked as IRA suspects.

While the five were detained at Morecambe their baggage was searched again, this time more thoroughly. The Mass Cards were found in Walker's bag. To the police, this must have seemed doubly incriminating. Not only had all five lied about the purpose of the journey to Belfast but that purpose was to attend an IRA funeral.

It is all too easy, with hindsight, to see that the suspicious chain of

circumstances was more persuasive of the innocence than the guilt of these men. The real IRA bombers would have appreciated only too well that all routes back to Ireland would be sealed that day because McDade's body was being flown back to Ireland. Elmdon airport was heavily policed. Both New Street station and the sea routes would be closely watched. Genuine IRA men, knowing that this surveillance would be intensified once the bombs had exploded, would not have risked returning to Ireland. Why, in any case, would they need to? It would be easy enough to lie low in the city.

However, this analysis of events is perhaps a sophisticated one.

In the immediacy of the situation, reeling from the searing horror of the bomb blasts, the police jumped to conclusions. They thought they'd got their men. Once Dr Skuse's forensic tests yielded some positive results, they were certain of it.

* * *

After waving goodbye to the others, Hugh Callaghan wandered back into Birmingham city centre. Within no time at all, he'd been in and out of two pubs; each was cleared because of bomb scares. Back in New Street he noticed a commotion by the Odeon cinema (i.e. in the vicinity of the bombed Mulberry

Bush) and decided it was safer to return home. He stopped off at the Lozell's club for a drink, and was told there about the explosions. By the time he arrived home shortly after 11.00 p.m. he was emotionally drained. This could be attributed partly to shock at realising how narrowly he'd missed the bombs himself, and partly to self-reproach for having forgotten it was his wife's birthday.

The homes of Gerry Hunter and the others were all raided and searched by police between 3.00 and 5.00 a.m. on Friday morning.

This was before the men had been questioned or the results of the forensic tests become available. The wives assumed that similar treatment was being meted out to other Irish families in the area.

By and large, it probably was. This was just thorough police-work in the aftermath of a national tragedy.

In the morning, Callaghan called on Sandra Hunter. He felt he needed to assure her that, despite the bombings, her husband had got safely away to Belfast.

It was a bewildering time for all the wives. They noticed they were followed as they did their Saturday shopping, and again on the Sunday when they went to Mass. The first they knew that their husbands were being held was when the names were read out on the

television news on the Sunday evening: a traumatic moment, indeed, for any mother and her young children.

The six accused of the Birmingham bombings were sent for trial by magistrates on 9 May 1975. Hunter, Power, Hill, McIlkenny, Walker and Callaghan were all accused of murder. There were three co-accused of conspiracy: Michael Murray, Michael Sheehan and James Kelly.

Counsel for eight of these nine (Murray refused to acknowledge the court and played no part in the judicial proceedings) immediately requested that, in view of the wave of public outrage which had followed the bombings, Mr Justice Bridge should move the trial away from Birmingham.

In granting the application, Bridge observed that, 'I cannot escape from the conclusion that those accused might reasonably apprehend, even if it be contrary to the fact, that a Birmingham jury would be unable to bring to the trial that degree of detachment that is necessary to reach a dispassionate and objective verdict.' Accordingly, the trial was moved to Lancaster's 900-year-old castle, a building which was felt to be suitable because it accommodated a medium security prison.

The biggest mass-murder trial in British criminal history duly commenced on 9 June 1975. From the outset, the

prosecution linked the bombings to the death of James McDade the previous week.

Harry Skinner QC told the jury that the bombs might have been planted 'in some illogical way' to avenge or commemorate his death.

Skinner stated that all nine were part of an IRA team which included McDade and which had made and planted eleven bombs in the Birmingham area, including the two that had been so wickedly placed in those crowded pubs. 'And what were the accused doing?' asked Skinner rhetorically. 'Five of them were on the train to Heysham, playing cards, and were described by people who saw them as being in a jolly mood.' This is one of the few points about which there was no dispute whatsoever.

The evidence against the accused men fell into three categories: the forensic tests; evidence of association with the IRA; and the "confessions".

In the Maguire trial, the tests were disputed on the grounds both of their unreliability and of the competence of the technician who performed them. In the Birmingham case, Dr Skuse's professional experience was beyond question. Argument therefore centred on what, if anything, his results proved. He had, quite properly, submitted the swabs to three different tests. In the cases of Hill and Power, he had

obtained positive results in the Griess test; on the TLC and the more sophisticated Gas Chromatography Multiple Spectrometry (GCMS) he got a negative reaction for Power and a doubtful positive one for Hill.

Those were the tests for nitroglycerine. He then tested for another component of explosives: ammonium nitrate. Now, he got positive reactions for Hill and Power, as well as one for Walker; *but he also got a positive reaction for himself*. Skuse told the court that, in Walker's case, contamination from his (Skuse's) own hands could have contributed to a positive reaction.

The tests for Hunter and McIlkenny had proved negative throughout. (So did those on Callaghan, who had been swabbed in Sutton Coldfield.) The results of the tests on Walker were so uncertain that no judicial weight could have been attached to them. Skuse, however, declared himself '99 per cent certain' that Hill and Power had been handling explosives.

The defence called Dr Black, an independent consultant who had been, until 1970, HM Chief Inspector of Explosives for the Home Office. He maintained that the tests were unreliable because, apart from nitroglycerine and ammonium nitrate, other substances, notably nitrocellulose, could produce the same results.

Nitrocellulose has a number of industrial applications. It is contained, for example, in paints and varnishes used for public-house furniture and bars. Black maintained that the nitrates the test was attempting to isolate could be found in varnishes, insecticides, fungicides and in petrol additives, as well as in the soil and in the atmosphere. He said that ammonium ions and nitrate ions, the constituent parts of ammonium nitrate, could come together on a man's hands quite by accident. He also insisted that, when testing for nitroglycerine, if the subsequent GCMS or TLC tests gave a negative reading then that totally invalidated a positive result from the preliminary Griess test. Overall, Black told the court, Skuse's tests had not succeeded in identifying nitroglycerine.

Apart from the scientific value of the tests, there was a separate and crucial factor. On the train journey, the five men had, as the prosecution told the court, been playing cards. Accordingly, if one person had traces of explosive on his hands, they all should have them. The cards, too, should have provided positive reactions in tests. According to police, however, tests proved negative. Subsequent independent tests could not be carried out because the pack was mislaid.

The trial hinged overwhelmingly on the "confessions" which had been

obtained in police custody. When he examined the case some years later, Lord Denning commented that 'apart from those confessions, the police had no sufficient evidence on which to charge, let alone convict the men.' The "confessions" were strenuously challenged by defence barristers during a week of legal argument while the jury was stood down. In the end, the judge ruled that they were admissible. He subsequently, however, refused the jury permission to see them.

If the "confessions" had been properly studied, their inherent weaknesses would have become only too apparent. They provided no information about the crimes other than that which the police already possessed, or could have surmised. They were contradictory, illogical and utterly improbable.

According to these statements, Power said that he alone planted the Mulberry Bush bombs; Callaghan said that it was he and Hunter who put the bombs there; Walker said that he and Hunter put the bombs in the Tavern in the Town. McIlkenny said he and Hill did that job.

Further, some of what was "revealed" in the "confessions" was shown by subsequent forensic work to be erroneous. Power, Callaghan and McIlkenny all said that the bombs had been placed in plastic bags. (Previous

IRA bombs in the Midlands had been in plastic bags; so had a third bomb discovered in the Hagley Road, fortunately before it exploded, on the evening of the pub-bombings.) Both Douglas Higgs, in charge of the Tavern in the Town forensic work, and Donald Lidstone, who was involved in the parallel investigation in the Mulberry Bush, confirmed that D-type handles had been found in the debris – indicating that these bombs had been in suitcases or hold-alls.

The men who had made "confessions" all repudiated them at the trial, saying they had been extorted under physical and psychological duress. According to their testimony, early that Friday morning, 22 November 1974, they were plunged into a nightmare from which none has yet emerged.

They were given breakfast, and then told to remove their clothes for forensic analysis. Hunter was taken into a cell. Two police officers came in and, he told the court, 'they started to hit me.' He said that he was slapped and punched throughout the rest of the day, and endured 'a long mental and physical torture'. He was deprived of sleep throughout the weekend, until he had made a court appearance on Monday morning, and was given no food or drink between Friday's breakfast and a light meal on Saturday evening. The

psychological pressure was, if anything, worse. He was told that his house was surrounded by a screaming mob and that his wife and children were being attacked. On the Sunday evening, in his cell, the police both threatened him with a gun and dangled a noose in front of him.

Walker's testimony was similar. The police had threatened to shoot him, too. One policeman had kicked him on the legs and in the genitals. Another burned his foot with a lighted cigarette. Walker removed his shoe and sock to show the court that, months later, his foot was still badly swollen. He said that on the way back from Morecambe to Birmingham he was punched unconscious. His black eye was the only visible injury suffered by the six. According to them all, the police were careful not to mark their faces.

Like Hunter, Walker was told that his family was being attacked, but that they would be given protection if he signed a statement. That was why, he said, he had signed it.

Hill also showed the court lingering injuries which he said he had sustained while in police custody. Several times a gun was put in his mouth and the trigger pulled. During the journey from Morecambe, he was repeatedly hit on the testicles with a truncheon. Power was told he would be thrown out of the car on the motorway, and that it would

afterwards be said that he had been trying to escape. He said he had signed a statement because 'I had been beaten up and my wife and children had been threatened.' McIlkenny testified that 'I was constantly punched and slapped and eventually I broke down completely.' He said he signed a statement because, 'I had just given up – I couldn't take any more.'

Callaghan was arrested at his home when he came in at about 11 o'clock on the Friday evening. The police had waited there for him since the afternoon. He was taken to Sutton Coldfield police station where he was made to stand naked, with just a blanket around him, and was given no food until Sunday evening, which weakened his resistance considerably. He said that one detective had been shouting at him 'like a raving lunatic' and that he had signed a statement only because he was terrified by the interrogation.

After making court appearances on the Monday morning, all were taken to Winson Green prison. Callaghan had already heard a policeman say that a reception had been arranged for them. Walker suffered physical injury before even entering the prison. As he moved to get out of the police van, he was pushed from behind, and landed face-first on the pavement.

From the moment of their arrival in

the prison, all six were assaulted indiscriminately by both warders and other prisoners.

Walker lost several teeth after being punched in the mouth by one prisoner. 'We ran the gauntlet of a lot of officers all the way through the reception area,' recalled McIlkenny. 'We were all in a bad state. We were taken into D Wing and at the top of the stairs there was a crowd of convicts who appeared to be waiting for us. One of them shouted, "Right, lads, let them have it." As part of this "reception" each in turn was pushed into a bath of scalding hot water. The prisoner instructed to clean out the bathroom area afterwards found the water red with blood. Throughout the afternoon the six were forced to stand to attention in their cells, with the blood and water dripping down their naked bodies.

Their wives were allowed to see them for the first time the following day. They found them almost unrecognisable.

Neither the solicitors nor the doctors involved with the men during this period emerge with credit. When the solicitors first saw their clients on the Monday morning, they should have refused the police further access to them until they, the prisoners, had been properly photographed and thoroughly examined by a doctor. The solicitors, though, could hardly be blamed; the pressure inside the police station must

have been immense. Only solicitors of vast experience and great strength of character would have been emboldened to take such a course.

As it happens, some photographs were taken. Walker clearly had a bruise under his right eye. Both solicitors reported that the men had sustained injuries; in particular, scratches on their chests. Nevertheless, the first time they were medically examined was in prison on the Monday afternoon by Dr Arthur Harwood, the prison doctor.

As a defence witness, he was in an invidious position. There was no escaping the fact that the men had been maltreated. Harwood's testimony would therefore fix the blame either on his colleagues in the prison service; or on the police; or both. So, he fell into the trap of telling the truth, but not the whole truth. He said that the defendants' injuries had been at least twelve hours old when he saw them on the Monday. The inference was that they had been sustained in police custody. However, Harwood declined to assert this himself. In doing so, he created a poor impression in two respects: he seemed either to be covering up for his colleagues; or admitting to gross negligence in not ascertaining the origins of the injuries he said he saw on the men. In the event, his testimony at Lancaster did the defence great damage.

After his harrowing experience at the trial, Harwood then contrived to create an entirely different impression in giving evidence to the Owen inquiry, when he attributed the injuries entirely to innocent causes.

Walker and McIlkenny were seen by an independent doctor on the Tuesday. Bruises and skin lesions on both were noted; one bruise on Walker's chest 'could have been caused three to four days previously'. Power was examined on the Thursday, after the men had made their second court appearance of the week. The doctor identified thirteen separate areas of wounding, and reported that some 'could have been inflicted as long as a week ago'.

The remainder of the prosecution evidence presented at Lancaster was either wholly circumstantial or distinctly odd or both.

A special dock had to be built at Lancaster to accommodate the nine accused, the others being Michael Murray, Michael Sheehan and James Kelly.

Murray is the only one of the team responsible for the Birmingham pub-bombings to have been captured – captured, but not, since he was never charged with the offence, brought to justice. He was known to be an IRA member. In May 1975, just prior to the

Lancaster trial, he was convicted on conspiracy charges connected with several of the earlier explosions in the Birmingham area. Thus, when he appeared in court in Lancaster, he was just beginning a twelve-year sentence. In time-honoured IRA fashion, Murray refused to recognise the court and kept silent throughout.

When giving evidence Walker told of a sensational meeting with Murray in the exercise-yard at Winson Green. Murray, he said, apologised about Walker and the others becoming involved in something which didn't concern them. 'Nothing went right that night,' he quoted Murray as saying. 'The first telephone box we got to was out of order.' Walker replied, 'What are you on about? Are you telling me that you did those bombs?' He said that he was shocked when Murray answered, 'Yes'.

Walker said he later learned the identity of the team responsible for the bombings: Murray, and three others who were by then in Eire. He sent the four names to the Home Secretary, Roy Jenkins.

While Murray was, perhaps, an enigmatic defendant, Thomas Watt was an enigmatic prosecution witness. Watt worked at the Witton factory with Walker, McIlkenny and Murray. He suspected some IRA sympathisers among them, and accordingly coaxed Walker into doing a drawing of how he

imagined a bomb was constructed. Walker did so. Watt then took it to the police, sometime around June 1974, using it as documentary proof to back up his suspicions. The police, so he said, were grateful and asked him to keep an eye on his work-mates.

Watt's evidence contained a number of other significant, and very prejudicial, observations. He said that his work-mates warned him to stay indoors on the night of the bombings; that Walker had admitted planting other bombs; and that he had asked Watt where he could buy cheap alarm clocks.

None of this is necessarily inconsistent with Walker's innocence; trouble in Birmingham that evening was widely expected among the security services and the Irish community. As for planting other bombs, no one who had done so would refer to it in casual conversation. Probably Walker had just been having him on; Watt seems to have been, on the most favourable interpretation of his behaviour, a rather credulous individual.

What lent the evidence a certain ambiguity, even apart from these reservations, was the revelation during the trial that at the time of the bombings Watt was giving shelter to Kenneth Littlejohn, then notorious in Anglo-Irish affairs.

On 12 October 1972 Littlejohn had

been a member of a gang involved in an armed robbery in the Irish Republic. Although the apparent purpose of this was to obtain cash to finance IRA activities, it is widely believed that it was staged by British intelligence in order to discredit the IRA. A week later Littlejohn and his brother were arrested in England on an Irish warrant. The Dublin government successfully pleaded its case for extradition. The Littlejohns appealed, and in February 1973 argued that they had infiltrated the IRA and had been working for British intelligence at the time.

The Appeal Court rejected their submissions, and Littlejohn was returned to Ireland where he was convicted and given a twenty-year sentence.

Within a year, he was back in the headlines. On 11 April 1974 he escaped from Mountjoy prison and disappeared. At the time of the Birmingham bombings, therefore, he was being actively sought by both the British and Irish security services. (He was in fact arrested on 12 December.) That one of the major prosecution witnesses at this trial had been giving him shelter, but was never charged with any offence in connection with it, seems to suggest that it would be naive to take his evidence at face value.

James Kelly, one of the three additional defendants, also had a bizarre story to tell. For a start, it turned

out that his real name was not Kelly, but Woods. He had changed it after deserting from the British Army – the Royal Corps of Signals – in Germany in 1964. He was an Orangeman (i.e. Protestant) from Portadown, and said he had been trying to infiltrate the IRA. He said to the policeman who arrested him, 'It is imperative that I see your assistant chief constable. I have some valuable information about the IRA.'

Kelly said that he had first conceived the idea after meeting Sheehan, who worked for the same Birmingham firm. Apparently, his opportunity occurred when Walker and Sheehan asked him to take charge of bags containing, he said, guns and explosives. However, he did not even contact the police, much less pass on information to them. He said his nerve failed him. He simply returned the bags.

Similar pieces of evidence would have been damaging to Walker in particular and, by extension, to all six. Hilda Wickett, one of his neighbours in Kingstanding, gave evidence that both she and her son had seen Walker and other men carrying large cement bags into the house late at night. She also said that after every Birmingham explosion Walker seemed to disappear for two or three weeks.

Evidence also came from a man who was drinking at the College Arms in Kingstanding when Sheehan came in

with a cardboard box, joined Walker, opened the box, and took out an alarm clock.

Apparently, Walker wound the clock up, held it to his ear, and then said, laughing, 'Isn't that a beautiful tick?'

Walker's explanation was that when he took over from Hunter the job of organising the raffle, Murray gave him an address in Dublin to which the money, for the Prisoners' Dependants' Fund, should be sent. He also told Walker how prizes could be purchased wholesale from a local warehouse. They were the sort of meretricious items that one might see being offered as fairground prizes: lamps, teddy bears, table lighters, and various clocks, including alarm clocks and watches. Murray said he could purchase these for Walker, because his wife had a membership card, and then pass them on either at work, or in the pub nearby called the Yew Tree. On one occasion, though, Murray had taken the prizes round to Walker's home address.

James McDade also helped sell the tickets. Once, in May 1974, he went round to Walker's house, carrying a bag which he asked if he could leave. Walker said he didn't look inside the bag, which was collected the following evening by Sheehan. He and Walker took it by car to a house which, Walker supposed, could have been Kelly's. At the time, he was not really interested;

he had only asked for a lift to the pub.

As usual in miscarriage cases, the evidence which the prosecution didn't provide is the more telling. According to its scenario, and according to those wretched "confessions", the six men who met at New Street station made brief excursions to plant the bombs, and then re-assembled there.

A number of people were in the Taurus bar on that particular evening. In their statements (these are the bona fide statements, made of their own volition), the men described some of them: the barmaid; a couple who seemed to have a quarrel and then kiss and make up, and so on. The prosecution, however, called no one who had been in the bar. This omission knocks a sizeable hole in the prosecution argument. Surely someone who had been there at the time must have noticed these men slip out and then return some minutes later.

The sum total of Crown evidence about this part of the case was a statement from a barmaid Julia Vines which was read out in court, and according to which her colleague served drinks to a man with an Irish accent at about 7.45.

Similarly, the men were never put on identity parades, although there was a possibility, however slight, that the bombers might have been noticed in either or both of the pubs. (On 23

November, the *Birmingham Post* carried a story in a special panel at the foot of the front page, to the effect that 'a man who missed the Mulberry Bush blasts by seconds last night said he felt sure he could identify the man who placed the bomb.')

The absence of forensic evidence is just as glaring. Even the most meticulous criminal is likely to give himself away, because of the skill of forensic scientists in identifying fibres on clothes, dirt on footwear, and so on. It is a corollary that if forensic science fails to yield one single microscopic factor connecting the accused with the crime then he is almost certainly innocent of it.

In this case, conditions for scientific investigation were practically ideal. All the men surrendered for analysis the clothes they had been wearing when they had supposedly planted the bombs, yet the laboratories were unable to discover anything to link them with the crimes. Nor was there evidence to connect the homes of any of the six men with either explosives or bomb-making equipment. The point bears repeating: in this instance, too, detective work should theoretically have been handsomely rewarded. Police raided the homes in strength within a few hours of the bombings. (The argument that the bombs could have been manufactured elsewhere is a non-starter. Where? And why, if the

"confessions" were as reliable as the prosecution insisted, was no hint of this contained in them?) Hilda Wickett told the court that Walker tended to disappear for a time after bomb attacks in the area. If this had been true, the prosecution would undoubtedly have been able to produce his attendance sheets from work to corroborate it.

Much was made at the trial of the failure of the five men at Heysham to volunteer the information that they were going to the funeral of an IRA man, but can one seriously imagine that this is indicative of their guilt? However law-abiding their intentions, it would have been a foolhardy admission. The police would have been almost bound to interpret it wrongly – as, indeed, they did.

And so the contradictions and implausibilities of the prosecution case accumulate.

In the twenty minutes prior to the arrival of Hunter and the three others, Power had been at New Street on his own. He is certain that during that time a Special Branch policeman monitored his movements carefully. (It was only in retrospect that he realised the man was on surveillance duty.) Power has always been convinced that this man must know they are all innocent, because he was in the bar throughout. It would have been grossly negligent of the

intelligence and security services to have left New Street station unmanned at such an especially tense time, so Power's suspicions are certainly plausible.

To take this a stage further: a Special Branch officer is on duty at New Street station, specifically assigned to keep a look-out for groups of Irishmen. He sees Walker and friends arrive, carrying a number of bags. He sees them depart for a few minutes, and then reappear with rather few bags. He does nothing at all about it, even though – according to the evidence of Watt, testifying for the Crown – the police had been informed five months previously that Walker and McIlkenny were IRA suspects.

Is this credible?

If the six men were the bombers, then the bombings should never have occurred because adequate security would have prevented them. In another parallel with the Maguire trial, if the prosecution case is true, then the ineptitude of the British security services is beyond belief.

Turning to the considerations which are persuasive of the innocence of the men individually, the positions of Hunter, Hill and Callaghan were particularly strange. The prosecution case rested mainly on the strength of the "confessions" and the forensic tests. So what was the evidence against Hunter?

He had not signed a "confession" and all his tests proved negative. Hill arrived at the station at 7.45 p.m. – after the time when the bombs were supposed to have been planted. He could account for virtually every minute of his time from 6 o'clock onwards that evening. (He had, for example, called in at the convent to borrow the money for his trip.) He had no opportunity to have planted the bombs. Callaghan was at liberty throughout the following day, Friday. He knew that the homes of all the others had been raided in the early hours. Surely, if he had been a bomber, he would have made himself scarce, instead of following his daily routine, and walking into the arms of the police.

Proceedings at Lancaster were interrupted for a week of legal argument which turned on whether or not the "confessions" were admissible, and for another week in July when the judge was admitted to hospital suffering from acute gastritis. When he resumed after his illness, he told the court that doctors had advised him to lighten his workload, and the daily sittings would be curtailed by forty-five minutes.

On Saturday 2 August, the *Daily Mirror* devoted its entire front page to what it termed a 'Mirror Exclusive'. photographs of the six facing the

murder charges at Lancaster. They were the 'first pictures', boasted the reporter, Paul Connew. It was extraordinary that the paper, then still the country's biggest-selling daily, should have sought to prejudice the outcome of the trial by publishing, let alone giving such prominence to, these photographs. Indeed, the appearance of the pictures was only marginally less bewildering than the judge's oversight in not ordering the *Mirror* editor to be brought before him to explain such a blatant contempt of court.

Even when the end of the trial seemed in sight, with the judge's summing-up under way, there was a further delay. The trial was adjourned at lunchtime one day. The judge was again indisposed, this time with a sore throat.

In his summing-up, Mr Justice Bridge stressed that there was a fundamental conflict over the forensic evidence, but that Dr Black had produced no proof of his theory. (Which was true; the overall presentation of the defence case left much to be desired.) Bridge told the jury, 'I have made my views pretty plain over this conflict over forensic evidence, but as an issue of fact, it will be your decision and not mine that will count.' Indeed, throughout the trial, he never refrained from making his own impressions abundantly clear to everyone.

He also said that the two accounts – from the police and the defendants – of how the "confessions" had been obtained were utterly irreconcilable. 'Gross perjury' was being committed by one party or the other.

'If the defendants' stories were to be believed,' he continued, 'many police officers had behaved in a manner that recalled the Star Chamber, the rack and the thumbscrews of four or five hundred years ago. At the very least, their [the defendants'] account was that they were subjected to gross violence and brutality.'

Mr Justice Bridge's strongest strictures were reserved for the hapless Dr Harwood. His attack was so trenchant that it was the main headline story in *The Times* the next day. He maintained that it was clear that the six men had been the victims of 'a series of quite outrageous assaults' soon after arriving in Winson Green. He suggested, therefore, that the doctor must be covering up for his colleagues. 'If Harwood came to this Court deliberately to give you [members of the jury] false evidence to protect his cronies in the prison service,' Bridge said, 'not only is he not fit to be in the prison service but he is also not fit to be a member of the honourable profession upon which – if he did commit perjury – he has brought such terrible shame.'

The jury deliberated for six and a half

hours, and on 15 August 1975 returned verdicts of guilty on all the 126 murder charges. The judge said to the six, 'You have been convicted on the clearest and most overwhelming evidence I have ever heard in a case of murder.' He sentenced them all to life imprisonment. What he did not do was to recommend minimum terms.

Of the three additional defendants, Murray was found guilty on the conspiracy charge, and given a nine-year sentence to run concurrently with the twelve-year one he was already serving. Sheehan was convicted on charges of conspiracy and possessing explosives, and given concurrent terms of imprisonment of nine and five years respectively. Kelly was found not guilty on the conspiracy charge, but guilty of possessing explosives. The judge said that the time he had already been held on remand was equivalent to a twelve-month sentence, and that this could be regarded as adequate punishment. Accordingly, he was set free. No action was taken against him for desertion in 1964.

Two interesting points emerge. The first is that the two men found guilty of possessing explosives in this case received sentences of five years and twelve months. The defendants in the Maguire case, convicted of the same charges, received twelve- and fourteen-year sentences. Secondly, why

did Murray have to face these additional charges at all? There was no penal reason for bringing him forward: the sentence he was already serving was longer than the concurrent one imposed for equivalent offences by Bridge. However, the presence of a genuine IRA man in the dock must have cruelly handicapped the abilities of the others to plead their case successfully.

Finally, the judge said, 'I am entirely satisfied, and the jury by their verdicts have shown they are satisfied, that all the investigations were carried out with scrupulous propriety.' The Birmingham pub-bombs trial concluded, and the six men were taken away to serve their long, and possibly unending, sentences. Meanwhile, senior officers of the West Midlands police force advised the press that they were still looking for at least three more men. The ones they had in mind, presumably, would have been the actual bombers.

Mr Justice Bridge had said that he hoped those responsible for administering the 'quite outrageous assaults' on the prisoners would themselves be brought to trial. An editorial in *The Times* echoed this: 'one of the most critical tests of any judicial system is that standards are upheld to the full for those least deserving of sympathy ... The final judgment on this

whole affair ought to be that justice was done to and for these men.'

Inquiries had already been set in motion. On 14 December 1974 the *Irish Press* published a report in which an Irishman lately released from Winson Green prison said he had witnessed the full severity of the beatings received by the six men. Robin Corbett, the Labour MP for Hemel Hempstead, was sent a copy by an Irish constituent. The *Guardian* published the story, and Corbett took up the issue in the Commons. Roy Jenkins responded by setting up an internal investigation headed by David Owen, then the assistant chief constable of Lincolnshire. He was instructed to look into both the press allegations of maltreatment in prison, and the prisoners' allegations of maltreatment in police custody.

The Owen inquiry concluded that there had been no breach of police discipline. A report on the conduct of the warders was forwarded to the Director of Public Prosecutions on 13 May 1975, but was then left to gather dust. The publication in the *Guardian* on 29 November of a letter from Jacqueline Kaye of the Prisoners' Aid Committee seems to have aroused officials at the DPP belatedly to acknowledge their public duties. By the end of the year it was announced that fourteen prison officers were to be charged with assault. They were all

suspended on full pay from 30 December.

The appeals of the six men were heard on 30 March 1976 before the Lord Chief Justice, Lord Widgery, sitting with Lord Justice Lawton and Mr Justice Thompson. They were dismissed.

Only two points of interest emerged from the judgment. Mr Justice Bridge was reprimanded, both over one aspect of his summing-up – 'it is difficult to say exactly what he was instructing the jury upon' – and over his ruthless attack on the character of Dr Harwood. 'He invited the jury to consider whether Dr Harwood had committed perjury, which was an observation not called for in the circumstances, and went on to imply that he was not fit to be a doctor of medicine, to which the same comment can be applied.'

The forensic evidence which had been heard at the trial was virtually set aside. Widgery noted that the scientific tests for explosives had given positive reactions for Hill and Power. 'This is not a point, as we see it, of great importance in the case because there was no trace of explosives found on the other hands and even in the case of Hill and Power a subsequent and, one understands, more precise and accurate test failed to confirm the original one.'

In the narrow terms of the appeal,

this availed the appellants nothing. Their counsel were unable to advance fresh theories about the pack of cards on the train on the basis that this whole issue was effectively a red herring anyway. 'The traces of explosive played such a small part,' reiterated Widgery.

In the context of the case as a whole, however, Widgery's remarks were extraordinary. At the trial, Dr Frank Skuse had testified that he was '99 per cent certain' that Hill and Power had been handling explosives. For the jury, this must have been persuasive evidence, particularly since Dr Black, the defence witness called to repudiate Dr Skuse's conclusions, was denigrated in the judge's summing-up.

Further, Widgery's comments would have been sufficient, *mutatis mutandis*, to destroy the Crown case in the Maguire trial, which had concluded at the Old Bailey earlier in the month. Those seven defendants were convicted on 4 March, as we have seen, on the basis of tests which, by 30 March, suddenly didn't seem to make much difference one way or the other.

As regards the Birmingham bombs case, the crux of the matter was now indubitably the "confessions". The appeal judges didn't concern themselves with these, though Widgery did make a passing reference to the fact that Walker had a black eye, 'the origin of which I have forgotten, but I do

not think it matters very much anyway'. The whole exercise was par for the Appeal Court course: the unimportant was considered at some length, before being dismissed as irrelevant; and the important was brusquely swept aside and not considered at all.

It could perhaps be argued that the judges were unable to give proper consideration to the "confessions" lest their deliberations impinged upon the forthcoming trial of the prison warders. This, of course, raises the question of why the appeal, which came to court relatively speedily, was held prior to the warders' trial.

The manoeuvres which preceded the warders' trial were not without significance. The DPP decided not to call the Birmingham men as witnesses. As far as one can tell, the decision was a final one, for the DPP wrote to Anthony Curtis, who was acting as solicitor for three of the men, explaining that it had been reached after 'long consideration'.

One can only speculate whether the intention was to deprive the six of an additional opportunity to reiterate publicly both their own innocence and the flagrant abuse they had received at the hands of the police. Certainly, their absence would nevertheless have made a farce of the proceedings. Once the decision had been leaked to the *Guardian*, which disclosed it in April

1976, the DPP had to backtrack. On 5 June the newspaper announced that the men would, after all, be called as witnesses.

The trial was held in Birmingham, illustrating a convenient inconsistency in judicial policy. The main trial had been switched from Birmingham to Lancaster, to avoid a possibly biased jury.

The trial of the fourteen Winson Green prison officers that opened before Mr Justice Swanwick on 10 June was technically the second one. The previous day's proceedings were aborted, because of what the *Guardian* described as 'remarkable confusion' over the empanelment of the jury. A fresh twelve were sworn in.

Altogether there were ninety separate charges of assault. The Crown's case was that 'a catalogue of beatings, screams, blows and blood' had occurred after the admission of the six to prison. None of the prison warders charged went into the witness-box, though a number made unsworn statements. 'I saw officers that I knew to be quiet and docile lose control of themselves,' said one. 'Their actions were the result of the emotions aroused by the murders and mutilations of the previous Thursday night. I do not condone their actions, but I could understand them.'

On 15 July all the defendants were found not guilty. Since there was by

now absolutely no dispute that Hill, Hunter, McIlkenny, Walker, Power and Callaghan had been brutally attacked inside prison, one explanation of these seemingly perverse verdicts could be that the jury appreciated that those on trial were not solely responsible for the harm done to the six men.

During the trial, the defence called Dr David Paul, a former surgeon with the metropolitan police and at that time coroner for the City of London. He studied photographs of the men taken before and after their arrival in prison, and deduced from them that although the men had sustained injuries around 24-27 November, they had also suffered injuries previously – i.e. while in police custody. Also, when the prison governor first carried out an internal inquiry into maltreatment of the prisoners, his officers made statements confirming that the men had been bruised and injured when brought to prison. Three of these officers made their statements available to solicitors of the six men.

On 14 November 1977, armed with such apparently persuasive testimony, the six men took out writs for assault against the Lancashire and/or West Midlands police forces, and also against the Home Office. They were granted legal aid to bring the action. A year later, on 23 November 1978, Mr Justice Cantley firmly dismissed an application by the West Midlands

police authority to strike out the statement of claim.

The police authority appealed against this decision. So the matter was determined in the Court of Appeal on 17 January 1980 by the Master of the Rolls, Lord Denning, sitting with Lord Justice Goff and Sir George Baker.

Counsel for the police argued that the issue of threats and violence had been decided in their favour at the trial and should not now be reopened. In legal terminology, their case was that the men were "estopped" from raising again an issue already determined by Mr Justice Bridge; and, further, that the men's action was 'an abuse of the process of the court'.

Issue estoppel applies only in civil, and not criminal, cases. It is the technical term for what is actually a kind of legal full stop. In a branch of law which thrives on the interminable, it is almost unique in carrying the weight of finality.

It was basically on the issue of estoppel that Denning did allow the police appeal, thereby thwarting the attempts of the men to find legal redress for their grievances. He affirmed that the jury's conviction had acted as confirmation of the judge's ruling on the admissibility of the "confessions", since the jurors must have agreed with him in believing the police and disbelieving the men; and that the new evidence

which the men had hoped to bring forward – Dr Paul's, for example – could not be considered because it could have been available for the trial had 'reasonable diligence' been used.

Denning's judgment included the following passage:

Just consider the course of events if their [the men's] action were to proceed to trial... If [they] failed it would mean that much time and money and worry would have been expended by many people to no good purpose.

If they won, it would mean that the police were guilty of perjury; that they were guilty of violence and threats; that the confessions were involuntary and improperly admitted in evidence; and that the convictions were erroneous. That would mean that the Home Secretary would have either to recommend that they be pardoned or to remit the case to the Court of Appeal.

That was such an appalling vista that every sensible person would say, 'It cannot be right that these actions should go any further.' They should be struck out either on the ground that the men are estopped from challenging the decision of Mr Justice Bridge, or alternatively that it is an abuse of the process of the court. Whichever it is, the actions

should be stopped.

The impression given by those final sentences is that Denning is not certain exactly *why* he is striking out the claim. It might be on some grounds; or it might be on others. Whatever the ostensible reason, however, the actual reason seems to be that the consequences for the English legal system would be so tremendous that the courts must shrink from them *irrespective of whether or not the men's cause is just*. 'An appalling vista' it may be; but if it is a landscape that must be surveyed, then the law must survey it. Not to do so brings into focus an even more appalling vista.

Ultimately, the judgment is intellectually dishonest. For all its erudite consideration of past issues of estoppel, it is seemingly based on gut emotion, not fine legal analysis.

Lord Justice Goff parted company with Denning, saying he 'could not agree that the judgment of Mr Justice Bridge alone created an issue of estoppel sufficient to bar the plaintiffs' claims', though Goff did uphold the police case on other grounds. His dissenting legal interpretation was read out on his behalf by Sir George Baker, for Lord Justice Goff had been suddenly taken ill. It fell to Denning, at the end of the appeal, to announce his death.

Denning concluded his judgment by saying that 'the cases showed what a civilised country we were': through the facility of legal aid, we had allowed the six Irishmen a generous crack of the judicial whip.

I beg leave to differ, Your Lordship. The cases showed what a wicked, wicked country we can be.