R v Ward

[1993] 1 WLR 619, 96 Cr App Rep 1, [1993] 2 All ER 577, COURT OF APPEAL (CRIMINAL DIVISION)

Hearing–dates: 29 April, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 26, 27, 28 May, 4 June 1992

Counsel: Michael Mansfield, QC and Nicholas Blake for the appellant; Timothy Langdale, QC and William Boyce for the Crown.

Solicitors: Birnberg & Co, for the appellant; Crown Prosecution Services, Headquarters.

Judgment–read: Cur adv vult

Disposition: Appeal allowed. Convictions quashed.

Panel: Glidewell, Nolan, Steyn LJJ

GLIDEWELL J, (Reading the judgment of the Court): On September 10, 1973, at about 1.15 pm a bomb exploded at Euston Railway Station in London. The bomb was relatively small, containing between two and five lbs of a nitroglycerine–based explosive. Fortunately, nobody was killed but about a dozen people were injured and damage to the extent of L5,400 was caused.

At 11.00 pm on Sunday, February 3, 1974, a motorcoach left Chorlton Street bus station, Manchester carrying soldiers and their families back to Catterick Camp, North Yorkshire after a weekend’s leave. The coach stopped to pick up more passengers in Oldham and Huddersfield. Shortly after midnight, on Monday February 4, 1974, whilst the coach was travelling along the M62 motorway, a bomb containing between 20 and 25 lbs of explosive, which had been placed in the rear luggage compartment of the coach, exploded. Twelve of the passengers, including two children, were killed, many more were injured and the coach, of course, was wrecked.

On the morning of Tuesday, February 12, 1974, another bomb, also containing about 20 lbs of explosive, was placed close to one of the main buildings at the National Defence College at Latimer in Buckinghamshire. At 9.10 am that morning the bomb exploded injuring many people but, fortunately, killing nobody. Damage estimated at over L6,000 was caused.

On October 3, 1974, this appellant, Judith Theresa Ward, was arraigned at Wakefield Crown Court before Waller J and a jury on an indictment containing 15 counts. These charged her as follows:

Count 1: Causing an explosion likely to endanger life or property on September 10, 1973, at Euston Station.

Count 2: A similar count relating to the explosion on the motorcoach on the M62 on February 4, 1974.

Counts 3–14: Twelve counts of murder relating to each of the persons killed in the explosion on the motorcoach.

Count 15: Causing an explosion as before on February 12, 1974, at the National Defence College at Latimer.

The appellant pleaded "not guilty" to all counts. On November 4, 1974, she was convicted on all counts, by a majority of 10 to two on count 1, unanimously on all the others. She was sentenced by Waller J to five years' imprisonment on count 1, 20 years' imprisonment concurrently on count 2, to life imprisonment for the murder counts 3–14, and to 10 years on count 15 to be served consecutively to the 20 years on count 2, making a determinate sentence of 30 years.

After her conviction she did not apply for leave to appeal against either conviction or sentence. Unlike other cases arising out of bomb explosions which have been before this Court in recent years, Miss Ward's case has not previously been considered by this Court.

However, on September 17, 1991, the Home Secretary, acting under section 17(1)(a) of the Criminal Appeal Act 1968, referred "the whole case of Miss Judith Theresa Ward" to the court. She therefore now appeals against her conviction on all counts.

To a considerable extent, though not exclusively, the prosecution case at the trial was based upon confessions and admissions which Miss Ward had made in interviews with police officers in the period before her arrest and the date of trial. The second major plank in the prosecution's case consisted of expert scientific evidence to the effect that after both the Euston and Latimer explosions, traces of nitroglycerine were found on Miss Ward's person and that after the M62 motorcoach explosion, traces of nitroglycerin were found in a caravan in which she had been staying and on various articles belonging to her. In this appeal it is argued that Miss Ward's admissions and confessions were wholly unreliable and thus could not be relied upon as being true. It is also argued that the scientific evidence can now be shown not to have been sufficiently reliable to be acceptable. It is thus necessary for us to start by considering the evidence given at the trial in some detail.

Evidence at the trial

Judith Ward’s life and activities before September 10, 1973

Miss Ward was born in Stockport on January 10, 1949. She was thus 25 years old at the time of the bombing of the motorcoach on the M62. After her birth, she was named Judith Minna Ward.

Miss Ward left school in 1965 and, after a short time, trained in Wiltshire as a riding instructor. In 1966 she then obtained employment at a riding school at Ravensdale, near Dundalk in the Irish Republic. Dundalk lies a few miles south of the border with Northern Ireland, approximately midway between Dublin and Belfast and not far from Newry.

Miss Ward remained in her employment at the Ravensdale riding school until October 1970. She then returned to Stockport. Her mother and father were divorced when she was a child but both still lived in Stockport, her mother having remarried. One of Miss Ward’s two older brothers also then lived in Stockport with his wife and child. After spending a few weeks in Stockport, on February 5, 1971, Miss Ward enlisted in the WRAC. She trained at Guildford and was then sent to Catterick Camp for four months. On August 5, 1971, she was posted to Aldershot. After two months, on October 4, 1971, she went absent without leave. A day later she flew from Manchester to Dublin and returned to the riding school at Dundalk. While she was there she had an association with, and became engaged to, a young man called Sean McKeowan. She left the riding school in about April 1971 and visited various places in Ireland, both north and south of the border. On May 22, 1972, she returned to England and on the following day went to the police station in Stockport and gave herself up.

She was then interviewed on May 24, 1972, at army barracks in Aldershot by Detective Inspector Ison and other officers of the Special Branch of the Metropolitan Police. On May 25, 1972, after that interview, Miss Ward made a statement under caution. That statement started by referring to two events which had then recently occurred, namely, Bloody Sunday, January 30, 1972, when a number of persons present at a demonstration in Londonderry were killed by shots fired by members of an army unit, and an explosion which had occurred at an army base at Aldershot on February 22, 1972. She said that between these two events she was in a bar in Dundalk when she was asked to go into a back room where she met two men, one of whom was called Seamus Quigley. She said that one of the men tried to persuade her to give information about "the Paras," urging her to be "loyal to Ireland." She said that she refused to do as he asked.

Private Blake, another member of the WRAC, was a prosecution witness. She said that she talked to Judith Ward during the short

time that she was at Aldershot after she had given herself up. According to Private Blake, Judith Ward said that she was a lieutenant in the IRA, that she had been helping to "blow places up and things like that," and that she had the letters "IRA" scratched on her arm. Miss Blake said, "I did not take much notice."

Judith Ward was discharged from the WRAC on June 2, 1972. She returned to Stockport where she worked for a short time, her second employment being at the Bridge Restaurant.

In August 1972 she returned to the riding school at Dundalk where she worked for a further year. On August 23, 1972, she visited and obtained entry to Thiepval Barracks, near Lisburn, Northern Ireland, the headquarters of the army in the province. Information about her visit to Thiepval Barracks came to the attention of the authorities and on September 3, 1972, Miss Ward was interviewed by Corporal Coleman (a sergeant by the time of the trial) who was in the security forces in Northern Ireland, and Detective Constable McNulty of the Royal Ulster Constabulary, together with a woman police constable. Both Coleman and McNulty gave evidence at the trial.

At this stage, the appellant was still calling herself Judith Minna Ward. According to the witnesses, she gave information about her family, her service in the army and the fact that she had been absent without leave. She said that during the period that she was absent without leave and back in Ireland she had visited republic areas of Londonderry and Belfast and named various people with whom she had been associated, including Mickey Pierce and Mickey Moore of Newry. She said that Mickey Moore was an ex−internee whom she had visited, using the name Teresa O’Connell, while he was interned in Long Kesh; she had smuggled letters into and out of Long Kesh for him.

She said that shortly after she had joined the army a man visited her at her home in Stockport saying that Mickey Moore had sent him. He asked her to obtain information which Moore could use, but at that stage she declined. However, she then referred to the occasion at which she had been asked to give information in the back room of the bar in Dundalk by two men. At this interview she said that she had been asked to draw a plan of the army camp at Aldershot and that she had drawn a plan as best she could which she gave to the men. She said that she knew one of the men was a member of the IRA. She concluded:

"When I heard of the explosion at the Officers’ Mess at Aldershot I didn’t think that the map I had supplied had anything to do with the explosion. A couple of days later it occurred to me that the map which I had supplied to Quigley and McNally had been used in the

bomb attack in which a number of people died. I didn’t repeat to any police or Army that I had supplied a map of Aldershot Army Camp."

Another prosecution witness was Lance Corporal Lamb of the WRAC (nee Stevenson) who gave evidence of a further statement made by Judith Ward while she was being interviewed by the Army and police on September 6, 1972. In this Miss Ward referred back to her visit to Thiepval Barracks. She gave considerable detail about the circumstances in which she entered the barracks. She said:

"I entered HQ Northern Ireland with the intentions of looking the place over regarding security measures and so on, having been asked 2 days previously by Michael Kelly to do so."

She then gave details of Kelly’s request to her and how she had met him. She said:

"The extent of my observations of Thiepval Barracks was regards security on all gates, ie, searching pedestrians and civilian’s cars, also anything more than can be of interest."

She signed this statement. After this series of interviews she was not arrested, no charges were preferred against her and no further action was taken. She continued to work at the riding school until some time in the summer of 1973.

In August 1973 she returned to England. On August 26, 1973, she was detained at Euston where she was sleeping rough. She was interviewed by a police sergeant and a sergeant of the Special Branch of the Metropolitan Police. She gave an address in Dublin, said that she carried out assignments for the IRA but was not a member and that she was in London to find work. In her rucksack was material relating to the activities of the IRA. No action was taken at that time.

On August 28, 1973, Judith Ward obtained employment as a chambermaid at the London Park Hotel, near the Elephant and Castle. She remained there until November 10, 1973. Another young woman, Elaine Gateley, also started a job at the London Park Hotel on the same day and the two women shared a room for a time and spent their off−duty time together.

Judith Ward gave evidence at her trial. Her evidence of her life and the events preceding the bomb at Euston differed from the evidence given on behalf of the prosecution in material respects. In summary, she said:

(a) Before she joined the WRAC she had no contact with either branch

of the IRA or with Sinn Fein.

(b) While she was at Catterick she knew of the weekly Catterick/Manchester bus service, but did not use it.

(c) When she returned to Ireland, being absent without leave from the army, she had no contact with any Irish political organisation and her fiance Sean McKeowan was not interested in Irish politics.

(d) When she surrendered, the letters IRA were not scratched on her arm. If she had said what Margaret Blake reported her as saying, it was not true.

(e) She did go to Thiepval Barracks on August 23, 1972, but purely to visit a former friend in the WRAC, not to spy out the land.

(f) She had been interviewed, as the prosecution alleged, by Inspector Ison and by Detective Constable McNulty and Corporal Coleman. She could not recollect saying what they alleged she said but if she did, it was not true.

(g) She did know both Mickey Pierce and Mickey Moore. It was Mickey Pierce who was in Long Kesh. She did visit him using the name Teresa O'Connell and smuggled letters to him.

(h) She had passed herself of as Teresa O'Connell saying that she was 14 years eight months old.

(i) She had not admitted to McNulty that she had passed a map of Aldershot to the two men, nor had she in fact done so.

(j) On August 15, 1973, she had married in a religious ceremony Michael McVerry. He was working for the Provisional IRA. On November 15, 1973, he was shot dead by the British Army.

(k) A Joe Coyle asked her to drive a car for him to Belfast which she did twice. After one of the trips he said there had been guns in the back, but she had not believed him.

(l) On August 25, 1973, she travelled to England with Joe Coyle after having a row with her husband. After being questioned at Euston Station, they both went to 72 Dyne Road, Kilburn where Joe Mooney lived. After staying there for a few days, she obtained the job at the London Park Hotel and joined a branch ("Cumman") of the Sinn Fein in Kilburn.

(m) About this time she also went to a shop run by Brendan Magill in Goldhawk Road, Hammersmith. Whilst there she was asked by Coyle to

suss out Euston Station. Having asked what this meant, she went to Euston and checked up on the times that the police officers there changed their beats and noted where the television surveillance cameras were sited.

September 10, 1973 –– The Euston Bomb

At 1.00 pm on September 10, 1973, a bomb exploded at King’s Cross Station, London. About five minutes later a man with an Irish voice telephoned the Press Association and warned that a bomb was about to explode at a snack bar at Euston Station. At about 1.15 pm a bomb did, indeed, explode outside the rail bar at Euston. Much damage was caused and about 12 persons were injured.

Detective Sergeant Baker gave evidence that between 5.00 pm and 5.30 pm that afternoon, while he was standing by the barrier erected outside the rail–bar at Euston, he saw Judith Ward and Elaine Gateley nearby. They were both shouting and swearing abuse, the appellant being the more talkative of the two. Amongst other things, Baker said Miss Ward shouted, "If the IRA had done it, it would have been a bigger and better fucking bang, they would have done it properly."

Later the same evening, at about 8.00 pm Judith Ward, Elaine Gateley and a young man called James Patrick Diamond were drinking together in another bar at Euston. The police were already interested in Diamond and after a time all three of them were detained and taken to the police station. Judith Ward was interviewed and asked where she had been at the time when the Euston bomb exploded. She gave an alibi, saying that she had been in the London Park Hotel at that time and afterwards had gone to the cinema with Elaine Gateley. A police officer then took swabs from her hands and fingernails. Miss Ward’s alibi was checked and found to be correct, and she and Elaine Gateley were released.

In evidence at the trial, Miss Ward did not dispute much of this prosecution evidence, though she said it was Elaine Gateley who had been doing most of the shouting and swearing and that they had not arrived at Euston in the first place until after 6.30 pm.

Judith Ward’s movements between September 11, 1973, and February 3, 1974.

Miss Ward continued to work at the London Park Hotel until November 10, 1973, when she was dismissed. On that day, she travelled to Ireland via Holyhead. As she was going through the embarkation hall she was stopped, questioned and searched by Police Constable Owen. In her luggage he found a quantity of literature relating to Sinn

Fein and the Irish Republican cause and a small address book containing a number of addresses and telephone numbers including that of Mr Magill. Constable Owen said that he mentioned during his questioning of her the bombings in London to which Miss Ward said, "Yes, Sean Mac is doing well." In her evidence at the trial, Miss Ward agreed that she had said that Sean Mac was doing well and said that this was a reference to Sean McStiofan, who was reported to be the head of the IRA at that time.

According to Miss Ward's evidence at the trial, she remained in Ireland for about 10 days. She said that whilst she was there, a man told her that her husband, Mickey McVerry, had been shot and that the funeral was to take place on Saturday, November 17, 1973. She therefore travelled to Newry on the previous day. On the evening of Friday, November 16 she was apprehended by the police and taken to a police station where they took from her her address book and two other books. She said that Police Sergeant McFarland saw her on November 18, 1973, and that the police put her on the boat to Liverpool on the night of Monday, November 19, 1973. At the trial, no prosecution evidence was called about this episode at all. We shall have to refer to this later.

Miss Ward returned to Stockport where, for a time, she worked in a restaurant. In January 1974 she wished to hire a car but could not do so because her driving licence was still in the possession of Sergeant McFarland who had kept it when he interviewed her. She therefore wrote to him for the licence which he returned to her.

Miss Ward then obtained employment as a groom with Chipperfields Circus, starting work with them on January 26, 1974. The circus was at that time at Belle Vue, Manchester, but after the last performance on Saturday, February 2, 1974, it moved to its winter quarters at Chipping Norton in the Cotswolds. Miss Ward travelled with the other members of the staff, arriving at Chipping Norton between 2.00 am and 3.00 am on Sunday, February 3, 1974. She remained at the circus that day and went out on the evening of the Sunday with other members of the staff. At the trial the prosecution accepted, and indeed there was ample evidence to the effect, that she was in Chipping Norton, nowhere near Manchester, on the night of Sunday, February 3, 1974. During the time that she worked for Chipperfields Circus, Miss Ward shared a caravan with a New Zealander, Wendy Claxton. Miss Claxton gave evidence that in conversation Miss Ward told her that "We" had made bombs, or a bomb, and that she had a boyfriend who had been killed, shot by soldiers.

The coach bombing on the M62

Mr Handley operated a regular coach service for serviceman from

Catterick who wished to return for a weekend's leave to the Manchester area. He ran two coaches from Catterick to Manchester on Friday, February 1, 1974, which returned on the night of Sunday, February 3. Mr Handley himself drove one of the coaches. This coach was parked during the evening of Sunday, February 3, at Chorlton Street bus station in central Manchester with the boot unlocked so that passengers could put their own luggage inside. The coach left the bus station at 11.00 pm, stopped in Oldham and Huddersfield and shortly after midnight was travelling along the M62 east bound when the explosion occurred. The bomb had been hidden in a piece of luggage placed in the boot. Eleven people died immediately and a 12th a few days later as a result of his injuries. Many other passengers were injured.

Judith Ward's movements to February 14, 1974

As we have said, Judith Ward was in Chipping Norton on the night of February 3/4, 1974, sleeping in the same caravan as Wendy Claxton. However, on the morning of Monday, February 4, she left the circus. About 8.00 am that morning she told Wendy Claxton that she was leaving. In evidence, Wendy Claxton said that Judith Ward gave as a reason for leaving that she was too slow at doing the job. She told Wendy she was going into Chipping Norton to buy a bag in which to pack her things.

According to her evidence, Judith Ward that morning bought a brown duffle bag and a raffia bag which were exhibits at the trial. She packed her belongings in them, went to Oxford by bus and that evening to London. She went to 72 Dyne Road, Kilburn and stayed with Joe Mooney there until the following Friday. While there she said that she found pieces of paper with references to the IRA, written in Irish, and to explosives and to persons who could supply them. After finding this paper she said that she decided to leave the flat which she did on the afternoon of Friday, February 8, 1974, going to Euston Station.

There, according to her evidence, she met a man whom she had known in Manchester called Ernie Mayall together with a Welsh girl. The next few days the three of them spent mostly at Euston Station, sleeping at night either in a disused flat nearby or in railway freight vans parked in a siding at Primrose Hill. During this time, Judith Ward left the two bags which she had bought in Chipping Norton, which contained her belongings, in a railway van. She returned to collect them on the night of Monday, February 11, 1974, to find that the van had been removed. That afternoon she also obtained a platform ticket for Euston in the hope that she would be able to stay the night there. On Tuesday, February 12, 1974, Judith Ward and Ernie Mayall went to Cardiff by bus and stayed the night in a cheap hotel. The following day, Tuesday, February 13, 1974, Judith

Ward said that she hitched a lift from Cardiff to Liverpool arriving there about 11.30 pm.

At the trial Ernie Mayall, who had a number of previous convictions for burglary and similar offences, gave evidence on behalf of Miss Ward in which he effectively corroborated her story of their movement during these days. He also said that this time she said nothing about the IRA or anything related to it.

At the trial, evidence was given that the railway van in which Judith Ward had left her two bags formed part of a train which left Euston at 11.15 pm on Monday, February 11, 1974. The vehicle travelled via Crewe and Chester to Bangor. On the evening of February 12, 1974, it was conveyed from Manchester to Crewe and then attached to a train to York where it arrived about 5.20 am on February 13, 1974. At that point a goods guard found Judith Ward's two bags in the van. When she was later shown these bags, the appellant at first denied, but later admitted, that they were hers. We shall refer later to scientific evidence relating to these bags.

The bomb at Latimer

Meanwhile, on the afternoon of Monday, February 11, 1974, between 3.00 pm and 3.30 pm a red Audi motor car was seen parked close to the entrance of the National Defence College at Latimer, Buckinghamshire, and shortly afterwards a similar car, driven by a person with shoulder length hair, was seen inside the grounds of the college. Shortly after 7.00 am one morning in February 1974 a young man and a woman had breakfast at a cafe some 15 miles from Latimer, and drove away afterwards in a red Audi car. About 9.10 am on Tuesday, February 12, 1974, a bomb containing approximately 20 lbs of explosive, which had been planted by one of the main buildings in the college, exploded injuring many people but killing no–one.

Judith Ward's detention

At 1.15 am on February 14, 1974, Police Constable Barnes was on duty in the centre of Liverpool. He saw a person, whose sex he was at first unable to determine, standing in a doorway. When he spoke to the person he realised that she was a woman, the appellant. She said that she had just arrived from London, that her luggage had been stolen in London and that she was going to Newry in Northern Ireland by the night boat for Belfast. The constable decided to detain her and take her to a police station. The appellant said, "I have been questioned by the Army intelligence and the Ulster Constabulary and they got nothing out out of me." In her possession were a Northern Ireland driving licence, a letter from the RUC, a Euston platform ticket and a small notebook.

Miss Ward was later questioned by Detective Sergeant Hayes and Detective Inspector Ralphson. She gave her name as Judith Theresa Ward. She said that most recently she had stayed with Jane Rooney [sic] at 72 Dyne Road, Kilburn until February 13. She said that the address on the driving licence, which the police had established was a false address, was that of her driving instructor and that she had the platform ticket because she had accompanied Joe Coyle, a friend of Jane Rooney, to the station to see him off.

Miss Ward was asked how she was going to pay for her fare back to Belfast. She said that she was going to telephone a friend in Ireland to send her the money. When the police asked for the friend’s telephone number, she gave it but said, "don’t phone now for God’s sake." When asked why she did not wish them to telephone the lady, she replied, "I’ve been a member of the IRA for three years and you know what will happen to me if they find out." She then said that she was a member of the Roger Casement Cumman of the Sinn Fein in Kilburn.

Miss Ward’s notebook contained a sketch, which she said was a drawing of Manchester airport, which she had been asked to make by a man called O’Reilly whose address in Longsight in Manchester she gave. She said that O’Reilly had threatened her brother’s child if she did not make the drawing. Detective Inspector Ralphson then said, "In leaving Manchester, if what you’ve said about O’Reilly’s threats are true you did in fact place your relatives in danger." To that the appellant replied, "I had to get away. After the bus I want out." Asked to expand, she said, "Killing children, I just want out." She was then told she would be detained.

At her trial Miss Ward denied that she had said that she had been a member of the IRA for three years. She said that she told the officers wholly untrue facts about going to London. She did not know why she said she was with Jane Mooney until February 13.

Interviews

At 6.40 am on February 14, 1974, Miss Ward was taken into custody by Sergeant Scott. At her trial, evidence was given by the prosecution of the following interviews with her and of statements made by her.

February 14, 1974, (10.00 am)

Miss Ward was seen at a police station by Detective Sergeant Giltrap. He showed her the items taken from her possession, to which we have referred, and she agreed they were hers. She was then taken to the police headquarters in Liverpool. Detective Sergeant Giltrap then interviewed Miss Ward, asking her questions relating to her

movements during the preceding six months or so. It is not clear from the material before us whether during this time Miss Ward was allowed any time to sleep. It seems that at no stage during this interview was she cautioned.

At about 6.00 pm she was seen by Dr Skuse who, with her consent, took swabs from her hands and fingernails. In conversation, according to him, she said she had been examined in this way before and that nothing would be found because she had cleaned herself.

At 8.20 pm that evening, Detective Sergeant Giltrap recorded a long written statement by Miss Ward, exhibit 38, which he said included the information elicited from her during his earlier interview with her. In this statement, Miss Ward gave an account of her family background saying that she had been christened Judith Minna Ward and that her father had been born in Ireland. She spoke of her work at the Ravensdale Riding School and her engagement to Sean McKeowan. She gave an innocuous account of her time in the WRAC, of going absent without leave and her return to England to give herself up. She said that from June to September 1973, whilst in Dublin, she had sold a republican newspaper each day but she was not a member of any organisation. She spoke of attending meetings and rallies. She then said when she came to London in September 1973 she obtained a job as a chambermaid at the London Park Hotel, she went to Brendan Magill's address in Goldhawk Road and joined a local Sinn Fein Cumman. She said she had also made friends with Jane Mooney of 72 Dyne Road, Kilburn.

She spoke of being taken into custody on the evening of the Euston explosion when she was with Elaine Gateley in a bar talking to a man who said that he had only been out of Long Kesh for a couple of weeks.

She said that after she was sacked from the hotel at the beginning of November, she went to Ireland and, after a time, was detained by the police for two days while in Newry. She was then put on a boat for Liverpool. She then said that when she was in The Ducie Arms in Longsight she was approached by a man called Seamus O'Reilly whom she had met previously in Dublin. He asked her to "suss out" Manchester Airport for him and threatened her brother's child if she did not. She said as a result she drew a small sketch of the interior layout of part of the airport but thought about whether to let O'Reilly have it and realised he could only want it for one thing, probably to blow a plane up or something like that, so decided not to give the note to him. She said that in consequence on Sunday, February 3, 1974, she went to Chorlton Street bus station in Manchester about 9.00 am and travelled by bus to Victoria bus station in London. She then went to Kilburn where she went to stay in Jane Mooney's flat. She left Jane Mooney's flat on Wednesday,

February 13, and went to Victoria bus station where her luggage was stolen. She then hitched a series of lifts to Liverpool, arriving the same evening. It should be noted that this statement, parts of which were clearly untrue, was not made under caution.

At the conclusion of the statement, Detective Sergeant Giltrap asked Miss Ward if she had any objection to a request from Detective Chief Superintendent Oldfield of the West Yorkshire Police to assist them regarding the M62 bomb incident and she said, "No, I don’t mind."

February 15, 1974

At 1.15 am Miss Ward was taken by officers from the West Yorkshire police to Wakefield arriving at 3.45 am. Again, it is not clear whether she had any sleep since she was taken into custody in Liverpool some 28 hours earlier.

At the trial, no evidence was given about any interviews on this day. As we shall see, there were, in fact, a number of interviews with Miss Ward to which no reference was made in evidence.

February 16, 1974

At 11.50 am Detective Inspector Moffatt and Detective Constable Smith of the Metropolitan Police interviewed Miss Ward at the Police Training College in Wakefield. Part of the interview consisted of a conversation about the making of explosive devices of which Detective Inspector Moffatt said, "It appeared that her knowledge of the making of explosive devices was poor and of no importance to us at that stage."

Detective Inspector Moffatt and Detective Constable Smith interviewed Miss Ward again at 2.45 pm. She was cautioned. She gave an account of her detention at Euston with Elaine Gateley and Diamond which was similar to that which she had given in her statement, exhibit 38. When it was pointed out to her that there were differences between this statement and what police officers said about having seen her at Euston that day, she said that what she was now saying was correct.

In a further interview at 4.50 pm with Detective Inspector Moffatt and Detective Constable Smith she said, "I went to Euston to see how much mess the bang had caused, Elaine did not have anything to do with it, she is just a loud mouth as I have said."

Asked if she was a member of the IRA she said, "Yes, I am a volunteer but not part of an ASU [Active Service Unit]. I first got interested when I sold papers in Dublin and then I go to know a lot

of them in the bars in Dublin." She then gave an account of driving cars containing guns for O'Reilly from Dublin to Belfast. She said that she had made the run a couple of times after she came to know that she was carrying guns.

She then spoke of going to see Magill in Shepherd's Bush and being told by him to check up on the police at Euston, when they changed beat, how many and that. She said that on that occasion Magill told her to get a parcel from a locker at the back of the shop which she understood was explosive. She handed this over to O'Reilly. Detective Inspector Moffatt turned to questioning her about the M62 explosion. She said, "I didn't like it when those children were killed on the coach. That shouldn't have happened." Asked whether a warning should have been given she said, "Yes, there should have been a warning. In London they get shorter and shorter and I didn't go along with that." Detective Inspector Moffatt asked, "What part did you take in the M62 explosion?" Miss Ward replied, "I carried the explosives up from London." At this point the interviewing party was joined by Detective Superintendent Edington. Miss Ward gave a more detailed description of going to Magill's shop and collecting the parcel. She said, "I stayed in the shop all day and then caught the train back . . . I gave it to O'Reilly at The Ducie Arms in Longsight. That's when he told me he was going to blow up a bus and asked me about the Army buses to Catterick." Asked whether she gave him the details she said, "Yes. Then I said I wasn't going to do anything else for him but he threatened me and told me to make a plan of Manchester Airport. I think I went there later in the week and drew something but I never gave it to him." Detective Inspector Moffatt asked, "Did he make you do something more in connection with the M62 explosion?" After a pause, Miss Ward said, "Yes. He said I had to put the bomb in the back of the coach because I looked more the part and could get away with it." Question: "Did you place the bomb in the coach?" Answer: [after a long pause], "Yes."

That interview was concluded at 6.00 pm and at 7.45 pm Miss Ward wrote out in her own hand a statement under caution, exhibit 44, which repeated the admissions to which we have just referred, and gave more detail of how she came to place the bomb in the coach. She said,

"I walked to the bus station. I was shaking like a leaf. I can't remember exactly where the bus was, the boot was open, I looked in and saw a few Army suitcases and a few Army issue bags. I put the bag in and pushed it to the back–ground around about the middle of the bus. I turned and legged it back to the corner where O'Reilly was standing."

She also said, "I did not intend there to be any persons killed when I agreed to plant the bomb." This statement was concluded at 9.50

pm.

February 17, 1974

At 5.15 pm on this day, interviewed by Detective Superintendent Edington and Detective Inspector Frost of the West Yorkshire Constabulary, she was shown the raffia and the canvas bag found in the railway van and denied that they were hers.

February 20, 1974

At 3.45 pm Detective Superintendent Weight and Detective Inspector Milner of Thames Valley Police saw Miss Ward at Risley Remand Centre. When they explained where they were from she replied, "Oh yes, I've been expecting to hear from you." They then questioned her about the Latimer explosion and she at first said that she did not even know where Latimer was. Later she said, of the M62 coach explosion, "True I put the bomb in the boot of the coach, but they told me it would go off in 20 minutes when the coach was at the station. It shows how unreliable they are. It didn't go off for two hours." She then said that it may be that she had been at Latimer and at one stage offered to, "have Latimer taken into consideration." Later she said that on one occasion she had driven though the Defence College at Latimer with a man–friend out of interest.

February 25, 1974

At 2.55 pm Miss Ward again saw Detective Superintendent Weight and Detective Inspector Milner at Risley. They understood that she had asked to see them. After caution she said, "I wanted to see you about that statement I made to the other Officers. I want to change it. I didn't put the bomb on the bus." Detective Superintendent Weight said, "Yes, I know that." Ward said, "I know about it and I carried it up there but I never put it on the bus. I want to get this straight."

She then continued, "I know something about the Latimer job, but I'm not going to name names. I have a family to worry about in Stockport." She then gave an account of her movements between the M62 explosion and the Latimer explosion very similar to that which she had given previously. She then repeated what she had said about her part in the Latimer explosion in a written statement under caution, exhibit 51, in which she said:

"After I left Chipperfields to London by bus from Oxford I stayed at an address in the Kilburn area, until Monday night, it must have been 11th February 1974. When I left London in the company of a

young man, it was very late. We were in a car and I was driving. We arrived somewhere in the vicinity of Latimer, we stayed the night in the car up some shady lane. The next morning we drove to a village and we had breakfast in a cafe. Then we left the cafe and drove towards Latimer and we drove into the grounds and then we stopped. The man gout out of the car and got the stuff out of the boot. It was a brown packet about eighteen inches by a foot, I knew it was explosive. I was very nervous. I said, 'I'll wait and keep the engine running, don't be long,' he said, 'OK I'll be back in a while,' and away he went. He was away for a few minutes and then he came back and we drove away at full speed. It was a red car. I don't know the make or registration number. Later I read about the explosion in the evening papers. That evening I saw him off at Euston Station and I hitch−hiked up to LIverpool. We went like this because we were told to go separate ways. I was later stopped in Liverpool. I refused to give any names and addresses of the people involved."

February 26, 1974: 10.30 am

Detective Chief Superintendent Oldfield of West Yorkshire police, together with Detective Superintendent Edington, saw Miss Ward at her request at Dewsbury. After caution, she said that she wished to change her statement. She then wrote out a further statement under caution, exhibit 52, in her own hand. In this she said, "The beginning of these operations started in Dublin in the summer of 1973." She then repeated that she had driven cars from Belfast to Dublin with guns three times; that she came to England with two men; moved to a house in Kilburn and got the job at the London Park Hotel; that she, at the request of one of the men, "sussed out" Euston Station and carried the explosive for the Euston bomb from Cricklewood to a house in Kilburn; and that after that explosion she went to Euston to see what damage had been done. She gave an account of being taken into custody and having her hands tested for explosives.

She then spoke of returning to Ireland for about a week and then returning to Manchester. There, she said, she was told to get in touch with a girl living in Longsight. It was this girl who told her to suss out Manchester Airport which she did, handing over the drawing she had made. She continued:

"She [the same girl] then asked me if I knew where the army buses came to when they were coming off leave and I told her it was usually Chorlton St bus station. She then fixed a date for myself and her to go and suss it out. Meanwhile I had changed my job and was working with Chipperfields Circus as a groom at Belle Vue, this was because it was much nearer my contact and easily accessible to Manchester itself. I called at this girl's house a few times and

arranged a date when I would collect the stuff from another house at an address in Derby. About 3 or 4 days before February 3 I went to the address in Derby and collected this package and delivered it to the house in Longsight. Then I realised that the circus would be moving the day before we had planned to plant the bomb. I told the girl this and she said that she would have to do it with a friend of hers who had been in the Army and still had short hair resembling a solder’s, and could easily pass for one."

As a result, she said, she left with the circus and went to Chipping Norton.

At 2.25 pm Commander Huntley and Detective Chief Superintendent Nevill of the Metropolitan Police interviewed Miss Ward under caution. In this interview she denied that she had planted the bomb at Euston and said she had already told the police what part she played in the Euston explosion. When asked about Brendan Magill she said, "I just thought I would give a few names to mess them about." She then gave a slightly more detailed account of collecting the explosive for the Euston bomb from Cricklewood and taking if to the house in Kilburn. Later in the interview she was asked, "How many times have you collected or carried explosives?" She replied, "Twice, once for Euston and once for Manchester." During the interview she was shown a photofit picture of McMorrow and asked also about a girl called Marlene Coyle. She denied that they were the two people whom she had met in Manchester. This apart, what she said in this statement was essentially a repeat of what she had already said to other officers previously.

March 4, 1974: 2.45 pm

Detective Superintended Weight and Detective Inpsector Milner of Thames Valley Police saw Miss Ward at Risley. They told her that they had come to see her to try to get her co–operation regarding the identity of her accomplices. She said, "I can’t do that, you know that. I told you you can’t grass on this sort of thing." She was then told. "The scientist has found traces of explosive in the caravan. What was that used for?" Miss Ward said, "I don’t know about any explosive in there." She denied that she had explosive in her duffle bag. Later she said that she had not been married to her boyfriend, he was killed before they could marry. He was killed by the soldiers in Ireland, "the Paras killed my man, I don’t care what happens to me." Towards the end of the interview she was asked whether she’d thought of getting a solicitor and she said, "I don’t want a solicitor. I’ll stand by what I’ve done. You can’t expect a country to supply a defence for you when you’ve tried to kill their people." It was only at the end of this interview that she was cautioned.

March 20, 1974

The final interview of which evidence was given at the trial was at 4.55 pm this day, when Detective Chief Superintendent Nevill and Detective Inspector Boreham of the Metropolitan Police interviewed Miss Ward at Risley. After caution, she started to give them names of people who had been involved in various incidents, together with descriptions. Amongst other people she named, she said that the two people called Joe, to whom she had previously referred, were Joe Mooney and Joe Coyle. Joe Coyle was the man she had met in Dublin and Joe Mooney was the man who lived in Kilburn who had set up the Euston job for her. Joe Coyle was the man who was with her in the red car to do the Latimer job. They had picked up the car from Joe Mooeny's. Whe asked who she had met in Manchester she said that the people had gone. One of them was Kiaren McMorrow and the girl was Marlene Coyle. She said she supposed Kiaran was the one who put the bomb on the coach and she did not know whether Marlene was with him. That was the explosive that she had fetched from Derby. When asked why she had told them all this now she said, "Because I had good news, my brother is moving house and the Council told him they would not tell anybody."

During her evidence at the trial, she said of her interview with Moffatt and Smith on February 16, 1974, that she gave them a different account of her movements for the day of the Euston bombing from that which she had given in court. She said, "I gave this account because I was tired and mixed up." She said she had given a wrong name for the man who had asked her to drive the guns to Belfast.

As to her account of going to Magill's shop, she said that this was wholly fictitious. She said that when she said she took the parcel from Magill's shop she understood it was explosives, she gave this reason because she was fed up with Detective Superintendent Moffatt. She agreed however that she had said all these things.

She denied however that she had said she carried explosives for the Manchester bomb from London to Manchester. In her evidence she was taken through the written statement she had made on February 16, 1974, exhibit 44, and she said that parts had never happened and the statement was fiction. She had never, for instance, been a member of an ASU. She said that she had finished with Joe Coyle, Joe Mooney and the two Hardys because of the children being killed. She said however that she believed in the cause that Sinn Fein was fighting for but she believed it could be done politically.

In summary, in her evidence at the trial, though Miss Ward denied saying some of the things she was alleged to have said to the

police, of the majority she either accepted that she said them or said that she could not remember saying them. Whether she accepted that she had said them, or accepted that she might have done, where they implicated her in any of these offences, at her trial she said that what she had previously said was untrue and she was not involved. The most she admitted was being a supporter of Sinn Fein, of knowing many people involved in IRA activity, of knowing something of their movements and thus of being able to put two and two together and make a guess as to what had actually happened and who had been involved, which she later translated into a fictitious account. She continued however to say that she had been married to Michael McVerry and that he was shot while on an IRA operation. She said, "I suppose he was something of a martyr."

At the conclusion of her evidence−in−chief she said,

"There is no substance in the admissions except in relation to going to Derby but even in relation to going to Derby there’s no truth in the admission that I knew what was in the bag or that I knew what was going to go into the bag before we set off. The true account is that which I’ve given here in the witness box."

The scientific evidence at the trial

Scientific evidence was a major feature of the trial of Miss Ward. A total of six scientific witnesses gave evidence: four for the prosecution and two for the defence. Four of the prosecution witnesses were employed by the Royal Research and Development Establishment ("RARDE") at Woolwich. The full complement of officers who worked on explosives in the forensic section of RARDE were as follows:

(1) Mr Douglas Higgs, the Principal Scientific Officer and the head of the forensic section;

(2) Mr Donald Lidstone, a Senior Scientific Officer;

(3) Mr Walter Elliott, a Higher Scientific Officer;

(4) Mr George Berryman, a Higher Scientific Officer;

(5) Miss Pamela Brooker (now Mrs Kemp), an Assistant Scientific Officer.

In addition, a Mrs Keeble also assisted on experiments with explosives from time to time. The prosecution called the four senior RARDE officers: Mr Higgs, Mr Lidstone, Mr Elliott and Mr Berryman. The other prosecution witness was a Dr Frank Scuse, a chemist, from

the Home Office Forensic Science Laboratory at Chorley.

The defence called as experts two former RARDE employees, namely Mr Howard Yallop, who was Mr Higgs' immediate predecessor as head of the forensic section of RARDE and Mr Vernon Clancey who was Mr Yallop's immediate predecessor as head of the forensic section at RARDE. Mr Yallop retired in November 1973 and Mr Clancey retired in 1969.

Mr Lidstone was the first prosecution witness. He examined debris from the Euston explosion. He was not a chemist and his evidence was limited to explaining that fragments of an electric detonator and an alarm clock were among the items he received.

Mr Elliott was a more important witness. He testified that the explosive substance in the bomb which exploded at Euston was nitroglycerine ("NG"). The tests of the swabs taken from Diamond, Gateley and Miss Ward at Euston were done under his supervision. His evidence was that the swabs taken from Miss Ward showed faint traces of NG. Mr Elliott also testified that the samples taken by him and Mr Higgs inside the caravan on February 21 and 25, 1974, gave positive test results for the presence of NG. The defence did not challenge these test results. Between Mr Elliott, on the prosecution side, and Mr Clancey and Mr Yallop, on the defence side, the principal terrain of the debate was whether Miss Ward could have been accidentally contaminated with NG by contact with Diamond. Mr Elliott was confident that the risk of accidental contamination could be excluded.

As the head of the forensic section at Woolwich, Mr Higgs was a major witness at the trial. He testified about his own sampling in the caravan. He said the test results for the caravan samples were positive. He accepted that he told Mr Clancey that the test was "definitely positive." On the issue of accidental contamination his evidence was that there was no real risk of contamination.

Mr Berryman's evidence fulfilled a supporting role. He had not taken any samples nor had he supervised any tests. But he was an experienced forensic scientist and he testified that the risk of contamination from the debris of an explosion could safely be excluded.

Dr Skuse testified about tests of swabs taken by him under Miss Ward's fingernails. He said the results were positive. That was the only evidence of the presence of NG under Miss Ward's fingernails. That led Mr Higgs to comment that Miss Ward must have taken part in the making of the bomb.

Dr Skuse also testified that tests performed on swabs from a ring taken from Miss Ward and on swabs from the duffle bag belonging to Miss Ward were positive. The defence case was that Dr Skuse's positive results were, in fact, preliminary in nature and inconclusive and that Dr Skuse had obtained no acceptable confirmation.

Mr Clancey and Mr Yallop testified at some length. The thrust of their evidence was that the Euston and caravan test results, which they accepted, were explicable on the basis of accidental contamination. They roundly challenged Dr Skuse's test results as falling short of establishing the presence of NG on Miss Ward or her belongings.

On the scientific evidence as presented at the trial, the scientific case for the prosecution seemed cogent and the defence seemed weak and implausible. What must have particularly impressed the jury was the number of alleged contacts of Miss Ward with NG, all of which had to be explained away if Miss Ward's protestation of innocence was to be given credence.

The prosecution case at trial

As we have already said, the prosecution case was to a large extent based upon the admissions which Miss Ward had made in the various interviews to which we have referred, coupled with damaging remarks she was alleged to have made to people other than police officers. In particular, the prosecution based their case on her admissions of the following matters:

(i) The Euston bomb: that she had "sussed out" Euston Station to observe the police patrols and the times they were changed and that she had collected the explosive from Cricklewood and taken it to Kilburn.

(ii) As to the M62 coach explosion, the Crown accepted that her initial admission that she had planted the bomb could not be correct, but suggested that she might well have conceived the idea of blowing up the coach because of service in the WRAC. She had admitted advising on the movements of the coach and had admitted carrying the explosive from Derby to Manchester.

(iii) She had admitted driving the car containing the man who planted the bomb at Latimer and had given a circumstantial account of how this was done.

In addition, the prosecution relied on evidence that she was implicated in other matters, eg providing information upon which the

Aldershot bombing may have been based.

It was the Crown’s case moreover that her admissions were substantially supported by the scientific evidence. Of Dr Skuse’s evidence as to the swabs he took in Liverpool after her detention there, Mr Cobb for the prosecution said that it was this examination that revealed that Miss Ward had relatively recently been in contact with an explosive substance and had actually handled uncovered and unwrapped explosives. The admission of carrying the explosive for the Euston Station bomb was supported by the evidence of swabs taken from her right hand after that bomb exploded. The scientific evidence of traces of explosive in her bags and in the caravan supported the evidence that she carried the explosive for the M62 bomb, the suggestion being that she had left the explosive in the caravan inside one of her bags while the caravan was parked at Belle Vue before handing it on to its recipients in Longsight.

The case for the defence at trial

As we have already made clear, the conclusions sought to be drawn by the scientists who gave evidence for the prosecution were challenged in the evidence called on behalf of Miss Ward. Nevertheless it was of course open to the jury to accept the prosecution evidence unless it was shown to be fallacious.

The main plank of the case for the defence outlined by Mr Rankin was that it was clear that in much of what she had said to the police Miss Ward was simply not telling the truth. He suggested to the jury that she had lied time after time. Thus, the jury could not rely upon the truth of any admission she had made. He asked, "Is this girl a female Walter Mitty, is she a pathological liar, is she trained to achieve notoriety by making false admissions, is she trying to seek a place in Irish folklore?" Mr Rankin questioned whether the jury should accept the truth of the claim to be married to Michael McVerry. He pointed out that the IRA would have been most unlikely to rely upon somebody of such apparent incompetence and ineptitude and, in particular, somebody who, as was clear so frequently, came to the attention of the police and the Army authorities in Northern Ireland. Such conduct, suggested Mr Rankin, was inconsistent with guilt of the kind to which in her police interviews she had admitted.

The Home Secretary’s reference and the Grounds of Appeal

In the letter of September 17, 1991, written on behalf of the Home Secretary referring this case to this Court, it is made clear that the reason for the reference was concern about the validity of the scientific evidence at the trial. In particular, the investigations

which had led to the appeal in McIlkenny and Others (1992) 93 Cr App R 287 (see the Birmingham Six) cast considerable doubt upon the validity of the opinions expressed by Dr Skuse at the trial in that case based upon a similar use of the Griess Test to that which he used in Miss Ward's case. Moreover, scientific investigation carried out in connection with the inquiry by Sir John May into the case of the Maguire family (1992) 94 Cr App R 133, whose convictions have also been quashed by this Court, had shown that some other substances may give a result in some of the tests similar to that given by NG and thus raise the possibility that what appeared to be scientific proof of the presence of NG on Miss Ward's hands, on her baggage and in the caravan may have been due to the presence of some other substance.

This then was the basis upon which the case was referred to this court. However, as in the case of every appeal, once the Home Secretary had referred the case of a particular defendant to this court, it is open to that defendant to raise at her appeal any relevant issue. Mr Mansfield has therefore argued before us grounds of appeal under three main heads. These are:

(i) That before and at the trial there was a material irregularity in the failure of the prosecution to disclose to the defence relevant evidence which the prosecution was under a duty to disclose. This non−disclosure relates to evidence which was relevant to both the matters raised in the second and third grounds of appeal.

(ii) That fresh evidence is available which casts considerable doubt upon the validity of parts of the scientific evidence given on behalf of the Crown at the trial.

(iii) That fresh evidence establishes that at and before the time of the trial Miss Ward was suffering from a personality disorder so severe and deep−rooted that none of the admissions that she had made could be relied upon as being true.

We shall consider each of these grounds in turn. We shall deal with non−disclosure first, both because of the seriousness of the allegations made and because the extent of the non−disclosure is relevant to the matters we have to consider under the other grounds of appeal.

Fresh evidence

At the start of the hearing of this appeal, Mr Mansfield for Miss Ward sought leave to call before us the evidence of five witnesses. Four had not been called to give evidence at the trial. The fifth,

Mr Frederick Ollier, the solicitor who represented MIss Ward at the trial, gave evidence that various statements and reports which were now available to us had not been supplied to him before or at the trial. Mr Mansfield's application was that the evidence of all five witnesses should be admitted under section 23(2) of the Criminal Appeal Act 1968. Mr Langdale, for the Crown, did not argue that the conditions of that subsection were not satisfied in relation to any of the witnesses. Even if we had thought that in relation to any of the witnesses there was some doubt about this, having considered the nature of the evidence to be given, we were clearly of the view that we should allow the evidence to be called under section 23(1) of the Act, since it was clearly necessary to do so in the interests of justice.

We also gave leave to the Crown to call the evidence of a number of witnesses, some of whom gave evidence about documents available to us but not produced at the trial, and some of whom gave expert evidence on the subjects on which we permitted such evidence to be called on behalf of the appellant. In addition, at our request, three police officers from the relevant police forces: West Yorkshire Police, the Metropolitan Police and Thames Valley Police gave evidence about the practice in their police forces, both in 1974 and now, as to the disclosure of the names and addresses of witnesses interviewed and of relevant documents before the trial of an accused person.

Accordingly, we have heard, over nine days, the evidence of the following witnesses:

On Miss Ward's unreliability

For the appellant
Dr JAC MacKeith, a consultant psychiatrist. Dr GH Gudjonsson, a consultant psychologist. Mr RG McFarland, formerly a Detective Sergeant in the Royal Ulster Constabulary.

For the Crown
Dr Northage J de V Mather, a retired consultant psychiatrist. Dr PMA Bowden, a consultant psychiatrist. Dr WK Lawson, formerly Principal Medical Officer at HM Remand Centre at Risley where Miss Ward was detained whilst on remand.

On non−disclosure

For the appellant
Mr Frederick W Ollier, Miss Ward's former solicitor.

For the Crown

Mr LJ Sage, now retired but formerly on the staff of the Director of Public Prosecutions. Mr MJ Bibby, now a Senior Crown Prosecutor, on the staff of the Director of Public Prosecutions in 1974. Detective Chief Superintendent Baines, West Yorkshire Police. Detective Chief Superintendent Horrocks, Metropolitan Police. Detective Inspector Peedell, Thames Valley Police.

On the scientific evidence

For the appellant
Dr John Lloyd, a consultant chemist, formerly with the Home Office Forensic Science Service.

For the Crown
Mr DG Higgs.
Mr George Berryman.
Mrs PJ Kemp (formerly Miss Brooker). All formerly members of the staff of the explosives section of the Royal Armaments Research and Development Establishment at Woolwich.

Dr RW Hiley, a Principal Scientific Officer in the Forensic Explosives' Group of the Defence Research Agency (the successor to RARDE).

In addition, a considerable amount of documentary material was placed before us which we admitted in evidence under section 23(1) of the Act. Much of this consisted of witness statements and other documents which were in existence but were not disclosed nor placed before the court at trial.

We also had reports from Doctors MacKeith, Gudjonsson, Bowden, Lloyd and Hiley (this last written with two of his colleagues at the DRA), to which each spoke in his evidence.

There is one further category of fresh evidence which was placed before us by Mr Mansfield which establishes to our satisfaction that:

(a) Miss Ward's father was not born in Ireland; and

(b) Miss Ward was never married to Michael McVerry.

The Crown did not challenge this evidence and we therefore received it in the form of a witness statement by Mrs Peirce, Miss Ward's solicitor, the accuracy of which was formally admitted by the Crown. Searches made by Mrs Peirce have disclosed Mr Ward's birth certificate, which shows that he was born in Stockport on December 18, 1925. They have also disclosed there is no record in any

relevant register of marriages of Miss Ward's marriage to Michael McVerry.

During the trial, Mr Ollier had in his possession some information about both these matters. He had a witness statement from Mr Ward which showed his place of birth as Stockport. During the trial, after Miss Ward had given evidence that she had married Michael McVerry, counsel for the defence received a letter from a solicitor in Newry who, on the instructions of Michael McVerry's parents, denied that he had at any time married Miss Ward.

Counsel and the solicitor acting for Miss Ward at the trial were, of course, in the difficulty that if they had sought to prove that either of these statements made by their client in the witness box was untrue, it would reflect upon her credibility as a witness. No doubt this was considered to outweigh the effect that such proof would have in seeking to establish Miss Ward's unreliability. Added to the other evidence on this subject, to which we shall refer later, we decided that this evidence should be admitted.

Detective Chief Superintendent Baines has been in charge of a police team engaged in finding (sometimes with difficulty) the statements and other documents which came into existence 18 years ago. We are satisfied that their dedicated efforts have resulted in us having the material necessary for us to decide this appeal. Perhaps inevitably, much of this material reached the appellant's solicitors at a late stage before the hearing, but it has been assembled in such a way as to be readily accessible.

Another major difficulty faced by those now representing both Miss Ward and the Crown has been that, since there was no earlier appeal, there were no transcripts of Waller J's summing–up nor of much of the evidence at trial. Transcripts have been found of the evidence of a few witnesses. With these, witness statements, a transcript of the judge's notes, counsel's note for his opening speech and some press reports of counsels' speeches and the summing–up, there has been assembled a record of the proceedings at the trial which is as accurate and comprehensive as possible. Much of the burden of collating and assembling all this documentary material has been borne by Mrs Gareth Peirce, Miss Ward's solicitor, to whom we give our congratulations and thanks.

The course of the hearing

Mr Mansfield then invited us to hear the appeal in three parts, dealing with each of the main heads of appeal in turn. We agreed to adopt this course, and we therefore heard the fresh evidence and submissions relating to each head of appeal before we considered the

next head. Although it is convenient for us to consider, first, the issue of non–disclosure, which overlaps both the other two heads of appeal, Mr Mansfield first addressed us and called evidence on the issue of Miss Ward's unreliability when making her various submissions and confessions. At the conclusion of the fresh evidence and submissions on this head of appeal, we had received persuasive and impressive evidence that in 1974 Miss Ward was suffering from a personality disorder of such a nature that no reliance could be placed on any statement of fact made by her. Thus, we concluded that none of the admissions or confessions she made before her trial could be relied upon as the truth; since the admissions and confessions were the core of the prosecution's case, it follows on this ground alone that Miss Ward's conviction was unsafe and unsatisfactory. At that stage in the hearing we announced that we should in due course allow her appeal against conviction, but that we intended to hear argument and evidence on the other heads of appeal. Pending the conclusion of the hearing, we granted Miss Ward bail.

We shall now consider the heads of appeal in turn.

Non–disclosure of evidence

It is clear from the two opening paragraphs of the grounds of appeal that the issue of non–disclosure lies at the heart of the appellant's case. First, it is submitted that evidence which should have been disclosed at the trial, taken together with the fresh evidence now available and added to the evidence which was given at the trial, shows that the appellant's admissions and confessions were unreliable and that the scientific evidence adduced against her was worthless, with the result that her convictions are unsafe and unsatisfactory for the purposes of section 2(1)(a) of the Criminal Appeal Act 1968.

Secondly, and in the alternative, it is submitted that the non–disclosure at trial of relevant evidence which should have been disclosed by or on behalf of the Crown amounts to a material irregularity in the course of the trial for the purposes of section 2(1)(c) of the Act. The first of these submissions is self–explanatory and calls for no further comment at this stage. The second requires further examination.

It is now settled law, in this Court at least, that the failure of the prosecution to disclose to the defence evidence which ought to have been disclosed is an "irregularity in the course of the trial" within the meaning of section 2(1)(c). We refer in this connection to Maguire and Others (1992) 94 Cr App R 133, 146 where, after a reference to earlier authorities, the judgment continues:

"The Court has now consistently taken the view that a failure to disclose what is known or possessed and which ought to have been disclosed is an ’irregularity in the course of the trial.’ Why there was no disclosure is an irrelevant question, and if it be asked how the irregularity was ’in the course of the trial’ it can be answered that the duty of disclosure is a continuing one."

It follows that if the irregularity is "material," then for this reason alone the appeal must be allowed unless the proviso applies. In the sentence immediately following the passage which we have quoted from the Maguire judgment the Court said:

"If categorisation is necessary we are content to categorise a failure to disclose as a ’procedural’ irregularity, and because that which was not disclosed ought to have been disclosed, we would expect the irregularity to be one which usually satisfied the adjective ’material.’"

We share this expectation. The obligation to disclose only arises in relation to evidence which is or may be material in relation to the issues which are expected to arise, or which unexpectedly do arise, in the course of the trial. If the evidence is or may be material in this sense, then its non−disclosure is likely to constitute a material irregularity. The proviso makes it plain that "material" means something less than "crucial," because it contemplates that although there may have been a material irregularity, yet a verdict of "guilty" can be upheld on the ground that it involves no miscarriage of justice.

Mr Langdale conceded that there were a number of items of evidence in the present case which should have been disclosed but were not. In relation to most of them, however, he argued that the failure to disclose did not bring section 2(1)(c) into operation: the undisclosed evidence may have been material to issues in the case, but it was relatively insignificant in the context of the case viewed as a whole, and therefore the failure to disclose it did not amount to a material irregularity. This is a perfectly valid proposition and one which appears to have been adopted in relation to some of the undisclosed evidence in Maguire, as to which the Court said, at p 148 of the report, that it "was of such insignificance in regard to any real issue that we cannot describe its non−disclosure as a ’material irregularity.’" We would emphasise, however, that the scope for the application of Mr Langdale’s proposition is limited to matters which, at the end of the day, can be seen to have been of no real significance. The possibility that this view will ultimately be taken of any particular piece of disclosable evidence should be wholly excluded from the minds of the prosecution when the question of disclosure is being considered. Non−disclosure is a potent source of injustice and

even with the benefit of hindsight, it will often be difficult to say whether or not an undisclosed item of evidence might have shifted the balance or opened up a new line of defence. We refrain from pursuing the matter further because in the present case it is unnecessary to do so. It is unnecessary because we are satisfied that the failures to disclose on the part of the prosecution which we have found to exist were of such an order that collectively, and in some cases individually, they constituted material irregularities in the course of the trial.

We have spoken of "the prosecution." In this term we include four categories of individuals and organisations, namely (1) the three police forces: West Yorkshire, Thames Valley and Metropolitan which carried out the relevant investigations, (though we say at once that the failure to disclose was limited to the West Yorkshire Police: there was no such failure by the Thames Valley or Metropolitan Police); (2) the staff of the Director of Public Prosecutions and counsel who advised them; (3) the psychiatrists who prepared medical reports on Miss Ward at the request of the prosecution; and (4) the forensic scientists who gave evidence for the prosecution at the trial. The responsibilities of the individuals involved in each of these four categories must be considered separately.

The duty of disclosure

In his written submissions dealing with the appellant’s complaints of non−disclosure, Mr Langdale has distinguished between what, as a matter of law and procedure, was disclosable in 1974 and what is disclosable in 1992, but both he and Mr Mansfield invited us to apply the standards of 1992 to the question of what ought to have been disclosed at the trial. We do not think that this is the correct approach to section 2(1)(c). It is true that in the Maguire case, where the original trial had taken place in 1975, the court adopted a test for disclosability which first appeared in the Attorney−General’s Guidelines (1982) 74 Cr App R 302 published in December 1981, namely, whether the undisclosed material had "some bearing on the offences(s) charged and the surrounding circumstances of the case." The point does not, however, appear to have been argued −− the case for the Crown was that non−disclosure was incapable of constituting a material irregularity in the course of the trial −− and we do not regard the Maguire decision as requiring us to take what was called in argument a "here and now" approach to the question of what should have been disclosed in 1974. The last 18 years have brought considerable advances in medical and forensic science.

In deciding whether a verdict is "safe and satisfactory" for the purposes of section 2(1)(a), or whether there has been an miscarriage of justice for the purposes of the proviso, we must

clearly take account of all of the knowledge and experience which is available to us in 1992, but in order to determine whether there were material irregularities in the course of the appellant's trial in 1974 we must, as it seems to us, apply as best we can the standards of what was considered to be proper and regular at that time. The distinction is, however, of limited practical significance because the appellant submits, and we accept, that even by the standards of 1974 there were failures to disclose by each of the four prosecution groups to which we have referred.

In terms of quantity the most substantial failures were those of the West Yorkshire Police and the Director of Public Prosecutions to give information about: (1) witnesses from whom statements had been taken, but who were not called to give evidence; and, (2) police interviews of the appellant. With regard to the first of these categories the then current edition of Archbold (38th ed, 1973) reads as follows:

"Information the Prosecution Should Make Available to the Defence.

443. Where the prosecution have taken a statement from a person whom they know can give material evidence but decide not to call him as a witness, they are under a duty to make that person available as a witness for the defence, but they are not under the further duty of supplying the defence with a copy of the statement which they have taken: R v Bryant and Dickson (1946) 31 Cr App R 146 . . . Where a witness whom the prosecution call or tender gives evidence in the box on a material issue, and the prosecution have in their possession an earlier statement from that witness substantially conflicting with such evidence, the prosecution should, at any rate, inform the defence of that fact: R v Howes, March 27, 1950 CCA (unreported) . . . In certain cases, particularly where the discrepancy involves detail, as in identification by description, it may be difficult effectively to give such information to the defence without handing to them a copy of the earlier statement: R v Clarke (1930) 22 Cr App R 58; see also Baksh v R, ante [1958] AC 167.

443a. Further, there have been cases where, in view of their particular circumstances, judges have ordered the prosecution to hand to the defence statements made to the police by witnesses for the prosecution: see R v Hall (1958) 43 Cr App R 29, CCA; R v Xinaris (1955) 43 Cr App R 30. In both these last−mentioned cases it is clear that the judge adopted the course only in the circumstances of the particular case, and neither case should be regarded as an authority for the proposition that there is any general duty on the part of the prosecution with regard to statements to the police by witnesses or potential witnesses beyond what is above stated. A different view, however, appears to have been taken by Lord Denning, MR, in Dallison v Caffery [1965] 1 QB 348 at p 369, when he stated:

’The duty of a prosecuting counsel or solicitor, as I have always understood it, is this: if he knows of a credible witness who can speak to material facts which tend to show the prisoner to be innocent, he must either call that witness himself or make his statement available to the defence.’ Diplock LJ, however, at p 376, while approving of the course adopted by the prosecution in that case, appears to have thought that they had gone further than they were strictly bound to do: see also R v Fenn (1959) Jour Cr Law 253."

We note in passing that the corresponding passage in the then current (43rd) edition of Archbold, which was quoted with approval by this Court in Lawson (1990) 90 Cr App R 107, 114, shows a move in more recent years towards the Dallison v Caffery approach. After referring to the relevant paragraph, paragraph 4−178 in the 43rd ed, Parker LJ, giving the judgment of the Court, said:

"I read it for two reasons: first for the comment of which this Court approves; and secondly, to point out that there is one omission in the paragraph which may be of some importance. The paragraph reads as follows:

’Where the prosecution have taken a statement from a person whom they know can give material evidence but decide not to call him as a witness, they are under a duty to make the person available as a witness for the defence and should supply the defence with the witness’ name and address. The prosecution are not under the further duty of supplying the defence with a copy of the statement which they have taken: Bryant and Dickson (1936) 31 Cr App R 146 . . . Certain prosecuting authorities and prosecutors not infrequently use this authority as a justification for never supplying the defence with the statement in such circumstances. It should be borne in mind however, that an inflexible approach to these circumstances can work an injustice. For example the witness’s memory may have faded when the defence eventually seek to interview him, or he may refuse to make any further statement. The better practice is to allow the defence to see such statements unless there is good reason for not doing so. Furthermore, it should be observed that the ruling in Bryant and Dickson, ante, cannot be reconciled with the observations of Lord Denning MR in Dallison v Caffery [1965] 1 QB 348, 369: "The duty of a prosecuting counsel or solicitor, as I have always understood it, is this: if he knows of a credible witness who can speak to material facts which then show the prisoner to be innocent, he must either call that witness himself or make his statement available to the defence."’"

If one looks at the authority itself, Lord Denning MR, continued immediately after that with these words (at page 369BC):

"’It would be highly reprehensible to conceal from the court the evidence which such a witness can give. If the prosecuting counsel or solicitor knows, not of a credible witness, but a witness whom he does not accept as credible, he should tell the defence about him so that they can call him if they wish.’"

To return, however, to the position in 1974, Mr Mansfield submits, rightly, that paragraphs 443 and 443a of Archbold (38th ed) were by no means exhaustive. They were merely aspects of the defendant’s elementary common law right to a fair trial which depends upon the observance by the prosecution, no less than the court, of the rules of natural justice. No authority is needed for this proposition but it is illustrated by the decision of the Divisional Court in Leyland Justices, ex p Hawthorn [1979] QB 283. On the broad basis of this right, the defendant is plainly entitled (subject to statutory limitations on disclosure, and the possibility of public interest immunity, which we discuss below) to be supplied with police evidence of all relevant interviews with him. We would adopt the words of Lawton LJ in Hennessey (1979) 68 Cr App R 419, 426, where he said that the courts must,

". . . keep in mind that those who prepare and conduct prosecutions owe a duty to the Courts to ensure that all relevant evidence of help to an accused is either led by them or made available to the defence. We have no reason to think that this duty is neglected; and if ever it should be, the appropriate disciplinary bodies can be expected to take action. The judges for their part will ensure that the Crown gets no advantage from neglect of duty on the part of the prosecution."

That statement reflects the position in 1974 no less than today. We would emphasise that "all relevant evidence of help to the accused" is not limited to evidence which will obviously advance the accused’s case. It is of help to the accused to have the opportunity of considering all the material evidence which the prosecution have gathered, and from which the prosecution have made their own selection of evidence to be led. We believe that in practice the importance of disclosing unused material has been much more clearly recognised by prosecutors since the publication of the Attorney−General’s Guidelines. The current Code of Conduct for the Bar, reflecting the words of Lawton LJ which we have quoted, provides that:

"Prosecuting counsel should bear in mind at all times that he is responsible for the presentation and general conduct of the case and that it is his duty to ensure that all relevant evidence is either presented by the prosecution or made available to the defence."

So far as the law is concerned, however, the only practical difference between 1974 and 1992 in the present case is that in 1974 the police and the Director of Public Prosecutions were entitled as a general rule to adopt the Bryant and Dickson (1946) 31 Cr App R 146 rather than the Dallison v Caffery [1965] 1 QB 348, approach to the statements of persons who could give material evidence but were not to be called, that is to say, they were not generally obliged to disclose more than the name and address of the person concerned and the fact that he had made a statement. But subject to public interest immunity all statements or other documents recording relevant interviews with the appellant should have been disclosed. It makes no difference for this purpose whether the document took the form of a witness statement, or notes of interview, or a police officer's report.

There are two further matters of law which we must mention before coming to specific instances of non-disclosure. The first is the doctrine of public interest immunity which we have mentioned. Quite apart from statutory limitations on the disclosure of information, the common law has always recognised that the public interest might require relevant evidence to be withheld from the defendant. Obvious examples are evidence dealing with matters of national security, or disclosing the identity of an informant. The Attorney-General's Guidelines refer, under the latter heading, to the judgment of Pollock CB in Attorney-General v Briant (1846) 15 MWR 169, 185 for the statement that:

". . . the rule clearly established and acted on is this, that in a public prosecution a witness cannot be asked such questions as will disclose the informer, if he be a third person. This has been the settled rule for 50 years, and although it may seem hard in a particular case, private mischief must give way to public convenience . . . and we think the principle of the rule applies to the case where a witness is asked if he himself is the informer."

Much more recently, and in more general terms, the subject has been discussed by the Divisional Court in Governor of Brixton Prison, ex p Osman (1991) 93 Cr App R 202, [1991] 1 WLR 281, which was an extradition case. At p 208 and 288 of the report Mann LJ said this:

"The seminal cases in regard to public interest immunity do not refer to criminal proceedings at all. The principles are expressed in quite general terms. Asking myself why those general expositions should not apply to criminal proceedings, I can see no answer but that they do. It seems correct in principle that they should apply. The reasons for the development of the doctrine seem equally applicable to criminal as to civil proceedings. I acknowledge that the application of the public immunity doctrine in criminal proceedings will involve a different balancing exercise to that in

civil proceedings. I shall come in one moment to the concept of the balancing exercise. Suffice it to say for the moment that a judge is balancing on the one hand the desirability of preserving the public interest in the absence of disclosure against, on the other hand, the interests of justice. Where the interests of justice arise in a criminal case touching and concerning liberty or conceivably on occasion life, the weight to be attached to the interests of justice is plainly very great indeed.

It may be that what I have just said explains the paucity of authority. It may be that prosecutions are not initiated where material is not to be exposed, or it may be that the force of the balance is recognised by prosecuting authorities and the immunity is never claimed. I know not. We have been referred to a few instances at trial where rulings have been made upon public interest immunity, but apart from indicating that the point has arisen I would attach no significance to those instances. I base myself upon the proposition that there is no discernible reason why the immunity should not apply in criminal proceedings."

AT pp 209 and 289 Mann LJ added:

"I turn then to the balancing exercise which is predicated in all the authorities.

It may be shortly put: do the interests of justice in the particular case outweigh those considerations of public interest as spoken to in the certificate?"

The certificate to which he referred was a certificate by the Minister of State for Foreign and Commonwealth Affairs in which public interest immunity had been claimed. It is of course implicit in Mann LJ’s judgment, and in the earlier authorities to which he referred, that the ultimate decision as to whether evidence, which was otherwise disclosable, should be withheld from disclosure on the grounds of public interest immunity was one to be made by the Court. Certainly this is our view. We would add that, as we understand it, one of the main reasons why in recent years the concept of "Crown privilege" as it used to be called has given way to the concept of public interest immunity is that no "privilege" in the ordinary sense of that word was involved: see, for example, Duncan v Cammell Laird & Co Ltd [1942] AC 624 per Lord Simon at p 641. In Air Canada v Secretary of State for Trade (No 2) [1983] 2 AC 394 Lord Fraser added, at p 436 that: "Public interest immunity is not a privilege which may be waived by the Crown or by any party."

More recently, in Makanjuola v Commissioner of the Police for the Metropolis (1989) 139 New LJ 468 (1990) 154 LG Rev 248, Bingham LJ

made the same point, observing that although one can waive rights, one cannot waive duties. He added that:

". . . where a litigant holds documents in a class prima facie immune, he should (save perhaps in a very exceptional case) assert that the documents are immune and decline to disclose them, since the ultimate judge of where the balance of public interest lies is not him but the court."

We are conscious that we are applying statements made in the relatively peaceful context of an extradition case, or a civil case, to the circumstances surrounding the trial of the appellant. It is not difficult to imagine the anxieties which must have beset the police and the prosecution lawyers lest the lives of investigating officers, of members of the public, and even perhaps of Judith Ward herself might be put at risk by the disclosure of "sensitive" information. But the rule that the court and not the litigant must be the ultimate judge of where the balance of public interest lies must always have applied to the prosecution in criminal cases, though it may not have been clearly spelt out in 1974. It is a matter of concern that at least two important decisions as to what should be withheld from disclosure on the grounds of its sensitivity appear to have been made by the prosecution alone –– in one case by the West Yorkshire Police, in the other by the Director of Public Prosecutions and counsel –– and without reference to the court.

The second preliminary matter of law which must be mentioned is the proviso to section 2. When we announced on Monday, May 11, which was the fifth day of the hearing, that we proposed to allow the appeal in the light of the fresh psychiatric evidence which had been placed before us, we made it clear by doing so that by reason of this fresh evidence alone we were unable to say, in the language of the proviso, "that no miscarriage of justice has actually occurred." In these circumstances, it would be pointless to consider at any length whether we might have applied the proviso by reference to any of the material irregularities which occurred in the course of the trial. It is sufficient to say that, even if our decision in favour of the appellant had been limited to the issue of material irregularities, we would not have thought it right apply the proviso.

Particular instances of non–disclosure amounting to material irregularities

In her grounds of appeal and in the accompanying bundles, the appellant referred to 43 items of evidence consisting of, or contained in, documents such as witness statements, notes of interviews and reports (including medical reports). In the course of the hearing, Mr Mansfield did not pursue his complaint in respect of

many of these items, accepting either that they were not disclosable or that the failure to disclose them involved no material irregularity. It seemed to us that a number of the remaining items, though meriting examination and providing scope for debate, could ultimately be excluded from the reckoning on the same grounds. We think that it will be sufficient in the interests of justice if we confine our attention to the items to which we now turn, whose non−disclosure amounted collectively, and in some cases individually, to material irregularities. We list them under the headings of the four categories of individuals and organisations to which we have referred.

1. The West Yorkshire Police

On January 17, 1992, Detective Chief Superintendent Baines was appointed to co−ordinate the police enquiries on behalf of the Director of Public Prosecutions into the appellant's case and to prepare a report for the assistance of this court. We are grateful to him both for the meticulous and comprehensive investigations which he conducted in the relatively short time available and for the clarity with which he has presented his findings, both in his written report and in oral evidence. We would make particular mention of the alphabetical lists and notes prepared by Mr Baines of 58 individuals and 24 addresses referred to by the appellant as having played a significant part in the criminal activities which she alternately admitted and denied. The glossary of these names and addresses, some of them known terrorists, some of suspects, some of apparently wholly innocent people, and some of shadowy figures who cannot be traced and may never have existed, has been an invaluable guide for us as we have traced and retraced our steps through the maze of fact and fancy in the appellant's accounts of her activities.

The West Yorkshire Police were principally concerned with the M62 bombing, but they also acted as the "lead" Force in the collection of evidence for the appellant's trial. Some idea of the burden which they bore can be gained from the fact that they took statements −− sometimes more than one −− from over 1,700 people. Of this total, however, only 225 statements were forwarded to the Director of Public Prosecutions. By way of contrast, every one of the 882 statements taken by the Thames Valley Police and of the 148 statements taken by the Metropolitan Police was forwarded to the Director of Public Prosecutions. How did this discrepancy arise?

Detective Inspector Peedell of the Thames Valley Police gave oral evidence about the practice of his force in 1974. He produced an extract from Force Weekly Orders dated August 2, 1971, concerning the procedures to be adopted in cases submitted to the Force legal department. The gist of this order was that all statements and other

material taken during an investigation for trial on indictment were to be fully disclosed to the Force solicitors who would vet the file, advise on charges and other related matters. The decision to disclose or not disclose statements or other material to the defence was and remained a matter for the solicitor or counsel. In cases conducted by the Director of Public Prosecutions a report, documents and statements would be referred to his office without being edited by the force solicitors. Again, it was Force policy to disclose to the Director all statements and other material taken during the course of the investigation.

Detective Sergeant Horrocks, who gave evidence on behalf of the Metropolitan Police, had been unable to trace any written order in force in 1974 requiring witness statements and other material to be submitted to the solicitor's department or the Director of Public Prosecutions. Paragraph 17 of the Metropolitan Police Orders published on February 5, 1982, makes full and clear provision for this to be done, but was apparently introduced as a result of the publication in December 1981 of the Attorney–General's Guidelines. Nonetheless, as we have said, all of the witness statements in the present case were duly transferred by the Metropolitan Police to the Director of Public Prosecutions, despite the apparent absence of a written order to that effect in 1974. Detective Sergeant Horrocks told us of steps now being taken to introduce a standard form to be used by all police Forces for the disclosure of material to the Crown Prosecution Service on the lines of Form 151 which is currently in use by the Metropolitan Police.

What, then, was the procedure in force in West Yorkshire in 1974? Detective Chief Superintendent Baines was a member of the West Yorkshire Force at the time, but played no part in the enquiries into the appellant's case. He knew of no written orders then in force covering the forwarding of witness statements to the solicitor's department or the Director of Public Prosecutions. In the appellant's case, the senior investigating officer would have decided what should be forwarded. Detective Chief Superintendent Baines would have expected the senior investigating officer to sit down with his team and divide the statements which had been taken into: (1) those providing evidence that the accused person was guilty, in other words those which the prosecution might wish to use; (2) those which related to the accused but were not admissible in evidence, such as descriptions of her antecedents and background; and (3) non–relevant statements, such as statements taken from suspects who were later eliminated from the case –– though if such statements referred to the accused they would be included in the documents mentioned in category (2).

It is perhaps understandable that the West Yorkshire Police should have been reluctant to burden the Director of Public Prosecutions

with the statements of 1,700 witnesses, the vast majority of whom, no doubt, were unable to contribute anything really significant, but it must be made clear that the course adopted was wholly wrong and led to the suppression of information which the appellant was entitled to receive. The principal relevance of the statements in question lies in their bearing on the appellant's proclivities for attention–seeking, fantasy and the making and withdrawal of untrue confessions. The West Yorkshire Police may well have been fully justified, on the information before them, in taking the view that the statements were of little or no relevance to the offences with which the appellant was charged. Even the Director of Public Prosecutions might only have appreciated their relevance as the trial proceeded and the full scope of the defence of unreliability became clear. But this simply shows why it was wholly wrong for the statements to be withheld from the Director.

The first of these statements was one taken from Sergeant Reynard of the Royal Electrical and Mechanical Engineers on February 26, 1974. He spoke of an incident which had occurred on August 15, 1972, a time at which, it will be remembered, the appellant was absent without leave from the WRAC. Whilst on patrol in Belfast on that date, Sergeant Reynard had seen an individual, whom he later discovered to be a girl named Ward, jump from a ground floor window ledge and run away from the patrol. She stopped when ordered to do so and was detained and questioned by Sergeant Reynard and by the police. She told him, amongst other things, that her parents had been gypsies and had originated from Dublin where she had spent her early childhood. This is to be compared with what the appellant had said in the course of a long and detailed statement taken from the appellant by the Royal Ulster Constabulary on March 22, 1972, also during the period when she was absent without leave. That statement had been forwarded to the Director of Public Prosecutions but had not been disclosed to the defence and we shall refer to it more fully in the context of failures to disclose by the Director of Public Prosecutions. At this stage, it is sufficient to note that on March 22, 1972, she said that her name was Teresa O'Connell, that she was aged 14 years and eight months, and that she had been leading an itinerant life with her 19–year–old brother in the Irish Republic. She said that her mother had died when she was six years old and that her father had walked out on her and her brother four years ago.

The next undisclosed interview to which we must refer was concerned with the occasion on August 23, 1972, which we have already described, when the appellant visited Thiepval Barracks, Lisburn with a companion. It will be remembered that by then she had obtained her discharge from the WRAC. She was questioned about the visit by the Army on August 29, 1972, and again over a period of four days from September 3 to 6. On this last date, as we have said,

she made a voluntary statement which was witnessed by a Lance Corporal Lamb (nee Stephenson). The appellant's statement was duly disclosed and became exhibit 79 at the trial. In the course of it she said that she had, "entered HQ Northern Ireland with the intention of looking the place over regarding security measures and so on, having been asked two days previously by Michael Kelly to do so." She also said that she had first met Michael Kelly when he introduced her to Seamus Quigley and Paeder McNally in McLoughlin's Bar in Dundalk in February 1972. Detective Chief Superintendent Baines' glossary states that it has not been possible to identify Michael Kelly, Seamus Quigley or Paeder McNally but that McLoughlin's Bar was a regular haunt for members of the official IRA.

What was not disclosed was that on the same day, September 6, the appellant was also interviewed by two officers of the Royal Ulster Constabulary, Detective Sergeant Speers and Detective Inspector Hylands. To Detective Sergeant Speers she said that the statement which she had made, "was all true except for the portion about her carrying out the observation for the IRA." She was asked why she had written that part of the statement if it was untrue and she said that she had just said it to get away from the Army because they had held her for four days; she had signed the statement in order to get out.

She was then questioned by Detective Inspector Hylands, together with another officer. To them she repeated that her statement was true with the exception of the fact that she had collaborated with, and furnished information about, the barracks to the IRA. Again, when asked to explain, she said that she had been with the military for four days and "would have admitted to almost anything to get away from them," though she had no complaints to make in connection with her treatment. In his witness statement, which was taken on May 27, 1974, Detective Inspector Hylands added that, "Despite being further interviewed with regard to this aspect of her confession, she continued to profess her innocence and I must concede that I found her to be convincing." Neither the Army nor the Royal Ulster Constabulary took any further action against the appellant in connection with the incident.

The statements of Detective Sergeant Speers and Detective Inspector Hylands were not forwarded to the Director of Public Prosecutions or disclosed to the defence. They clearly should have been. They recorded the almost immediate retraction by the appellant of the confession which she had made in her statement, exhibit 79, that she had visited Thiepval Barracks in order to reconnoitre it for the IRA. That confession must have been part of the basis upon which (according to newspaper reports at the trial) Mr Cobb, QC, for the Crown, submitted in his closing speech that the appellant was an

intelligence officer, as well as a gun–runner, bomb–carrier, bomb–maker and even bomb–planter for the IRA. Her prompt withdrawal of the confession was therefore plainly material to an issue raised in the trial. Further, although the comment of Detective Inspector Hylands that he found the appellant's profession of innocence to be convincing would not have been admissible in evidence as such, it was a statement helpful to the defence which he would probably have made in evidence when asked why no further action had been taken against the appellant over the Thiepval Barracks visit. Mr Langdale very properly conceded that the failure to disclose these statements constituted a material irregularity.

The final item in this category consists of notes made by Detective Chief Superintendent Oldfield of conversations which he had with the appellant on June 11 and 18, 1974, after she had been charged. These conversations took place without the knowledge of the appellant's solicitor. They ranged widely over the appellant's movements, activities and contacts. In the course of them the appellant named Joe Coyle as the man responsible for the bomb explosions at Euston and also at King's Cross and made allegations against many other individuals, some of them known or suspected members of the IRA. Detective Chief Superintendent Oldfield has since died. Detective Chief Superintendent Baines in his evidence said that clearly Detective Chief Superintendent Oldfield was endeavouring to obtain intelligence and use Miss Ward as a source of information. The notes had been removed from the West Yorkshire files and transferred for security reasons to a special room maintained by the Metropolitan Police, where Detective Chief Superintendent Baines had found them. Mr Langdale accepted that the notes were prima facie disclosable but said it was arguable that Detective Chief Superintendent Oldfield and the West Yorkshire Police were not obliged to forward them to the Director of Public Prosecutions. He said that although we did not know how the meeting came about, it was possible that the appellant asked to see Detective Chief Superintendent Oldfield in complete confidence without even her solicitor knowing and that she acted as an informer only on the express basis that the conversations would not be disclosed.

The suggestion that the appellant may have made such a stipulation is clearly speculative. We should be surprised if it had occurred, bearing in mind the uninhibited freedom with which the appellant had volunteered allegations against other individuals on almost every other occasion when she was interviewed. But if such a stipulation had been made, Detective Chief Superintendent Oldfield should at least have consulted the Director of Public Prosecutions before accepting it. It might then have been decided that the stipulation was unacceptable or, alternatively, steps could have been taken to invoke public interest immunity for the conversations. Detective Chief Superintendent Oldfield had no right to make the decision that

the conversations should remain wholly undisclosed.

2. The Director of Public Prosecutions and counsel

We heard evidence from Mr Bibby, now a Senior Prosecutor for the Crown Prosecution Service, who was the professional officer in charge of the appellant's case, and also from Mr Sage who in 1974 was in charge of an office opened by the Director of Public Prosecutions in Leeds for use in connection with the appellant's trial and other major trials which were in progress, or in the course of preparation, at the time. Other members of the legal department at the time were Mr Bourke and Mr Phillips. They were senior to Mr Bibby and signed some of the letters sent out from the Director of Public Prosecutions' office in London in connection with the appellant's trial, but all those letters were drafted by Mr Bibby.

All decisions as to the disclosure or non–disclosure of evidence to the defence were implemented by Mr Bibby after consultation with counsel, generally with Mr Brian Walsh, (now Mr Brian Walsh, QC) who was the junior counsel instructed by the Crown and whom Mr Bibby knew well. The general policy adopted in relation to statements from people who were not going to be called as witnesses was to adopt the Bryant and Dickson approach and to disclose to the defence only the names and addresses of those individuals. Mr Bibby was unable to recall the detail of any discussions about the disclosure of particular documents. The Crown decided not to call Mr Walsh as a witness before us. We made it clear that we should feel free to draw such inferences as seemed appropriate from the evidence concerning his role in the matter.

The first of the undisclosed items about which complaint was made by Mr Mansfield was the statement made by the appellant to the Royal Ulster Constabulary, giving the name Teresa O'Connell, on March 22, 1972. It is, as we have indicated, a graphic and highly imaginative tale about Teresa O'Connell, aged 14 years and eight months (the appellant at the time was 23) whose mother had died when she was six (the appellant's mother is still alive) and whose father, Francis O'Connell, had walked out on her and her brother in Cork City four years previously. Her father, Thomas Ward, an English crane driver, married her mother in 1946. They had five children of whom the appellant was the second and were divorced in 1962. The statement, after describing her itinerant life with her 19–year–old brother, Eddie (she had no such brother) speaks of him deciding on March 4, 1972, that is a fortnight before the statement, after a quarrel with the appellant, that he was going to go North and join the Provos. According to the statement, the appellant left their caravan before he did and hitch–hiked up to Newry where she was questioned by the Newry police. She told them that she was going to Antrim to look for

her brother but then hitch−hiked to Belfast and after that to Derry searching for her brother. After further encounters with the police and with soldiers, one of whom hit her with a rifle, and after a night in hospital, she was taken to a convent from which she departed, again in search of her brother. She was picked up on the streets by soldiers at 3.45 am and handed over to the police. They evidently arranged for her to be accommodated at St Joseph’s Training School for two days before she made her statement.

It was apparently decided that the statement need not be disclosed because it was not material to the issues in the case. Mr Langdale submitted that this was a perfectly reasonable decision and further submitted that, even if the statement should have been disclosed, the failure to disclose it was not a material irregularity. He added that at any rate some of the information contained in the statement had come out in the course of the trial as part of the evidence given by Sergeant Coleman for the prosecution and by the appellant herself. As we have said, Sergeant Coleman did indeed speak of the appellant as having stated to him, in the course of an interview on September 3, 1972, that she had passed herself off as being 14 years and eight months old whilst in Northern Ireland and absent without leave and linked this with statements made by the appellant about visits to inmates of Long Kesh as a carrier for the IRA. The appellant, for her part, when giving evidence, spoke of staying at a convent in Newry during the same period and added that, "this was at the time of my visiting Long Kesh and I passed myself off as being 14 years and eight months because Teresa O’Connell is a juvenile."

In our judgment, the statement of March 22, 1972, should have been disclosed. Taken by itself, it may well have been thought to have no bearing on the question of the appellant’s responsibility for the offences with which she was charged, but when compared with the other accounts of this period given by the appellant, including those contained in the evidence of Sergeant Reynard and in the trial itself, its relevance to the crucial problem of discovering the truth or falseness of the appellant’s various statements becomes apparent. We bear fully in mind the dangers of judging the matter with hindsight and in the light of the fresh evidence from the psychiatrists but it seems to us that the statement threw enough additional light upon the appellant’s powers of deception and unreliability for it to have been disclosable.

We take the same view of an undisclosed statement made by Police Constable Open on March 19, 1974. On September 16, 1973, the appellant and her friend, Elaine Gateley, with whom she shared a hotel room, had reported the theft of property belonging to Miss Gateley from that room. Police Constable Open visited the room on October 2, 1973, and found it to be filled with IRA posters and other material of that type. He made a joke of the posters and the

frequent bomb hoaxes at the hotel and the appellant stated that there would be no bombs in the hotel whilst she was staying there. In a general conversation regarding fingerprints the appellant said, "Oh yes mate. I had them done in Derry. They said I had planted a bomb but they couldn’t make it stick."

Again it may be said that, at any rate at first sight, the statement had no direct bearing upon the issues in the case. But it will be remembered that September 16, 1973, was only six days after the bomb explosion at Euston and after the detention of the appellant and Miss Gateley in connection with it. It may well be that if the appellant’s advisers had been given Police Constable Open’s name and address and had sought a statement from him, they would not have wished to call him as a witness but that was a matter for them. Here too we would say, even after making allowance for the distorted vision of hindsight, that the attention−seeking behaviour of the appellant, if she were in fact guilty of the Euston bombing, was so bizarre as to merit further consideration by the defence and the opportunity to look into the matter should have been given to them.

The next undisclosed interview which must be recorded is one which was described by Detective Sergeant McFarland of the Royal Ulster Constabulary in a witness statement made on March 8, 1974. Detective Sergeant McFarland also gave evidence before us. In his statement and in his oral evidence, he spoke of an interview with the appellant on November 18, 1973, during which he questioned her about her possible involvement with the IRA. At first she said, "I don’t know anything about it. I have never been involved." During further questioning she stated, "I have brought guns up to Belfast on several occasions," adding that they were revolvers and that she had brought them in her handbag. A short time after that, she again denied ever being involved with the IRA. When asked why she boasted about bringing guns to Belfast she replied, "It was just something to say, I know that’s what you want me to say." Mr McFarland’s statement closed with the words, "I formed the opinion that Miss Ward was not mentally stable and that she could be easily persuaded to say or do anything."

It will be remembered that gun−running was the first of the assertions which Mr Cobb had levelled against the appellant in his closing speech.

In his oral evidence, Detective Sergeant McFarland added that in 1973 he had been a Detective Sergeant for a number of years and had had quite a few dealings with those suspected of terrorist activities and crimes. He felt that he had a reasonable insight into their organisation. He thought that the appellant’s claim to be gun−running for the Provisional IRA was total nonsense. That organisation would not trust a person of her mentality at that time.

From talking to her, he formed the view that she was not mentally stable. He reported his view to his seniors in the Royal Ulster Constabulary. She was released and helped on to a boat to England the same day.

There can be no doubt that the defence should have been given Detective Sergeant McFarland's record of the interview. His account of the appellant's admission and denial of gun−running activities was plainly relevant to an issue in the case. Further, as with Detective Inspector Hylands, his view of her confession might usefully have been elicited by the defence when he gave evidence. In saying this we must make it abundantly clear that we are not suggesting that the belief of a particular police officer in the innocence of the defendant makes him a disclosable witness. A belief in the defendant's innocence by a police officer, or any other witness, is no more admissible or relevant than a belief in the defendant's guilt. But it is a factor to be borne in mind when considering whether the evidence of a particular witness is significant enough for the defence to be given the opportunity of obtaining it in the interests of fairness. In the case of Detective Sergeant McFarland it is arguable that his evidence upon her unreliability was admissible in its own right. In Cross on Evidence (7th ed, 1990), p 498, it is stated that:

"In some cases a non−expert witness has been allowed to give evidence of opinion on a subject on which expert testimony would have been admissible. Acquaintances of a person whose sanity is in issue may be asked whether they consider him sane, but this is not so much a demand for an opinion as a 'compendious mode of ascertaining the result of the actual observations of the witness.' Did the witness observe any action by the accused characteristically associated with persons of dubious sanity?"

Mr Langdale pointed out that this passage only referred to cases where "sanity is in issue," and in the present case it was not. Nor, of course, was the existence of the personality disorder which Dr McKeith and Dr Bowden have now diagnosed. The admissibility of the observations made by Detective Sergeant McFarland, as a very experienced observer of the mentalities of terrorists, might more usefully be considered in the context of the fresh evidence which we have received than in the context of whether he should have been made available to the defence as a witness of unreliability at the trial. For the reason which we have already given, however, we are satisfied that whether or not his opinion as such was admissible, his statement describing his interview with the appellant should have been disclosed.

We turn next to the statement of Detective Superintendent Wilson describing a series of interviews with the appellant which he and

other officers conducted on February 15, 1974, the day after she had been found by police in a doorway at Liverpool and detained. As we have said, no evidence was given at the trial about these interviews. It will be remembered that at this stage the appellant had been neither cautioned nor arrested. She was first cautioned on the afternoon of February 16 and was arrested at 9.55 pm that evening.

The interviews described by Detective Superintendent Wilson consisted of six separate question and answer sessions, the first beginning at 11.00 am and the last at 4.10 pm. For most of the time Detective Superintendent Edington was present and he and Detective Superintendent Wilson took it in turns to question the appellant. For a short time in the afternoon they were joined by Detective Chief Superintendent Nevill, who also asked the appellant a number of questions. All three officers were from New Scotland Yard. Detective Superintendent Wilson was serving in the Special Branch.

On the previous day she had made the long voluntary statement to the Merseyside Police, exhibit 38, which we have earlier described. As we have noted, it is clear that parts of the statement were untrue, though the jury were not to know that. For example, she said in it, as she was to say again in evidence at her trial, that her father was born in Eire, County Offaly. The fresh evidence before us includes a copy of his birth certificate, which states that he was born in Stockport. Later in the statement, as we have mentioned, she spoke of coming to London in September 1973 and making contact with Brendan Magill, who was to figure prominently in her later statements as a supporter of the IRA and suppliers of explosives. Brendan Magill is identified in the notes made by Detective Chief Superintendent Baines as a man who had previously been convicted of possessing explosives for which he had been sentenced to two years' imprisonment but no connection was established between him and the offences of which the appellant was convicted. The statement also spoke, as we have said, of the appellant being approached by a man called O'Reilly, whom she met in a public house called The Ducie Arms in Manchester, and asked to "suss out" Manchester Airport. Detective Chief Superintendent Baines reports that it has proved impossible to identify such an O'Reilly, or any connection between The Ducie Arms and IRA sympathisers or activities.

The interviews on February 15 began with questions to the appellant about her statement of the previous day and then ranged widely over the subject of her contacts with Sinn Fein and the IRA, including meetings with named individuals who were either known or suspected to be members of the latter organisation. She admitted such meetings and spoke favourably of the IRA but criticised their training methods. She denied carrying out any activities on behalf of the IRA in England. The relevant questions (put by Detective Superintendent

Wilson) and answers were as follows:

"Q Have you ever done anything in this country for the IRA?

1. Never.
2. Have you ever been asked to do something for them?
3. Never.
4. If you had been asked, would you?
5. Never.
6. Are you in favour of carrying on the war in this country?
7. No.
8. There have been all kinds of bombs here, some have been killed and maimed, do you know anything about them?
9. No.
10. In Ireland and England you've been a dedicated Sinn Feiner.
11. Yes.
12. I find it difficult under these circumstances to think that you know nothing.
13. No, they're two different groups.
14. Are you not more than a follower?
15. If I wanted to be in it –– the Army that is –– I'd be in it.
16. Can't Sinn Fein lead to other organisations?
17. Yes.
18. Are you saying you didn't want to (join the IRA)?
19. Yes."

The appellant also denied that she knew Stuart McMorrow or Marlene Coyle when these names were put to her by Detective Chief Superintendent Nevill. This appears to have been the first occasion on which those names figured in the case.

The interview was plainly relevant to issues in the trial, and was therefore plainly disclosable. Mr Bibby told us that it was not disclosed on the advice of counsel, Mr Walsh. It was, however, referred to in a letter written by Mr Bibby to Mr Ollier on September 26, 1974. In the third paragraph of that letter Mr Bibby wrote:

"I understand that there were interviews with the defendant and senior police officers on Friday 15th February concerning antecedent and certain peripheral matters, details of which I do not propose to adduce at the trial."

This wording closely followed the written advice given by Mr Walsh on September 24, extracts from which have been put before us by Mr Langdale, legal professional privilege having been waived by the Director of Public Prosecutions. To be precise, paragraph 4 of that advice, so far as relevant reads:

"Will Mr Bibby please write to the defendant's solicitors to inform them: . . .

(c) That he 'understands that there were interviews with the defendant generally about her antecedents and of a peripheral nature on the 15th February 1974, the details of which the prosecution does not propose to adduce in evidence.'"

Paragraph 9 states that, "This written advice confirms my telephone conversation earlier today with Mr Bibby."

In cross-examination, Mr Bibby accepted that the matters discussed in the interviews were central to the issues in the case. He could not explain the use of the word "peripheral." He added that, "in general terms we were very conscious of security at that time" and in re-examination he said that the fact that much of the material contained in the interviews was also to be found in other interviews and evidence which were before the jury would have weighed with him.

With assistance of Detective Chief Superintendent Baines, Mr Langdale also put before us a letter dated September 16, 1974, written by Detective Chief Superintendent Oldfield of the West Yorkshire Police to the Director of Public Prosecutions. It refers to a statement by Detective Superintendent Edington dealing with the interviews of February 15. In its edited version, which we approved, the second paragraph of the letter reads:

"This statement was not included in the original papers passed to you because at that time Detective Chief Inspector Wilson of the Metropolitan Police was involved, and any disclosure of his identity could have placed him in considerable personal danger."

We were also shown an extract from a report made by Detective Chief Superintendent Nevill on September 11, 1974, which refers to the interview and which states, "For security reasons it is requested that Detective Chief Inspector Wilson is not called to give evidence unless it is absolutely vital."

The inference must be that the motive for the decision to withhold the interviews from disclosure, and to refer to them in correspondence in terms which can only be described as misleading, was concern for the safety of Detective Chief Inspector Wilson and fear of jeopardising the anti-terrorist activities upon which he was engaged. The motive was right. The decision was wrong. There should have been no difficulty in putting the substance of the interviews before the jury with the co-operation of the defence, or by direction of the judge, without Detective Chief Inspector Wilson being involved. Indeed, there is no apparent reason why Detective

Superintendent Edington and Detective Chief Superintendent Nevill should not have dealt with, at any rate, the bulk of the interviews in their evidence (both of them were called as witnesses, but did not refer to the interviews) without Detective Chief Inspector Wilson making an appearance. It was wholly wrong for Mr Walsh to draft, and for Mr Bibby to adopt, the language of the letter of September 26, 1974. This letter seriously misrepresented the position. It was calculated to give the impression to the defence that the interviews were of no material significance and that is precisely what it did. Mr Ollier told us that, "Having regard to the contents of that paragraph I took the view, rightly or wrongly, that [the interviews] were not relevant." It is true that most of the matters discussed in the interviews were also discussed in other interviews and statements of which the jury were made aware, but the jury did not know of the appellant's denials of "guilty" in the answers which we have quoted. The appellant was entitled to have these details taken into account and set against what he had said in her interview with Detective Sergeant Hayes and in her written statement of the previous day. The non-disclosure of the interviews of February 15 amounted to a material irregularity in the course of her trial.

There are three other matters of which complaint is made in this category and which require mention. The first is the non-disclosure of the fact that statements had been taken from Joseph Mooney, Brendan Magill and Alexander Rowntree, all of whom had been named by the appellant at various times as being implicated in terrorist offences. No evidence was found to support the allegations made against them. All of them, in their statements, admitted knowing the appellant but denied the assertions which she had made against them. The names and addresses of these witnesses and the fact that they had made statements, if no more, were plainly disclosable to the defence under the Bryant and Dickson rule.

The second matter concerns Joseph Mooney. In his case the non-disclosure went a stage further. He had made statements to the police in February and May 1974 and the address which he gave was 72 Dyne Road, Kilburn. We have mentioned that, when first detained in Liverpool on February 14, 1974, the appellant had spoken of staying with a Jane Rooney of that address and had repeated this in her statement, exhibit 38, of the same day. In her interviews with Detective Chief Inspector Wilson, and on later occasions, she spoke of Jane Mooney and Joe Mooney as living at that same address. Although Mr Ollier had difficulty in remembering the details of the event, he was able to tell us, by reference to his files, that he had taken out a witness summons in the name of a Miss Jane Mooney on September 16, 1974, and had visited 72 Dyne Road the following day with a view to speaking to her or to Mr Joseph Mooney. According to his file note, he was told on his arrival that no-one of the name of

Mooney lived there.

On September 18, 1974, Mr Ollier wrote a letter which referred to the fact that he had had the opportunity of interviewing a Mrs Perera and Elaine Gateley. The letter to the Director of Public Prosecutions continued:

"They inform us that they have been interviewed by the Prosecution and that statements had been taken from them. We are extremely surprised to learn this in view of the fact that where the Prosecution have taken a statement from a person whom they know can give material evidence but decide not to call them, they are under a duty to make that person available for the defence. The authority for this is R v Bryant and Dickson. We shall be obliged if you will kindly confirm that there are no other persons from whom a statement has been taken who can give material evidence but whom the prosecution have decided not to call. If so, will you kindly let us have their names and addresses immediately.

In particular, will you kindly inform us whether the prosecution have interviewed a Joe Mooney or a Jane Mooney both formerly of 72 Dyne Road, Kilburn, London. If so, will you kindly inform us of their present whereabouts."

A reply was sent from the Director of Public Prosecutions' office on September 23, 1974. It was signed by Mr Bourke but drafted by Mr Bibby. It said:

"I thank you for your letter of 18th September which will have crossed my letter of 18th September.

Extensive enquiries have been made in the Kilburn area by the police, and no trace of the existence of a Joe Mooney or a Jane Mooney has been found."

It will be noted that Mr Ollier's emphatic reminder of the rule in Bryant and Dickson was not acknowledged and appears to have remained entirely unheeded. The second paragraph of the letter was, of course, simply wrong so far as Joseph Mooney was concerned. As we have said, he had made statements to the police giving the address 72 Dyne Road in February and in May 1974. These statements were actually forwarded by the police to the Director of Public Prosecutions, though we cannot be certain that this occurred before September 23. At all events, Mr Bibby told us that he was sure that he would have checked with the police before drafting the letter of that date. His recollection of the incident was faint but he thought that he had spoken to an officer in the Bomb Squad. He could not remember who the officer was, save that it was not one with whom he

normally dealt.

Finally, under this heading, we must deal with the appellant's complaints that her advisers never received the medical reports of Dr Lawson and Dr Mather. As will be seen, Dr Lawson made two full reports upon the appellant. The first, which was in handwriting and was presumably an internal prison service report, was on July 6, 1974. The second, which was addressed to the Director of Public Prosecutions, was made on September 4, 1974. Dr Mather, who was consulted as an independent psychiatrist, made his report to the Director of Public Prosecutions on September 18, 1974. These reports reveal that on July 5, 1974, the appellant had attempted to commit suicide and had been diagnosed by Dr Lawson as suffering from an acute psychotic depression. In evidence before us Mr Ollier said that he felt quite confident in saying that he had not seen them, "because those reports indicate that she had a psychiatric problem and that issue was not a matter which I took into consideration at the trial but I would have done if I had seen those reports."

Mr Bibby and Mr Sage were confident, for their part, that the medical reports must have been sent to Mr Ollier. They said that it was standard procedure in a murder case. Copies would go automatically to the Court, to the prosecution, and to the defence. Mr Sage spoke of a printed form which would be at the front of the file in a murder case, setting out a list of matters to be recorded and these matters would include the receipt and despatch of medical reports. There was, however, no such form in the appellant's file and Mr Bibby thought that the form did not come into existence until after 1974. When asked by the court what system was in existence for despatching material to Mr Ollier, he said that there was no system; he was in regular contact with Mr Sage and they dealt with the matter between them.

Mr Bibby and Mr Sage confirmed that there was no letter or other record on the file covering the forwarding of the medical reports to Mr Ollier. At one stage, Mr Bibby suggested that he might have handed them to Mr Sage on one of the latter's visits to the Director of Public Prosecutions' office in London, so that Mr Sage could deliver them personally to Mr Ollier and defence counsel, but Mr Sage was sure that this had not occurred.

All that does appear from the office diary and correspondence file is that: (1) on August 21, 1974, a note was sent to prosecuting counsel telling them of the appellant's suicide attempt; (2) on August 23, 1974, Dr Lawson telephoned the Director of Public Prosecutions' office asking for the depositions and saying that an independent psychiatrist had been called in: the papers were sent to him that day together with a covering letter in standard form signed by Mr Bibby; (3) in response to a telephone call on September 3, Dr

Lawson said that the reports would arrive early next week: the diary note adds, "nothing in them"; (4) on September 9 the prison medical officer's report (in the singular –– presumably Dr Lawson's report of September 4) is noted as having been received and despatched to the copying room; (5) on September 11 copies of the report were sent to the three prosecuting counsel, to Mr Bibby and to New Scotland Yard and the Thames Valley and West Yorkshire Police; and (6) on September 19 the Director of Public Prosecutions' office in London received a letter from Dr Mather enclosing his report: there is a note on the letter in Mr Bibby's handwriting saying, "12 copies of this report, please."

This last note is consistent, and Mr Langdale submits only consistent, with the standard procedure being followed and with sufficient copies of the report being obtained for the defence as well as the court, the prosecution and the police.

We are bound to say, however, that in the absence of any comprehensive system for recording the receipt and despatch of reports and other material, it cannot, in our view, be assumed that the standard procedure was followed. On the contrary, such records as do exist seem to us to point in the opposite direction, at any rate so far as Dr Lawson's report is concerned. It is to be noted that the information about the suicide attempt of July 5 is recorded as having been given to the prosecution lawyers but not to the defence lawyers and similarly that Dr Lawson's report is recorded as having been sent to the prosecution lawyers and the police but not to the defence. Further, we think it most unlikely that Mr Ollier and the very experienced counsel (Mr Andrew Rankin, QC), who represented the appellant at her trial, would have omitted to obtain a further psychiatric report upon the appellant if they had seen Dr Lawson's report to the Director of Public Prosecutions. (Dr Mather's report was much more favourable and might not have aroused concern.) Whether further psychiatric advise at that stage would have led to a diagnosis of mental disorder, of the kind now made by Dr McKeith and Dr Bowden is, of course, another matter and one upon which we cannot usefully speculate. There is no question, however, but that the reports should have been seen by the appellant's advisers and we think it is established on the balance of probability that Dr Lawson's at least was not. It is not suggested that the reports were deliberately withheld from the defence by Mr Bibby but the failure to disclose them both was nonetheless a material irregularity.

3. Doctor Lawson and Doctor Mather

As we have said, Dr Lawson made two full reports upon the appellant. The handwritten report dated July 6, 1974, was evidently prompted by the suicide attempt which had occurred during the previous night. The reports states:

"Ward appeared very well until 5–7–74, when the discipline staff noted that her mood was changing, and about 23.00 hours on this day, she scratched her L wrist. The wound was trivial, but the desire for death was acute.

When I examined her at length on 6–7–74 she was withdrawn, tearful, retarded, silent and intensely suicidal. In short, she has an acute psychotic depression of rapid onset. At this stage, I feel I must say, that precipitate or impulsive action would be most unwise, and that for the present, the clinical management should remain at Risley.

At the moment, Judith Ward is unfit to plead and it must be faced squarely, that her life is in some danger. In short we have an acute psychiatric emergency on our hands."

The report goes on to discuss the political implications and dangers of the appellant's illness and possible death and the need to be prepared for a possible leakage of information. Dr Lawson describes himself as "satisfied that she is NOT malingering nor has she produced these symptoms in some attempt to evade trial." He says it is obvious that the Crown will require independent psychiatric opinion and that he intends to consult Dr Mather. It is plain that although the appellant's self–inflicted wounds were trivial in themselves, the incident was regarded by Dr Lawson as one of the utmost gravity. His report of July 6, 1974, was not sent to the Director of Public Prosecutions and appears to have remained undisclosed until now. We make no criticism on that score because, as we have said, it was evidently an internal report.

In his typewritten report to the Director of Public Prosecutions of September 4, 1974, Dr Lawson presents a more reassuring picture. It says:

"She was committed for trial to Wakefield Crown Court on 24th June, 1974 and on the 6th July, 1974 it was reported to me that her behaviour had changed." [We interpose to observe that the appellant was, in fact, committed for trial on 11th June. On 24th June there had been a pre–trial hearing before Cumming–Bruce J]. "Up to this time she had been alert, and surprisingly cheerful. However on 6th July, 1974 she managed to scratch her wrist in some way and when I saw her she was withdrawn, retarded, silent, tearful and intensely suicidal. At this stage it was obvious she had an acute psychotic depression and as she was refusing medication, I did consider her life to be in danger. However, due to the efforts of our very devoted and disciplined staff she was persuaded to take treatment and she gradually improved. In view of the serious nature of the case, I asked Dr H Northage Mather –– Consultant Psychiatrist –– to

see her as an independent Psychiatrist on behalf of the Crown. He agreed with my diagnosis and treatment and by the 12th July we were satisfied that Ward was improving and by 1st August, 1974, we classified her ’relieved.’"

What this report does not disclose is that there had been a further incident on August 24, when the appellant had damaged her wrists. This was discovered by Dr MacKeith when he studied the Risley notes and records concerning the appellant. He found a letter written by Prison Officer Scott to the governor on that day, stating that:

"I report for your information that at 10.50 pm the female night orderly officer, S/O Martin, informed me that she suspected that this inmate was attempting to cut her wrists .

On my arriving at the female wing her cell was unlocked and she was examined by the Hospital sister. Ward had minute abrasions on both wrists. They appeared to have been caused by her rubbing them on the bed straps.

As she was upset and very emotional, I instructed the female night orderly officer to put her Category A staff on special watch, as has been the routine over the past few weeks and to fully report the matter to the medical officer am.

The Hospital sister gave her medication, and she spent a restful night.

Dr Lawson was in the prison on another matter, and I informed him of Ward’s state."

There is a handwritten note at the bottom of the letter, in writing other than that of Prison Officer Scott, saying, "To Dr Lawson for information please."

There is also a letter to the governor dated August 25, 1974, from S/O Martin, who had been keeping the appellant under observation. The letter says:

"She settled down to sleep, eyes closed, and about 5 minutes later it appeared as though she was rubbing her wrists under the covers.

. . . it was found both Ward’s wrists were scratched. It was decided to have a night officer with her for the rest of the night. Ward stated she hadn’t done this because she was locked up or worried about her trial. Refused to state reason . . ."

In giving evidence before us Dr Lawson stated that he had no

recollection of the incident whatever. At first he was inclined to suggest that he might have been on holiday at the time, but when shown the letter from Prison Officer Scott he accepted that the incident must have been reported to him. He was wholly unable to offer an explanation for his apparent failure to take any action in the matter, save that at Risley he was working under great pressure and with inadequate resources. He denied that, when he wrote the report, he was toning things down. He said that he thought he had signalled his views of the appellant's mental state loud and clear in the first sentence of his opinion in which he had said:

"I would say at this stage that Ward cannot be described as a very truthful person, in that she has changed her story to me several times and I have never been satisfied that she has been as horror struck by the incident, as she claims to be."

He said that he was amazed when he was not called to give evidence at the appellant's trial, and was very surprised that no psychiatrist was instructed on her behalf.

It is clear that when writing his report of September 4, 1974, Dr Lawson did tone things down, quite apart from his failure to record the incident of August 24. The report states that by August 1 the appellant was classified as "relieved," but Dr Lawson's note of August 2 describes her merely as "improved" and adds that "treatment requires to be maintained." On August 9 he noted, "Today she is weeping, withdrawn and silent as she was in early July." It was not until August 21 that Dr Lawson felt able to report to the Governor: "This inmate's clinical condition is now satisfactory."

This accords with a letter written by Dr Lawson to the Regional Principal Medical Officer on November 23, 1982, in which he said: "During the remand period she had a severe reactive depression between July 6 and August 21."

We must add that we are unable to accept Dr Lawson's statement that he had signalled his views of the appellant's mental state loud and clear in the first sentence of his opinion, which we have quoted above. That sentence records, in muted terms, Dr Lawson's assessment of the appellant's powers of deception and self–deception, but it fails to meet Mr Mansfield's submission that Dr Lawson had put the interests of secrecy and of security before the interests of the appellant who was his patient. Dr Lawson admitted that he had not told the appellant's family, let alone her solicitor, about the acute psychosis which he had diagnosed.

Dr Mather's report, dated September 18, 1974, dealt with the subject in these terms:

"On July 6, 1974, it is reported that her behaviour changed, that she scratched her wrist with a needle, became withdrawn, tearful and suicidal, refusing to speak. She was kept under constant supervision and an anti−depressant drug was prescribed for her. To this she responded rapidly and has been quite well ever since."

Thus his report too made no mention of the incident on August 24, and gave the impression of a prompt and complete recovery from the incident of July 6. Dr Mather had visited the appellant at Risley on July 13 and September 17, and had kept in touch with Dr Lawson by telephone. He stated in his evidence that he was aware of the second suicide attempt but when asked what was said about it by him and Dr Lawson he answered: "That I cannot tell you. I cannot remember." Asked if it did not alert him possibly to the fact that she had not recovered and was still prone to suicide he answered: "Not particularly, because one quite often gets behaviour of attempted suicides and this sort of thing in a large remand prison." When asked again by the Court whether he did not attach significance to the injury to the wrists on August 24 he answered: "Not particularly, no."

These answers are astonishing both in their own right, and in the light of the anxiety caused by the earlier wrist cutting incident.

We can only assume that if the incident of August 24 in fact registered in Dr Lawson’s mind and was notified to Dr Mather (as to which we feel considerable doubt, despite Dr Mather’s recollection that he was aware of it) then both doctors must have succeeded in persuading themselves that it was of no significance. Its non−disclosure nonetheless plainly amounts to a material irregularity. If it had been disclosed, together with the other information contained in the reports of Dr Lawson and Dr Mather, it was evidence which established beyond doubt that the defence required the assistance of psychiatric advice.

(4) The non−disclosure of evidence by the forensic scientists who gave evidence for the prosecution is a matter whose significance must be considered in the context of the scientific evidence as a whole. To this we now turn.

The scientific evidence: Grounds of Appeal A and D

The role of the prosecution’s scientific evidence at the trial of Miss Ward was to lend cogent support to the reliability of her confessions. The confessions of Miss Ward amounted to a clear acknowledgment by her that she had played a part in causing the explosions at Euston Station, on the coach travelling along the M62 motorway and at the National Defence College, Latimer. But at the

trial there was a real issue about the reliability of Miss Ward's confessions, and about the truth of what she had said in the confessions. By and large the defence accepted that she had made the statements attributed to her by the police but Miss Ward testified, and the defence argued, that the confessions were untrue. The scientific evidence was the basis on which the prosecution asserted that Miss Ward had at critical times been in contact with NG in relation to all three explosions. Given that Miss Ward denied that she had been in contact with explosives, the scientific evidence led by the prosecution struck at the heart of Miss Ward's credibility. To the jury a combination of her confessions, and the supporting scientific evidence linked with all three explosions, would have seemed compelling proof of Miss Ward's guilt.

The shape of the prosecution's scientific case

Newspaper reports for Saturday, November 2, 1974, stated that on the previous day Waller J had made some trenchant comments to the jury about the defence case. The judge apparently said:

". . . that Miss Ward's case, in a nutshell, as put by Mr Andrew Rankin, QC, for the defence, was that she was a pathological liar and, once [the jury] had found she was telling lies about one thing, they could not tell what was true or false.

The case was also that, although there had been four occasions in six or eight months when something resembling traces of nitroglycerine had been found either on Miss Ward or on her belongings, 'this was the most appalling series of coincidences.'

. . . the defence contended that 'the first one must have come from debris; the second was found in a caravan which most unfortunately must have been used by a safe blower, and the last two were found by somebody who drew the wrong conclusions from his test.'"

It will be noted that the judge referred to four occasions when something resembling NG had been found either on Miss Ward or on her belongings. It is right that we should describe those four occasions straight away.

The first occasion was, when at 11.20 pm on September 10, 1973, some 10 hours after the Euston Station explosion, swabs were taken from the hands and under the fingernails of James Diamond, Elaine Gateley and Miss Ward. The samples were tested at the laboratory of the forensic section of the Research and Development Establishment ("RARDE") at Woolwich. At the trial the prosecution led evidence that the tests on swabs from Miss Ward showed "faint traces" of NG. This conclusion was not disputed but the defence contended that Miss

Ward had been accidentally contaminated, directly or via Diamond, by debris from the explosion.

The second occasion involved a duffle bag and a raffia bag which Miss Ward had placed on a train which left Euston Station at 11.15 pm on February 11, 1974. At the trial Dr Skuse, a chemist from the Home Office Forensic Science Laboratory at Chorley, testified that swabs from the duffle bag gave a positive test result for NG. The defence case was that a proper identification of NG had not been established. This occasion came seven days after the M62 explosion, and 10 days before the explosion at Latimer. The prosecution case was that these test results established a link between Miss Ward and the explosion at Latimer. The third occasion must now be described.

After Miss Ward was taken into custody in Liverpool on February 14 Dr Skuse took swabs from her hands and under her fingernails. Dr Skuse was satisfied that the tests revealed a positive reaction for a substance similar to NG. At the trial the issue was whether this finding was correct. The prosecution contended that this occasion was linked with the explosion at Latimer.

The fourth occasion relied on by the prosecution related back to the period during which Miss Ward had stayed in the caravan at Chipping Norton. It will be recalled that after a brief stay at Chipping Norton Miss Ward packed her belongings and left the caravan on February 4. That was the very day on which the M62 coach explosion took place. The relevance of this occasion depends on swabs taken inside the caravan at Chipping Norton at midnight on February 21 by Mr Higgs (the head of the forensic section of RARDE) and on swabs taken on February 25 by Mr Elliott (a Higher Scientific Officer of RARDE) inside the caravan after it had been moved to Woolwich. The prosecution case was that this evidence linked Miss Ward with the M62 explosion. This is all that needs to be said by way of introduction about the context of the four occasions on which the prosecution alleged that there was NG, or something similar, on the person of Miss Ward or on her belongings. It will now be convenient to group our discussion of the test results under three headings, namely the test results of the Euston samples, the caravan samples and the samples taken by Dr Skuse, the latter test results covering both samples taken from Miss Ward’s hands and under her fingernails as well as test results of swabs from the duffle bag.

The scientific tests

In the IRA bombing campaign in mainland Britain during 1973 and 1974 the IRA used NG as an explosive substance, sometimes with an addition of dinitrotoluene ("DNT") to give it greater explosive force. NG is a pale yellow, heavy oily substance which explodes with

great violence when subjected to sudden shock or detonation. By 1973 various tests had been developed to detect the presence of NG. There was the Griess test of which there were several variants. It is a test which is designed to detect nitrite. Since nitrite is not present as such in NG, caustic soda is used to convert NG to nitrite. The addition of the Griess reagent to a material containing nitrite results in the development of a pink colour within 10 seconds. It was regarded as a preliminary test which, if positive, would lead to the application of the more sensitive thin layer chromatography test ("TLC"). In a memorandum dated May 22, 1991, Dr AW Scaplehorn of the Defence Research Agency described this technique as follows:

"Thin layer chromatography (TLC) is a technique whereby a mixture of substances in solution can be separated from each by applying them to one side of a flat plate coated with absorbent inert material such as silica or alumina. The insertion of the edge of the plate where the mixture has been spotted into a solvent causes the components of the mixture to migrate up the plate and the distance travelled is governed amongst other things by the chemical nature of the compound and the solvent. Different compounds will travel different distances in relation to the solvent front."

The test is performed with a suspect sample and a control sample. It is common ground that the distance travelled by each spot from its starting point is characteristic of the compound forming the spot, and this assists in the identification of the compound. The distance is conventionally measured relative to the final distance travelled by the eluent (the solvent). The ratio of the distances is known as the Rf value for the compound. If the suspect sample travels the same distance as the control sample, and it turns pink when a Griess reagent is applied, NG has been identified.

In this case samples were sent to the Home Office Research Establishment at Aldermaston for Gas Chromatography/Mass Spectrometry ("GCMS") tests to be done. The samples were rejected as unacceptable and no GCMS testing took place.

The test results

It will now be necessary to examine with as much precision as possible the test results in respect of the swabs taken at Euston, in Liverpool and in the caravan. This exercise is possible in respect of the Euston and caravan test results in the light of contemporary RARDE chemical analysis sheets and notebooks which were disclosed in 1991. Unfortunately, the corresponding documentation for Dr Skuse’s test results is no longer available.

On September 10, 1973, Detective Sergeant Brian Vickery collected the swabs at Euston. He used hand test kits issued by the laboratory at Woolwich. He took swabs from the hands and under the fingernails of James Diamond, Elaine Gateley and Miss Ward. The samples were analysed by TLC in the laboratory at Woolwich. Mr Elliott was in charge. It is now clear from chemical analysis sheets, which were disclosed by RARDE in 1991, that the test results were as follows:

	Dry swab		Nitroglycerin Ether swab		Nail Scrapings	
	Right	Left	Right	Left	Right	Left
James Diamond	positive	positive	positive	positive	trace	trace
Elaine Gateley	trace	trace	trace	trace	trace	negative
Judith Ward	faint	negative	faint	negative	negative	negative
	trace		trace			

Exactly the same results were recorded for DNT.

On February 14, 1974, Dr Skuse took a series of samples from Miss Ward at the Merseyside Police Headquarters in Liverpool. He took swabs from Miss Ward’s right and left hands and from her right and left fingernail crevices. On February 15 and 16, 1974, he took samples from her eternity ring and from her brown duffle bag. Using the modified Griess test Dr Skuse obtained positive results from the presence of NG in respect of the fingernail swabs, the eternity ring and the brown duffle bag. These tests were done at the police station. Subsequently, in a laboratory, Dr Skuse attempted to confirm by TLC the presence of NG in the swabs taken under Miss Ward’s fingernails. The TLC result was negative in respect of the swabs from the right fingernail crevices. But in the case of swabs taken from the left fingernail crevices Dr Skuse professed to see a spot at the same position as NG was seen. He described it as a shadow and colourless. In due course Dr Skuse was to testify that this test supported his view that NG was present. Dr Skuse sent swabs taken from Miss Ward’s fingernails to Aldermaston for GCMS testing but as we have said the testing did not take place. No confirmatory tests were done in respect of the samples from the eternity ring and the duffle bag: lack of intensity on the Griess test made Dr Skuse believe that it would be pointless to try.

That brings us to the series of samples taken from the caravan by Mr Higgs on February 21 and by Mr Elliott on February 25. Mr Higgs took his swabs under the bed and in adjoining areas. There is before us a chemical analysis sheet which shows that the TLC process yielded negative results in respect of all samples except one from under the bed which was entered as "NF Rf = 0.50 v faint + ve." Mr Elliott took further samples from the floor under the bed and at the bottom of the cupboard. The chemical analysis sheet records in respect of the first showed "NG + ve v faint trace" and in respect of the second "NG + ve (faint)." The laboratory notes give Rf values of

0.07, 0.10 and 0.05 for the three caravan test results. The chemical analysis sheets and the laboratory notes were disclosed by RARDE in 1991.

The pre−trial disclosure of the scientific evidence

Mr Mansfield, QC asked us to examine the adequacy and fairness of the pretrial disclosure of scientific evidence. He did not allege that any staff member of the Director of Public Prosecution's office, or prosecuting counsel, failed to disclose any material scientific evidence. On the contrary, the thrust of Mr Mansfield's submission is that government forensic scientists, acting on their own, concealed from the prosecution, the defence and the court matters material to the issues in the case. Mr Mansfield's criticism was directed at the conduct of three senior RARDE officials, namely Mr Higgs, Mr Elliott and Mr Berryman. Mr Mansfield did not suggest that the other members of the RARDE staff, that is Mr Lidstone, Miss Brooker and Mrs Keeble withheld information. Nor did Mr Mansfield contend that Dr Skuse withheld information.

That brings us to an examination of the non−disclosure alleged by Mr Mansfield. The starting point must be the Euston swabs. The chemical analysis sheets showed only two faint traces in respect of hand swabs in the case of Miss Ward, and more positive results in the case of Gateley and still more positive results in the case of Diamond. That was important since it was not alleged by the prosecution that Gateley and Diamond were involved in the Euston explosion. The relevant witness statement is that of Mr Elliott dated February 18, 1974. It was served on the defence and used at the committal proceedings. In respect of the Euston test Mr Elliott simply stated: "All gave positive results from Nitroglycerine and Dinitrotoluene." This was a misleading statement for which Mr Elliott was responsible. The statement failed to distinguish between the test results for Diamond, Gateley and Miss Ward. Moreover, it was an overstatement to describe "a faint trace" simply as "positive." If the true results had been revealed we believe that the defence might have contested the conclusion that NG was present on Miss Ward or her belongings. In any event, the fact that only a faint trace was involved was relevant to the possibility of contamination. It was also wrong for the prosecution to serve such an uninformative witness statement on behalf of a forensic scientist. It was calculated to make it more difficult for the defence experts to probe the matter.

Dr Skuse's statement is dated February 25, 1974. It was served on the defence and used at the committal proceedings. The relevant part of the statement reads as follows:

"A positive colour reaction for a substance similar to nitroglycerine has been obtained from each of the swabs FS3 and FS4 [fingernail scrapings] and item 47 [the ring]. No confirmatory test for nitroglycerine was obtained from these swabs. Negative tests for ammonium and nitrate were obtained from these swabs. The examination of these items is consistent with the opinion that contact of the hands with an explosive substance could have occurred. Item 45 is a brown fabric bag [the duffle bag] fitted with a string grip. The bag and grip were swabbed and positive colour reactions were obtained for a substance similar to nitroglycerine and ammonium ion a part component of ammonium nitrate.

No confirmatory tests for nitroglycerine and ammonium ion were obtained. A negative test for nitrate was obtained from these swabs.

The examination of these items is consistent with the opinion that contact of the inside of the bag and commercial explosive has probably occurred."

This was not an unfair summary of the view which Dr Skuse apparently held. But it is noteworthy that at the trial Dr Skuse’s evidence became more positive in his insistence on what he believed to be the correct inferences to be drawn from his tests.

The prosecution evidence served in respect of the caravan tests must now be considered. Mr Higgs’ witness statement is dated March 25, 1974. This statement was served on the defence and used at the committal proceedings. Mr Higgs said that one of his samples gave on a TLC test "a positive result for nitroglycerine." That sample was apparently taken under the bed. Mr Higgs said that the samples taken by Mr Elliott on February 25 gave "a positive indication for nitroglycerine." Mr Higgs said that the positive results for samples taken under the bed on different days "could only have arisen from the placement thereon of a package, parcel or some form of container in which was contained a quantity of an explosive composition based on nitroglycerine." Mr Elliott’s witness statement is equally economical. He referred to the tests on the samples, which he took, and said: "From these results it is my opinion that explosive material has been present in the vehicle." On any view both statements overstated the position. The chemical analysis sheets recorded the results as "v faint," "v faint trace" and "faint". If the statements had disclosed the true position, it is likely that the defence experts would have probed this aspect. The statements were calculated to discourage investigation.

But Mr Mansfield’s complaint goes further. On September 27, 1974, Mr Higgs met Mr Clancey, the defence expert, at the caravan which was then at Kiddlington Police Headquarters. At that time it would still

have been possible for Mr Clancey to take further swabs. Mr Higgs said to Mr Clancey that the TLC "definitely" established the presence of NG. That was a considerable overstatement of the true position. Relying on Mr Higgs' assurance Mr Clancey did not take further samples. The inaccurate statements of Mr Higgs and Mr Elliott caused the defence to concede that the test results established the presence of NG in the caravan. Mr Elliott has died. We did, however, have the benefit of hearing Mr Higgs' explanations in oral evidence. We find that Mr Higgs did not wish to reveal anything which might encourage investigation by the defence. He did not want to disclose the faintness of the traces or the details of the Rf values which were recorded in the laboratory notes.

So far we have discussed in general terms the inadequacy of disclosure of scientific evidence in the pre−trial process. It will now be convenient to discuss three specific challenges made by Mr Mansfield in respect of non−disclosure by the three RARDE forensic scientists, namely about discrepancies in Rf values, the conclusions drawn from certain boot polish experiments and the results of certain firing cell tests.

Non−disclosure of Rf values

At trial Mr Higgs said that for a positive TLC test to be recorded the centre of the control spot must be in line with the centre of the suspect spot. Today there is general agreement among responsible scientists that on a TLC test there must be a maximum variation of 0.03 before a suspect sample can be declared positive. There was some dispute at the trial about the question whether there was a practice regarding permissible variation in 1974. We are not satisfied that in 1974 any specific figure was accepted as a maximum variation, but we are persuaded that in 1974 it was accepted at RARDE that if the variation exceeded 0.05 the identification of NG would have been regarded as unreliable, particularly if the recording for a sample was "very faint" or "faint."

There are no surviving records which enable us to determine the Rf values for the TLC tests performed on the Euston and Liverpool samples. But fortunately the chemical analysis sheets and laboratory notes for the caravan samples are now available. These documents show that the caravan test results were recorded as "very faint," "very faint trace" and "faint." On any view these recordings were at the margin of reportability. Given this context the details of the recorded Rf values is important. The details are as follows:

Mr Higgs' sample from under the bed Rf = 0.50 (v faint)

NG control sample	Rf = 0.57	Mr Elliott's sample from under the bed	Rf = 0.55 (v
NG control sample	Rf = 0.65	Mr Elliott's sample from the cupboard	Rf = 0.55 (f

NG control sample Rf = 0.60

The discrepancies therefore ranged from 0.05 to 0.1. Two of these discrepancies were beyond the acceptable maximum in 1974, and the third was in the grey area particularly in the light of recordings of "faint" and "very faint". If these discrepancies had been disclosed it would have weakened the prosecution case on the caravan samples; it would probably have caused the defence experts to challenge the validity of the caravan samples and it would probably have led to a parallel investigation of Rf values for the Euston and Liverpool TLC results which at that time would probably still have been available. It is sufficient to say that if the chemical analysis sheets and the laboratory notes for the caravan samples, or the substance of the information contained in those documents, had been disclosed in the pretrial process, the course of the deployment of the scientific evidence at the trial may have been different.

Non−disclosure of the shoe polish tests

The defence contention at the trial was that a TLC test can only be regarded as giving a positive result if the suspect spot matches the known NG spot both in position and colour. That involved saying that there might be a substance which produces a point in the right position for NG but which does not have the right colour. At the trial Mr Clancey said that there could be such a substance but he was unable to name one. That seemed a weakness in the defence case. But Mr Higgs, Mr Elliott and Mr Berryman had superior knowledge which they suppressed. In 1973 Mr Elliott had carried out control tests at the Woolwich laboratory on samples of 10 black shoe polishes to determine whether dyestuffs present in black shoe polish could interfere in the detection of NG and DNT by TLC. The result of those tests is summarised in a supplementary DRA Report dated March 1992 from Doctors RW Hiley, DN Marshall and A Scaplehorn, which was placed before us by the prosecution. The authors of the report pointed out that the dye described as Solvent Yellow 56 ("SY56") was found in some types of black shoe polish. Their conclusion was as follows:

"The primary discriminating factors in TLC analysis are Rf value and final spot colour. The dyestuff SY56 corresponds quite closely with NG in both respects, and is not a ’chemical curiosity’ but a substance which can be encountered in normal domestic life. It is not an explosive. The possibility that it might be confused with NG in TLC analysis must be carefully considered. . . .

In our view the possibility that the reported detections of NG in the caravan were in fact misidentifications of the dyestuff SY56 derived from shoe polish or another material is small but cannot be entirely excluded. Although our ether swab of shoe polish on a

linoleum tile failed to produce any detectable TLC spots it was clearly possible for spots to be obtained from shoes and shoe polish since these are recorded in case file PP5985."

Bearing in mind that the Euston and caravan test results established at the highest merely faint traces of the presence of NG, the significance of the experimental data regarding boot polish was obvious long before the trial began on October 3, 1974. And it was known in 1974 that the distinctive dyestuffs were present not only in certain boot polishes but also in a range of other commodities which were in common use. The results of these experiments were not revealed to the prosecution. Indeed in a RARDE memorandum, signed by Mr Higgs, in answer to a series of questions posed by prosecuting counsel, which was delivered to prosecuting counsel between September 3 and 11, 1974, Mr Higgs advised that there was no commodity which could on a TLC test mimic the reaction for NG in respect of colour, position and time of colour development. He added: "These three factors constitute an absolute test, in our opinion, for nitroglycerine." It is probable, we find, that the memorandum was the combined work of Mr Higgs, Mr Elliott and Mr Berryman. Having supervised the boot polish tests in 1973, Mr Elliott must have known that the advice to prosecuting counsel was incorrect and misleading. Mr Higgs said that he was unaware of these experimental data. He became head of the Woolwich laboratory in November 1973. He was an experienced chemist. He was the head of a closely knit team of five forensic scientists. It is in our judgment inconceivable that Mr Higgs was not aware of these experimental data. We reject Mr Higgs' evidence and find that he was fully aware of these data. But Mr Higgs did not want the prosecution and defence to know about these experiments. In short Mr Higgs' attitude was that he was not going to reveal data which might weaken the prosecution case. Mr Berryman also denied that he was aware of the boot polish tests. We are satisfied that he was aware of these experimental data. About the materiality of the boot polish experiments there is no argument. The results of the experiments should have been disclosed to the prosecution, the defence and the court.

Non−disclosure of the firing cell test results

Towards the end of February 1974 Mr Higgs, Mr Elliott and Mr Berryman knew that in respect of the Euston TLC results there would be an issue as to whether Miss Ward could have become contaminated by touching debris or as a result of physical contact with a companion. On February 26, 1974, a firing cell experiment was conducted at Woolwich. A recently disclosed RARDE notebook shows that a member of staff recorded a faint positive from one swab taken during the tests. This experiment was not disclosed before the trial. But at the trial Mr Higgs relied on it. He gave evidence on

October 16. The relevant passage in his evidence in chief reads as follows:

"(Q) Has any test been done as to whether their hands are contaminated by picking up debris? (A) We have a firing cell, my Lord, in which we fire off charges, and, on one occasion, a number of our staff went in and touched the walls and objects within the firing cell and the results were all negative."

This amounted to a disclosure of the experiment, in an attempt to assist the prosecution, but it was simply not true to say that all the results were negative. Even more importantly it now appears from the recently disclosed RARDE notebooks that between September 20 and October 4, 1974, in a firing cell at RARDE a series of further experiments were conducted. These experiments resulted in a number of positive results for the presence of NG on the hands of staff members who had touched objects in the firing cell. One such result related to the hands of Mr Higgs: it showed positive results for NG contamination to a degree described as "very heavy" and "extremely heavy." These experiments and their results should undoubtedly have been disclosed to the prosecution, the defence and the court. Mr Higgs agreed on this point. But he sought to distance himself from these results, in much the same way as he had tried to distance himself from the boot polish experiments in the present case, and from a series of second test results in the case against the Maguires: see Sir John May’s Interim Report on the Maguire Case, paras 11.13 to 11.20. Mr Higgs said that he had no recollection of the faint positive found on February 26, and he said that he must have attended the one subsequent test, in which the documents show that he undoubtedly participated, on what he in oral evidence described as a "blind basis." He said that he had not been involved in the other tests. And he said that when he testified at trial he had forgotten about the tests in September and on October 4.

Bearing in mind that (1) Mr Higgs was the head of a very small team, who conducted firing cell experiments with a view to using the results in evidence in the case against Miss Ward, and (2) that Mr Higgs was to be the senior RARDE witness at the trial of Miss Ward, we reject Mr Higgs’ account as a deliberate falsehood. We are conscious that we have not had the benefit of Mr Elliott’s explanations. But the evidence leaves us in no doubt that Mr Elliott knew of the firing cell tests, and was a party to the concealment of the results which were unfavourable to the prosecution case. Mr Berryman had set up the tests. He knew what the results were. In evidence before us he sought to deny the relevance of the tests. That was wholly implausible since he had made a statement on October 4, 1974, that is on the second day of the trial, in which he described, and misdescribed, the results of the firing cell tests on February 26, but failed to mention the firing cell tests with

positive results which had been going on in September 1974. We reject Mr Berryman's evidence as untrue. The consequence is that in a criminal trial involving grave charges three senior government forensic scientists deliberately withheld material experimental data on the ground that it might damage the prosecution case. Moreover Mr Higgs and Mr Berryman misled the court as to the state of their knowledge about the possibility of contamination occurring from the debris of an explosion. No doubt they judged that the records of the firing cell tests would forever remain confidential. They were wrong. But the records were only disclosed about 17 years after Miss Ward's conviction and imprisonment.

The scientific evidence at trial

It is now necessary to take stock of the deployment of the scientific evidence at trial. The starting point must again be the results of the tests done on the Euston samples. At the trial Mr Elliott gave evidence that the TLC tests revealed "positive" results in respect of Diamond, "traces" in respect of Gateley and "faint traces" in respect of Miss Ward. Mr Higgs' evidence was to the same effect. That redressed Mr Higgs earlier misleading witness statements about the precise test results to a considerable extent. But the full test results in respect of all there were not produced even at trial.

Mr Higgs and Mr Elliott gave evidence about the caravan test results. Both described the relevant results as positive. Neither revealed that the true findings were "v faint," "v faint trace" and "faint". We are satisfied that both must have looked at the actual results as set out in RARDE laboratory notes and chemical analysis sheets before they gave evidence. They must have known that they were over−stating the prosecution case.

Dr Skuse's evidence was along the lines of his witness statement. He insisted that his Griess test results showed that Miss Ward had probably been in contact with a commercial explosive. He also testified that a TLC test of a swab taken under the left fingernail reinforced his view despite the fact that the suspect spot did not turn pink or anything like it. He was cross−examined on these points but refused to budge. If the jury chose to accept Dr Skuse's evidence, as they probably did, it followed that Miss Ward had NG on her person some 57 hours after the explosion at Latimer.

During their oral evidence on the caravan test results Mr Higgs and Mr Elliott did not mention the discrepant Rf values. This is the more surprising since the question of Rf values was canvassed during the oral evidence.

Mr Higgs, Mr Elliott and Mr Berryman, who knew of the significance of the boot polish tests, never mentioned these tests in their oral evidence. They would have appreciated that these experimental data revealed a risk of misidentification of NG, particularly when the findings were recorded only as "v faint trace" or "faint trace."

On the question of the risk of contamination as a result of Miss Ward handling debris, or more realistically as a result of contact between Miss Ward and Diamond, the three senior RARDE forensic scientists put forward a solid front. They were prepared to exclude it as a realistic possibility. They mentioned the firing cell test of February 26 but wrongly stated that the results were all negative. They professed to have no knowledge of the possibility of such contamination occurring. They made no mention of the positive firing cell tests in September and October 1974. They misrepresented the position to the court.

Conclusions on ground A: material non−disclosure

It is necessary to consider the impact of the legal rules governing the disclosure by the prosecution of material scientific evidence. An incident of a defendant’s right to a fair trial is a right to timely disclosure by the prosecution of all material matters which affect the scientific case relied on by the prosecution, that is, whether such matters strengthen or weaken the prosecution case or assist the defence case. This duty exists whether or not a specific request for disclosure of details of scientific evidence is made by the defence. Moreover, this duty is continuous: it applies not only in the pre−trial period but also throughout the trial. The materiality of evidence on the scientific side of a case may sometimes be overlooked before a trial. If the significance of the evidence becomes clear during the trial there must be an immediate disclosure to the defence. These propositions were already established in 1974, and decisions such as Leyland Justices, ex p Hawthorn, (supra) merely served to reinforce the generality of the legal duty of fair disclosure.

In Miss Ward’s case the disclosure of scientific evidence was woefully deficient. Three senior RARDE scientists took the law into their own hands, and concealed from the prosecution, the defence and the court, matters which might have changed the course of the trial. The catalogue of lamentable omissions included failures to reveal actual test results, the failure to reveal discrepant Rf values, the suppression of the boot polish experimental data, the misrepresentation of the first firing cell test results, the concealment of subsequent positive firing cell test results, economical witness statements calculated to obstruct enquiry by the defence, and, most important of all, oral evidence at the trial in the course of which senior RARDE scientists knowingly placed a false

and distorted scientific picture before the jury. It is in our judgment also a necessary inference that the three senior RARDE forensic scientists acted in concert in withholding material evidence. Common sense suggests that none of them would have wanted a sudden revelation of the suppressed material at the trial. It is pointless to try to add up the number of failures which amount to material irregularities. It is sufficient to say that cumulatively the failures amount to a material irregularity which, on its own, would undoubtedly have required us to quash Miss Ward's conviction. The application of the proviso would have been out of the question. On the scientific case deployed against her Miss Ward did not have a fair trial. Our law does not tolerate a conviction to be secured by ambush. For the future it is important to consider why scientists acted as they did. For lawyers, jurors and judges a forensic scientist conjures up the image of a man in a white coat working in a laboratory, approaching his task with cold neutrality, and dedicated only to the pursuit of scientific truth. It is a sombre thought that the reality is sometimes different. Forensic scientists may become partisan. The very fact that the police seek their assistance may create a relationship between the police and the forensic scientists. And the adversarial character of the proceedings tend to promote this process. Forensic scientists employed by the government may come to see their function as helping the police. They may lose their objectivity. That is what must have happened in this case. It is illustrated by the catalogue of non−disclosure which we have set out. But in oral evidence before us Mr Higgs came close to giving an insight into the philosophy of the senior RARDE forensic scientists in 1974. His answers in oral evidence were as follows:

(Q) You did not tell Mr Clancey that you had used a vapour detector, did you? (A) No, but the policy at Woolwich was that you answered questions for scientists for the defence; you do not proffer information. (Q) Was it? (A) Yes. You give them every assistance to investigate what they want, but you did not in fact necessarily say what you had yourself found out. (Q) You were careful about what you said, to use your words on another occasion. Is that right? (A) I think that is right, yes. That was the policy I seemed to be following, as guided by the people who were there before me."

At a conference after the trial of the Maguires in 1976, which was attended by a large number of forensic scientists, Mr Higgs gave the following explanation:

"What did worry us however, was that we were not able to satisfactorily distinguish between NG and PETN using toluene as eluant. However, this point never really cropped up during the trial. We were all very careful about what not to say in this respect. I know this is not entirely a satisfactory scientific

viewpoint, but we took the view that for a given amount of explosive we could distinguish PETN by the slower rate of colour development."

PETN is another explosive substance. The validity of Mr Higgs' comments on possible confusion between the two explosives does not matter. What does matter is the revelation that there was an understanding among the senior RARDE forensic scientists that nothing would be said about their doubts at the trial. It is this attitude which, for example, led Mr Higgs at the trial to explain the results of the testing of the caravan samples in terms which amounted at least to suppressio veri and probably to suggestio falsi. It also led Mr Higgs, Mr Elliott and Mr Berryman to conceal the positive firing cell test results. The disinclination by the RARDE forensic scientists to assist the defence was also a feature of the Maguire case: see Sir John May's Interim Report on the Maguire case, paras 12.1 to 12.4. And in the present case Mr Higgs, Mr Elliott and Mr Berryman had plainly succumbed to the dangers of partisanship. They misled both the prosecution and the defence in order to promote a cause which they had made their own, namely that Miss Ward had been in contact with NG.

What are the lessons to be learnt from this miscarriage of justice? The law is of necessity concerned with practical affairs, and it cannot effectively guard against all the failings of those who play a part in the criminal justice system. But that sombre realism does not relieve us, as judges, from persevering in the task to ensure that the law, practice and methods of trial should be developed so as to reduce the risk of conviction of the innocent to an absolute minimum. At the same time we are very much alive to the fact that, although the avoidance of the conviction of the innocent must unquestionably be the primary consideration, the public interest would not be served by a multiplicity of rules which merely impede effective law enforcement. Recognising that the Royal Commission on Criminal Justice will no doubt consider the subject of scientific evidence in criminal trials in depth, we propose to limit our observations about the lessons to be learnt to two matters which we regard as of critical importance. First, we have identified the cause of the injustice done to Miss Ward on the scientific side of the case as stemming from the fact that three senior forensic scientists at RARDE regarded their task as being to help the police. They became partisan. It is the clear duty of government forensic scientists to assist in a neutral and impartial way in criminal investigations. They must act in the cause of justice. That duty should be spelt out to all engaged or to be engaged in forensic services in the clearest terms. We trust that this judgment has assisted a little in that exercise. Secondly, we believe that the surest way of preventing the misuse of scientific evidence is by ensuring that there is a proper understanding of the nature and scope of the prosecution's duty of disclosure. In our view there was

an imperfect understanding of the position in 1974. Mr Langdale suggested to us that the problem was solved by the Crown Court (Advance Notice of Expert Evidence) Rules 1987, which came into force on July 15, 1987. Those rules enable the legal representatives of a defendant in a Crown Court criminal case to require the prosecution by notice in writing to provide in respect of scientific evidence a copy of (or an opportunity to inspect) "the record of any observation, test, calculation or other procedure on which (any) finding or opinion is based." The new rules are helpful. But it is a misconception to regard them as exhaustive: they do not in any way supplant or detract from the prosecution's general duty of disclosure in respect of scientific evidence. That duty exists irrespective of any request by the defence. It is also not limited to documentation on which the opinion or findings of an expert is based. It extends to anything which may arguably assist the defence. It is therefore wider in scope than the rule. Moreover, it is a positive duty, which in the context of scientific evidence obliges the prosecution to make full and proper enquiries from forensic scientists in order to ascertain whether there is discoverable material. Given the undoubted inequality as between prosecution and defence in access to forensic scientists, we regard it as of paramount importance that the common law duty of disclosure, as we have explained it, should be appreciated by those who prosecute and defend in criminal cases. And, if difficulties arise in a particular case, the court must be the final judge.

Fresh evidence relating to the presence of explosives: Ground D

We must now turn to the question whether, in any event, the conviction of Miss Ward is safe and satisfactory, having regard to the totality of the fresh scientific evidence, satisfying the requirements of section 23(1) and (2) of the Criminal Appeal Act 1968, which has been placed before us. That evidence consists of a detailed report by Dr Lloyd, with supporting appendices. Dr Lloyd was also called on behalf of the appellant to give oral evidence before us. On behalf of the prosecution there was placed before us a general review by Doctors Hiley, Marshall and Scaplehorn, three forensic scientists from the Defence Research Agency, as well as a specific report on the boot polish experiments, both reports being supported by appendices, and supplemented by two helpful scientific memoranda. The general review we will call "the DRA report." Dr Hiley was also called by the prosecution to give oral evidence. It is our pleasure to record how impressed we were with the objectivity and care with which the forensic scientists on both sides approached the matter and compiled their reports in this case. Not surprisingly there was some divergence of views. We were willing to resolve those issues. But on behalf of Miss Ward Mr Mansfield urged, in the light of what has been agreed between the forensic scientists, that it would serve no useful purpose to investigate these issues. Mr

Mansfield’s submission was that on the basis of what had been agreed between the experts the conviction of Miss Ward is, in any event, unsafe and unsatisfactory. For reasons which will emerge in this section of the judgment we accept Mr Mansfield’s submission. Mr Langdale, QC, on behalf of the prosecution, also submitted that we should not investigate the outstanding issues between the scientists. While we have been anxious throughout this appeal, in the interests of Miss Ward as well as in the public interest, to examine all the grounds of appeal, we are prepared on this aspect to accede to the joint request of counsel. That makes it possible for us to deal with the fresh evidence quite shortly. Departing from the strict chronology we will deal first with Dr Skuse’s evidence, and then with the Euston test results and the caravan test results.

Dr Skuse’s evidence

The prosecution did not call Dr Skuse to give evidence before us. But there is before us an impressive body of expert opinion to the effect that Dr Skuse’s tests, notwithstanding his confident assertions at the trial, were of no value in establishing contact between the appellant and the explosives in 1974. The fact that Dr Skuse apparently got the Griess test result, which he described, cannot be regarded as more than an initial step towards the identification of NG: it was not evidence of the presence of NG. Dr Skuse relied on one TLC test spot, despite the fact that it was not pink. It is established to our satisfaction that this conclusion was wrong. The scientific evidence before us further shows that the interval of some 57 hours between the alleged handling of explosives at Latimer and the taking of samples by Dr Skuse rendered unlikely the suggestion of the presence of explosives on Miss Ward’s hands as a result of planting explosive devices. Moreover, the very fact that the TLC test did not work puts a substantial question mark over the conditions of the preliminary Griess test. In our judgment, if the trial judge had known what we know, he would have excluded Dr Skuse’s evidence as valueless. Dr Skuse’s conclusion was wrong, and demonstrably wrong, judged even by the state of forensic science in 1974.

That brings us to the impact of Dr Skuse’s evidence on the trial of Miss Ward. In many ways Dr Skuse was the most important scientific witness called by the prosecution. He was after all the only forensic scientist who professed to have found NG under Miss Ward’s fingernails. That evidence enabled Mr Higgs to say that Miss Ward must have kneaded explosives. The elimination of Dr Skuse’s evidence is therefore an important matter. But it would be artificial to pose the question whether on its own it warrants a finding that the conviction is unsafe and unsatisfactory. Instead we will address that question at the end of our review of all the fresh scientific evidence.

The Euston samples

There are outstanding issues between the experts on the reliability of the Euston findings. These issues include:

(1) the difficulty of evaluating the findings without knowing the Rf values;

(2) the adequacy of a single TLC test;

(3) the possibility of contamination of hand test kits by police officers or explosive vapour in the laboratory;

(4) the adequacy of the identification of DNT in the Euston sample, having regard to the fact that not more than 10 per cent of the bomb would have been DNT but nevertheless all the findings in respect of Diamond, Gateley and Miss Ward coincided in respect of NG and DNT; and

(5) the effect of possible interference of dyestuffs in giving false positives in TLC results.

In view of the agreement that we should not embark on an investigation of these issues, we will assume (without deciding) that there were faint traces of NG on Miss Ward when the Euston samples were taken. We also do not propose to assess the importance of the point that Diamond and Gateley, whose samples were respectively "positive" and "trace" for the presence of NG, were not involved in causing the explosion.

In respect of the Euston swabs there is agreement between the experts that any NG traces found on Miss Ward’s hands could have been transferred from Diamond. The DRA report concludes:

". . . that a transfer from a person heavily contaminated with explosive traces to Miss Ward, at a level detectable by TLC, could have occurred provided that there was some direct or indirect physical contact between them. If at trial the defence were suggesting that Mr Diamond had been the source of the contamination detected on Miss Ward’s hand, we agree that such a transfer would have been possible."

Dr Lloyd’s conclusion was as follows:

"Given that Mr Diamond was heavily contaminated, a hand−to−hand contact with Miss Ward earlier in the evening could have transferred an amount of NG to her sufficient to survive as a faint trace when she was swabbed."

In the light of this evidence the Euston test results do not prove that Miss Ward had handled explosives.

The caravan samples

There is again a measure of agreement between the experts. The DRA report states: ". . . despite the deficiencies in the TLC results, we believe it most probable that the substance detected on the caravan floor was nitroglycerine."

In a supplementary report on the boot polish tests the conclusion of the DRA review is as follows:

". . . the possibility that the reported detections of NG in the caravan were in fact misidentifications of the dyestuff SY56 derived from shoe polish or another material is small but cannot be entirely excluded."

Dr Lloyd summarises the position as follows: ". . . the results obtained from the caravan swabs were inadequately specific and cannot be taken as an adequate identification of NG."

That is how matters stood on the report placed before us. But in oral evidence the divergence in views was narrowed down. We have already pointed out the discrepancies in the Rf values for the caravan samples. The DRA report pointed out that the discrepancies may be attributable to the phenomenon of "holding back." That process involves an interference in the TLC by materials such as fats and waxes collected in the swabs. The question is, however, whether there was in fact a "holding back" observed in the TLC. The contemporary laboratory notes of Mrs Kemp (formerly Miss Brooker) do not record a "holding back." Mrs Kemp’s usual practice was to make a note of any "holding back." It seems to us therefore more probable than not that there was not any "holding back." On this assumption Dr Hiley accepted that the two "v faint" samples with Rf values of 0.10 and 0.07 were not NG, and that one cannot make any judgments on the "faint" sample with an Rf value of 0.05. On the fresh expert evidence the highest that the case against Miss Ward could be put is that NG was possibly present but, in the absence of confirmation, its presence is not established.

There was another matter which caused us concern. Mr Higgs and Mr Elliott took the caravan samples. They must have supervised the TLC tests. And on Mrs Kemp’s evidence, which we accept, her role was that of a laboratory assistant and Mr Higgs and Mr Elliott must have determined the test results. The interpretation of a TLC process is a matter of judgment. The chemist must exercise judgment in respect of the distances travelled by the suspect and control spots as well

as the colour of the suspect spot. Given the fact that we have found that Mr Higgs and Mr Elliott had allowed their objectivity to become clouded by partisanship, the question arises whether we can have faith in their supervision and interpretation of test results. It may, of course, be that in dealing with the tests Mr Higgs and Mr Elliott were approaching their task with clinical detachment. But can we be sure? After all, in February 1974, a day or two after the caravan samples were tested, Mr Higgs and Mr Elliott were already arranging for firing cell tests to be done at Woolwich, with a view to obtaining evidence which could be used by the prosecution at Miss Ward's trial. Mr Higgs and Mr Elliott in due course misrepresented the results of the first firing cell tests to the court, and they concealed the results of the further firing cell tests in September and October. In these circumstances it seems more realistic to accept that the lack of objectivity that subsequently characterised the conduct of Mr Higgs and Mr Elliott may also have affected their judgment on the earlier interpretation of the TLC tests. For this further reason we have to say that we have no faith in the accuracy of the caravan test results.

Conclusions on Ground D: Fresh scientific evidence

A careful study of the fresh scientific evidence has persuaded us that the scientific case against Miss Ward is now insupportable. In our judgment on this further ground Miss Ward's conviction is unsafe and unsatisfactory.

Non−disclosure −− a summary

It is now convenient to summarise the principles of law and practice which at the present time govern the disclosure of evidence by the prosecution before trial.

(i) "Where the prosecution have taken a statement from a person whom they know can give material evidence but decide not to call that person as a witness, they are under a duty to make that person available as a witness for the defence . . ." Archbold (44th ed) para 4−276. It is part of the same passage as is quoted with approval in this Court in Lawson (1990) 90 Cr App R 107 at 114 from the preceding edition. "Material evidence" means evidence which tends either to weaken the prosecution case or to strengthen the defence case.

(ii) Unless there are good reasons for not doing so, the duty should normally be performed by supplying copies of the witness statements to the defence or allowing them to inspect the statements and make copies: Lawson. Where there are good reasons for not supplying copies of the statements, the duty to disclose can be performed by

supplying the name and address of the witness to the defence.

(iii) In relation to statements recording relevant interviews with the accused, as we have already said, subject to the possibility of public interest immunity, the defence are entitled to be supplied with copies of all such statements.

(iv) In relation to the evidence of expert witnesses, both for the prosecution and the defence, the Crown Court (Advance Notice of Expert Evidence) Rules 1987 now require that any party to the proceedings in the Crown Court who proposes to adduce expert evidence must, as soon after committal as possible, furnish the other party with a written statement of any finding or opinion of which he proposes to give evidence, and where a request in writing is made by that other party, either supply copies of, or allow the other party to examine, the record of any observation, test, calculation or other procedure on which such finding or opinion is based. There is an exception in rule 4 which is not here relevant. What the rules do not say in terms is that if an expert witness has carried out experiments or tests which tend to disprove or cast doubt upon the opinion he is expressing, or if such experiments or tests have been carried out in his laboratory and are known to him, the party calling him must also disclose the record of such experiments or tests. In our view the rules do not state this in terms because they can only be read as requiring the record of all relevant experiments and tests to be disclosed. It follows that an expert witness who has carried out or knows of experiments or tests which tend to cast doubt on the opinion he is expressing is in our view under a clear obligation to bring the records of such experiments and tests to the attention of the solicitor who is instructing him so that it may be disclosed to the other party. No doubt this process can often be simplified by the expert for one party (usually the prosecution) supplying his results, and any necessary working papers, to the expert advising the other party (the defence) directly.

(v) It is true that public interest immunity provides an exception to the general duty of disclosure. For present purposes it is not necessary to attempt to analyse the requirements of public interest immunity. But in argument the question arose whether, if in a criminal case the prosecution wished to claim public interest immunity for documents helpful to the defence, the prosecution is in law obliged to give notice to the defence of the asserted right to withhold the documents so that, if necessary, the court can be asked to rule on the legitimacy of the prosecution’s asserted claim. Mr Mansfield’s position was simple and readily comprehensible. He submitted that there was such a duty, and that it admitted of no qualification or exception. Moreover, he contended that it would be incompatible with a defendant’s absolute right to a fair trial to

allow the prosecution, who occupy an adversarial position in criminal proceedings, to be judge in their own cause on the asserted claim to immunity. Unfortunately, and despite repeated questions by the court, the Crown's position on this vital issue remained opaque to the end. We are fully persuaded by Mr Mansfield's reasoning on this point. It seems to us that he was right to remind us that when the prosecution acted as judge in their own cause on the issue of public interest immunity in this case they committed a significant number of errors which affected the fairness of the proceedings. These considerations therefore powerfully reinforce the view that it would be wrong to allow the prosecution to withhold material documents without giving any notice of that fact to the defence. If, in a wholly exceptional case, the prosecution are not prepared to have the issue of public interest immunity determined by a court, the result must inevitably be that the prosecution will have to be abandoned.

(vi) For the avoidance of doubt we make it clear that we have not overlooked the Attorney–General's Guidelines for the disclosure of "unused" material to the defence in cases to be heard on indictment: see (1982) 74 Cr App R 302. It is sufficient to say that nothing in those guidelines can derogate in any way from the legal rules which we have stated. It is therefore unnecessary for us to consider to what extent the Attorney–General's Guidelines relating to "sensitive material" (the phrase used in those guidelines) are in conformity with the law as we have expounded it in the judgment.

We now turn to consider the third head under which the appeal was argued.

The issue of Miss Ward's unreliability

It is trite law that when in a criminal trial the prosecution seek to rely upon a confession or admission, or a series of confessions or admissions, made by the accused person, it is necessary for the prosecution to prove (to the criminal standard of proof) the following matters:

(1) that the accused spoke or wrote the words alleged;

(2) that the confession was made voluntarily, not as the result of the use of force or a threat or the holding out of an inducement; and

(3) that the confession or admission was true.

Formerly the first of these matters was often in issue in criminal trials. Fortunately the tape recording of the great majority of

interviews of suspects by the police has resulted in a lessening of allegations that the defendant did not say what he was alleged to have said, though of course this can still be an issue where it is alleged there was a verbal confession before arrival at the police station. As we have made clear, in the present case Miss Ward at her trial did not accept that she had said everything that she was alleged to have said, and sometimes said that she could not remember whether she had made a particular statement, but for the most part the fact that she had made the damaging confessions she was alleged to have made was not seriously in issue. Certainly the various written statements which were exhibited were not challenged in this respect.

Moreover, it was not suggested that any of the confessions which were made were the result of the use of force or of any threat, or of the holding out of any inducement. Thus there was no question of a "trial within a trial" before Waller J to determine whether the evidence of the confessions was admissible. Counsel for the defence accepted that it was.

While it is for the prosecution to prove that a confession was true, this is normally not a matter which creates any great difficulty for them. If they have succeeded in proving that the statement was made voluntarily, and the accused appears to be of normal intelligence, most juries will readily accept that an accused would be most unlikely to make a damaging series of confessions against his or her own interest unless they were true. This was no doubt in the mind of the learned judge when he said in his summing–up to the jury (as reported in The Daily Telegraph for November 2, 1974,) that the jury were entitled to consider whether there was any possible reason for making the statements, other than to tell the truth and the weight of conscience after being in custody for nine or 10 days. "When people make very serious admissions you have to ask yourself if they are likely to do it, if they are not true."

When an accused person who is alleged to have made admissions or confessions asserts that he did so because of a threat or an inducement held out to him, he will normally also assert that the admissions or confessions were untrue. But the question of the truth or otherwise of the confessions is normally subsumed in the question whether they were made voluntarily. If the judge on the voire dire decides that the confessions were voluntary and thus are admissible, and the jury believes that they were not the result of threat or inducement, then normally there is no further challenge to the truth. In our experience, cases in which it is accepted that a confession was made and was made voluntarily but nevertheless it is asserted that the confession was wholly untrue are rare in the extreme. This of course is such a case. No doubt because of this rarity, there is but little authority on issues of this kind.

In considering the question of Miss Ward's reliability, we have taken account of the fresh evidence of witnesses and by way of documents put before us, principally the medical evidence, and also of relevant parts of the evidence which was not disclosed before the trial but which is now available to us. Thus the evidence we have considered falls into three categories:

(i) the undisclosed evidence of interviews with Miss Ward at various times before the trial;

(ii) Dr Lawson's evidence; and

(iii) the fresh evidence. This is principally the medical evidence, but also includes the evidence that what Miss Ward said both before the trial and in her evidence at the trial about her father's birth and her marriage to Michael McVerry were untrue.

We will consider each of these categories in turn.

Undisclosed evidence of interviews

We have already considered this in some detail under the heading of "Non−disclosure." It is therefore only necessary to refer again briefly to those interviews which we consider of particular significance in relation to Miss Ward's unreliability. These are:

(a) the "Teresa O'Connell" statement to the RUC on March 22, 1972. We have already set out this statement in some detail. It was a graphic story, almost every word of which was fiction;

(b) the interview by Detective Inspector Speers and Detective Sergeant Hyland on August 23, 1972. It will be remembered that in this interview Miss Ward said that it was untrue that she had gone to Thiepval Barracks in order to obtain information for the IRA. Sergeant Hyland's comment, "She continued to profess her innocence and I found her to be convincing," may well not have been directly admissible in evidence, but if he had been called by the prosecution as a witness no doubt counsel for the defence could have made use of it by asking −− certainly in cross−examination, possibly even if he had been a witness for the defence −− why, after this interview, no action in respect of her entry to Thiepval Barracks was taken against Miss Ward. The answer would almost inevitably have been, in effect, "We did not believe her;"

(c) the statement of Police Constable Open who, it will be remembered, whilst investigating a complaint of theft by Miss Ward and Miss Gateley, visited their room at the London Park Hotel on September 16, 1973, and found it full of IRA posters and the like.

Coming as it did a few days after the Euston bomb incident, and the detention of the two young women after that incident, the defence might well have suggested that this was a prime example of Miss Ward deliberately trying to draw attention to herself;

(d) the interview with Detective Sergeant McFarland on November 18, 1973. We have already set out the content of this interview in some detail. The significant point about this interview is that Miss Ward first said that she had brought guns up to Belfast on several occasions, adding that they were revolvers and that she had brought them in her handbag, but shortly afterwards denied ever being involved with the IRA and, when asked why she had boasted about bringing guns to Belfast, replied, "It was just something to say, I know that's what you want me to say." As we have said, Mr McFarland's opinion, in his witness statement, was, "I formed the opinion that Miss Ward was not mentally stable and that she could be easily persuaded to say or do anything." In evidence to us, Mr McFarland said that at the time when he saw Miss Ward he had been a member of the RUC for some 20 years, and he had a reasonable familiarity with, and insight into, the workings of terrorist organisations. He said that of Judith Ward's claim that she had been gun−running for the IRA, "I thought it was total nonsense." When asked why, he said, "That particular organisation, my Lord, would not trust a person of the mentality of Judith Ward at that time." He repeated that in his opinion she was not stable, and that following this interview the RUC had released her and put her on a boat back to England;

(e) the interviews on February 15, 1974, by Detective Superintendent Wilson and Detective Superintendent Edington. Substantial parts of this interview, or at least of the information elicited in this interview, were given in evidence at the trial through other witnesses, sometimes as the result of other interviews. However, what was not given in evidence was the important passage which we have already set out in which in answer to direct questions she denied having done anything in the United Kingdom for the IRA or having been asked to do so and said that she would not have done so if asked. She drew a distinction between her support for Sinn Fein and her denial of being involved in the IRA; and

(f) finally, there were the two interviews with Detective Superintendent Oldfield on June 11 and 18, 1974. In these Miss Ward mostly gave information about the alleged activities of and parts played by other persons in terrorist enterprises. Many of her allegations were wild and untrue. We do not find it possible to say what use the defence would have made of the interviews, but it might have been considerable. This non−disclosure, though perhaps in the event not as important as that of the evidence of Detective Chief Superintendent Wilson, is not insignificant.

Medical evidence available at the time of the trial

In his report to the DPP dated September 18, 1974, Dr Mather said:

"From my examinations there is nothing to lead me to think that there is anything abnormal or has been about her mental state and I have no medical recommendation to make. She is fit to plead to the indictment and stand her trial."

In evidence before us, Dr Mather said that he was not then concerning himself with expressing an opinion about her reliability, but only as to whether she was of sound mind and fit to plead.

As we have already said, in his report to the DPP prepared on September 4, 1974, Dr Lawson started his opinion by saying:

"I would say at this stage that Ward cannot be described as a very truthful person, in that she has changed her story to me several times and I have never been satisfied that she has been as horror struck by the incident as she claims to be.

She is a most difficult person to evaluate. AT times she is feminine and well−mannered, at other times she is rough, foul−mouthed and coarse."

In evidence to us under cross−examination Dr Lawson said:

"I think I signalled my views loud and clear in the first sentence of my opinion, and I may say that I was amazed that I was not called to Wakefield Crown Court."

He explained that he had not felt able to express his views as to her veracity more strongly, in case it was thought that in some way this prejudiced the defence. We do not regard this as a valid reason.

We have said that we do not accept that Dr Lawson signalled his views "loud and clear." We have also found that he toned down his report. We think however that if his report, even with these defects, had been received by Mr Ollier, it is most probable that counsel would have advised that another psychiatrist be asked to examine Miss Ward on behalf of the defence. No doubt this might have been initially with a view to determining her mental state in view of the psychotic depression, but such a psychiatrist might very well have followed up Dr Lawson’s view about Miss Ward’s failure to tell the truth on occasions, and been able to give evidence at the trial on that issue. Of course, the fact that the defence did not receive the prosecution’s medical report did not prevent them from seeking

psychiatric evidence themselves, but it can at least be said that they lacked the spur to seek such evidence which Dr Lawson's report might well have provided.

The fresh medical evidence

The fresh evidence before us was given by two witnesses called on behalf of the appellant and one called on behalf of the Crown. Dr James MacKeith, a distinguished consultant psychiatrist, had been instructed in May 1991, to give psychiatric advice about Miss Ward to her solicitors. He had provided them with a report dated April 7, 1992, the contents of which he confirmed in his oral evidence to us. In that report he expressed the following views:

"I think that Miss Ward probably suffered from personality disorder –– hysterical type, long before her arrest in 1974. Moreover, I think it likely that she was suffering from mental illness as well. . . .

I believe her false claims, which she may have believed, served to reduce emotional distress and to enhance self–esteem. Her untrue claims related to romantic themes and her involvement with Ireland, Irish people and Irish causes. They were in a sense specific, not general as in an unprincipled compulsive liar. . . .

It is my opinion that Miss Ward was mentally disordered from the time of her arrest, on remand and during her trial. Her impaired functioning was both the product of her personality and mental illness. As explained in this report, this mental disorder had a profound effect on her capacity to give a reliable account of herself and her memories to anybody."

When giving evidence, in answer to questions from the Court, Dr MacKeith explained that he used the phrase "mental disorder" as a generic term embracing both mental illness and personality disorder. He placed hysteria under the heading of mental illness. He said, however, that his concern was to establish whether in his opinion Miss Ward in 1974 was a person upon whose word any reliance could be placed, and that in reaching his opinion on that issue it was not absolutely essential to his opinion whether the impairment from which she was suffering was categorised as mental illness or personality disorder.

Dr MacKeith's evidence was supported by that of Dr Gudjonsson, a senior lecturer in clinical psychology, who had evolved a technique for seeking to measure suggestibility and confabulation. By suggestibility Dr Gudjonsson means the extent to which a person can be persuaded to adopt a leading question or give an answer which is

affected by verbal pressure, and by confabulation he means the extent to which a memory of an event or statement can have added to it some other material which is conscious or unconscious invention. His opinion as to suggestibility was that Miss Ward was "abnormally yielding to the misleading questions. She had an abnormal tendency to accept the suggestions offered." On the second matter he said that Miss Ward's "tendency to confabulate fell well outside the normal range."

Dr Bowden, a consultant psychiatrist, who gave evidence for the Crown, had had much less time to prepare his report. He was only able to interview Miss Ward for the first time on April 29, 1992, but he succeeded in interviewing her in all four times before he gave evidence before us on May 8, 1992. We are grateful to him for being able to devote so much of his time to this task in that period. We accept that he has reported more rapidly than he would have wished, and we wish to say that we have found his evidence, coupled with that of Dr MacKeith, of the greatest assistance.

In his report dated May 6, 1992, Dr Bowden expressed the following views:

"My task as an assessor is made even more difficult by my suspicion that Miss Ward can be both deliberately and unconsciously devious and manipulative. Miss Ward exemplifies the basic traits of the hysterical type of personality disorder. From the time of adolescence she has sought to appear, both to herself and others, as more than she is. Genuine experience and natural expressions were replaced by a contrived act, and forced kinds of experiences concerning Irish Republican matters. Miss Ward has been caught up in a series of dramas engineered by herself so that there is no sense in anything existing within her, she being merely the reflection of those dramas. For many years Miss Ward sought to convince herself and others of the existence of dramatic and life−threatening experiences and her attachment to the Republican cause reflects this attraction to what is dramatic and extreme. The cause brought interest and excitement to an otherwise lonely, friendless person and the supposed marriage to an IRA 'hero' can be taken as reflecting at so many levels the reality of a largely asexual woman who has often been taken for, and has masqueraded as, a young man. In the weeks before the final arrest she was clearly forcing herself to experience more than she was capable of. . . . Miss Ward has lied to create an effect, and for other reasons. This initially conscious lying became unconscious and is then believed by Miss Ward. These are not permanent states and there is a constant flux between conscious lying and the acceptance of believed (but false) material as truth.

Thus Miss Ward's claims to have association with important

personalities, serves to deceive not only others but Miss Ward herself. In this context I suspect that at times she has lost awareness of her own reality and fantasy has become a reality for her."

In conclusion Dr Bowden said:

"In summary, I believe that Miss Ward has exhibited evidence of mental disorder in the form of hysterical personality disorder since adolescence. The current manifestations of the disorder have been modified by 18 years' imprisonment and by the usual ameliorative effects of ageing but the passage of time has revealed a coherent and consistent picture. The course of the disorder for Miss Ward has led from insecurity, aloneness, and doubts about gender identity to the restless seeking of excitement, a tendency to lie and fantasize, and ultimately to claims of involvement, or actual involvement in terrorist activities. Miss Ward has the capacity both to seek out terrorist activities and to fantasize about them. She has been provocative and has led from innuendo to unbridled admission. Her narratives have been sometimes plausible, at others implausible and contradictory. The essence of her nature is her unreliability, both to others and herself. It is her lack of substance which she is seeking to disguise with a series of real and imagined roles.

In assessing Miss Ward I was struck by the complexity of understanding the ever−changing picture. With Miss Ward both reality and truth are ephemeral, affected as they are by both conscious and unconscious mechanisms, so that it is almost impossible to find a reliable point from which to progress. These considerations and the disharmony which existed in her behaviour before the final arrest in February 1974 lead me to believe that her personality disorder is severe in degree. With my own limited assessment in mind I do not believe that the medical information which was available to the court in 1974 adequately explored these issues."

I interpolate that he presumably assumed that some medical information was available to the court.

"Miss Ward's essential unreliability leads me to believe that her statements regarding the offences of which she was convicted should be required to pass one at least of two tests of truth and reality. Her statement should be required to reveal a special knowledge, or it must be shown that there is objective evidence, being fact not merely thought."

Dr Bowden confirmed those opinions in his evidence to us.

It will be seen that the only respect in which Dr MacKeith and Dr

Bowden differ was that Dr MacKeith categorised Miss Ward's disability as mental illness, whereas Dr Bowden did not. As we have already said, this was not an essential part of Dr MacKeith's opinion, and thus on the essential issue they are in agreement. We found their evidence entirely persuasive.

There is one last point made by Dr MacKeith which we found of interest. He was asked in cross–examination whether he would have been able to reach the conclusions he had reached if there had been available to him only the information that was available to the defence in 1974. He answered:

"I do not know whether I would, if I try and enter this hypothetical situation, because in 1974 I was comparatively unaware of the dangers of people making such false, self–incriminating statements as to render themselves in danger of being convicted. It is only in the last 12 years that I have had an interest in this subject and tried to learn how to approach the issue of assessment."

We do not of course know whether what Dr MacKeith says about his own lack of experience in 1974 was true of other psychiatrists. Even at that time of course it may not have been true at all.

Admissibility of evidence of psychiatrists and psychologists as to an accused's reliability

At one time the authorities on this issue seemed fairly clear. In Toohey v Metropolitan Police Commissioner (1965) 49 Cr App R 148, [1965] AC 595 three men were charged with assault with intent to rob a boy aged 16. Their defence was, in essence, that they had neither assaulted nor robbed the boy, who was hysterical and had invented the whole matter. On behalf of the defence it was sought to call the evidence of a police surgeon who had expressed the view that from his examination of the boy he would consider him to be more prone to hysteria than a normal person, and that the hysteria might be exacerbated by alcohol. The judge at trial refused to allow these questions to be asked. The Court of Criminal Appeal dismissed an appeal following its own decision in Gunewardene (1951) 35 Cr App R 80, [1951] 2 KB 600. In a speech with which all members of the House of Lords agreed in favour of allowing the appeal, Lord Pearce said at p 162 and p 608 B:

"Human evidence shares the frailties of those who give it. It is subject to many cross–currents such as partiality, prejudice, self–interest and above all, imagination and inaccuracy. Those are matters with which the jury, helped by cross–examination and common sense, must do their best. But when a witness through physical (in which I include mental) disease or abnormality is not capable of

giving a true or reliable account to the jury, it must surely be allowable for medical science to reveal this vital hidden fact to them."

Lord Pearce drew an analogy and then added (ibid):

"So, too must it be allowable to call medical evidence of mental illness which makes a witness incapable of giving reliable evidence, whether through the existence of delusions or otherwise."

At p 163 and p 609 C his Lordship said:

"Gunewardene's case was, in my opinion, wrongly decided. Medical evidence is admissible to show that a witness suffers from some disease or defect or abnormality of mind that affects the reliability of his evidence. Such evidence is not confined to a general opinion of the unreliability of the witness but may give all the matters necessary to show, not only the foundation of and reasons for the diagnosis, but also the extent to which the credibility of the witness is affected."

Lowery v R (1974) 58 Cr App R 35, [1974] AC 85, was a case in which the appellant and another young man were charged with the sadistic murder of a young girl. Each said it was the other who had killed the girl. Despite objection on the part of the appellant, the defence for the other man were allowed to call the evidence of a psychologist as to their respective personalities. On that evidence the jury were invited to conclude that the appellant was the more likely of the two to have killed the girl. They were both convicted, and the appellant appealed on the ground that the psychologist's evidence was inadmissible.

Giving the opinion of the Judicial Committee of the Privy Council dismissing the appeal, Lord Morris of Borth-y-Gest said at p 53 and p 103 respectively:

'. . . it was most relevant for King to be able to show, if he could, that Lowery had a personality marked by aggressiveness whereas he, King, had a personality which suggested that he would be led and dominated by someone who was dominant and aggressive. In support of King's case the evidence of Professor Cox was relevant if it tended to show that the version of the facts put forward by King was more probable than that put forward by Lowery. Not only, however, was the evidence which King called relevant to this case: its admissibility was placed beyond doubt by the whole substance of Lowery's case. Not only did Lowery assert that the killing was done by King and not only did he say that he had been in fear of King but, as previously mentioned, he set himself up as one who had no

motive whatsoever in killing the girl and as one who would not have been likely to wreck his good prospects and furthermore as one who would not have been interested in the sort of behaviour manifested by the killer. While ascribing the sole responsibility to King he was also in effect saying that he himself was not the sort of man to have committed the offence. The only question now arising is whether in the special circumstances above referred to it was open to King in defending himself to call Professor Cox to give the evidence that he did. The evidence was relevant to and necessary for his case which involved negativing what Lowery had said and put forward: in their Lordships' view in agreement with that of the Court of Criminal Appeal the evidence was admissible."

So far the position seems reasonably clear, and the authorities would support the proposition that the evidence which we heard would be admissible in the present case and would have been admissible in 1974. However, a number of decisions thereafter showed a less clear picture. In Turner (1974) 60 Cr App R 80, [1975] QB 834, a decision of this Court, a defendant on a charge of murder was not permitted to call a psychiatrist to prove the depth of his emotional state in order to support his defence of provocation. Giving the judgment of the Court dismissing the appeal, Lawton LJ said at p 84 and p 842:

"We adjudge Lowery to have been decided on its special facts. We do not consider that it is an authority for the proposition that in all cases psychologists and psychiatrists can be called to prove the probability of the accused's veracity. If any such rule was applied in our courts, trial by psychiatrist would be likely to take the place of trial by jury and magistrates. We do not find that prospect attractive and the law does not at present provide for it. . . . We are firmly of the opinion that psychiatry has not yet become a satisfactory substitute for the common sense of juries or magistrates on matters within their experience of life."

That decision was followed by another Division of this Court presided over by the Lord Chief Justice in Javed Masih [1986] Crim LR 395.

However, Everett [1988] Crim LR 826 was a decision to the opposite effect. The issue was whether the judge at trial should have ruled under section 76(2) of the Police and Criminal Evidence Act 1984 that a confession allegedly made by the appellant was inadmissible because, although the appellant was of very low mental age, he did not have a solicitor or other responsible person present when he was interviewed. The judge at trial had admitted the evidence. He had heard the evidence of a psychiatrist about the mental condition of the defendant, but had apparently given little or no weight to it. This court allowed the appeal. Giving the judgment of the Court, Watkins LJ said:

"Thus when the judge had to decide in making up his mind whether or not to admit these confessions, he had to take into account the evidence which he had listened to from experts as to that mental condition."

Watkins LJ then summarised the evidence and later said:

"What the judge in fact did was to rule in effect that he did not have to take account of the medical evidence of the mental condition of the appellant. On the contrary he listened to the tape recording and expressed himself, having done that, to be satisfied that the appellant understood the questions and made rational answers to them. That is not the function of a Judge in such a situation as this. He cannot say to himself, 'I am going to listen to a tape recording of the interviews and decide upon that alone whether it is proper to admit evidence of confessions.' He must, as we have already said, regard the whole circumstances and take account of the medical evidence, which was here in no way contested. Having done so, he may decide, bearing in mind the terms of the provision I have referred to and the code, whether the prosecution has discharged the clear burden upon it. Here it most certainly had not."

Most recently in Raghip and others (unreported, transcript number 90/5920S1) decided by this Court on December 5, 1991, the Court was directly concerned with the question whether the trial judge should have admitted the evidence of psychologists and a psychiatrist as to the appellant's lack of mental capacity. Giving the judgment of this Court, Farquharson LJ said of the decision in Masih:

"With respect to the Lord Chief Justice he is there endorsing the 'judge for yourself' approach in respect of the jury which this Court in Everett held was the wrong approach for the judge. The state of the psychological evidence before us as outlined earlier in this judgment –– in contradistinction to that which was available to the defence at Raghip's trial and before this court on the renewed application –– is such as to demonstrate that the jury would have been assisted in assessing the mental condition of Raghip and the consequent reliability of the alleged confessions. . . .

We emphasise that nothing we say in this judgment is intended to reflect upon the admissibility of psychiatric or psychological evidence going to the issue of the defendant's mens rea. But in the context of assessment of reliability of a confession pursuant to section 76(2)(b) we consider that the trial judge should ask himself the question posed earlier . . .

. . . Posing that question and applying those criteria in the instant case we consider that the psychological evidence as deployed

before us was required to assist the jury and would have been admissible at Raghip's trial.

We are therefore prepared to admit the evidence we heard de bene esse under section 23 of the Criminal Appeal Act 1968 as credible and admissible at Raghip's trial but not available at the time thereof. Having done so, it is apparent, for the reasons given earlier, that this fresh evidence renders Raghip's conviction unsafe and unsatisfactory and his appeal is allowed on this ground also."

We appreciate that in Raghip the fresh evidence was advanced in support of an argument that, if it had been available at the trial, it would have supported an application to the judge to rule that Raghip's confessions were inadmissible under section 72(2)(b) of the Police and Criminal Evidence Act 1984. The judgment in that case, however, applies equally to the admissibility of such evidence to prove that no reliance could be placed on Miss Ward's confessions and admissions.

We agree with what Lawton LJ said in Turner, that Lowery is not an authority for the proposition that in all cases psychologists and psychiatrists can be called to prove the probability of the accused's veracity. Nor is the decision of this Court in Raghip authority for such a wide–ranging proposition. But we conclude on the authorities as they now stand that the expert evidence of a psychiatrist or a psychologist may properly be admitted if it is to the effect that a defendant is suffering from a condition not properly described as mental illness, but from a personality disorder so severe as properly to be categorised as mental disorder. Both Dr MacKeith and Dr Bowden here so categorise the condition from which, in their opinion, Miss Ward was suffering in 1974 and before. In our view such evidence is admissible on the issue whether what a defendant has said in a confession or admission was reliable and therefore likely to have been true.

We emphasise that the occasions on which such evidence will properly be admissible will probably be rare. This decision is not to be construed as an open invitation to every defendant who repents of having confessed and seeks to challenge the truth of his confession to seek the aid of a psychiatrist. But where evidence of the quality and force of that of Doctors MacKeith and Bowden is tendered, it is in our view properly admissible. For that reason we admitted it and have taken account of it.

Mr MacFarland's opinion

As to the admissibility of Mr MacFarland's opinion about Miss Ward, we have already quoted and repeat a passage from Cross on Evidence.

We add only that if the defence had had his statement in their possession, they could properly have used it in cross–examination of him, and no doubt without too much difficulty elicited his view.

Conclusions on this issue

The extent to which Miss Ward's confessions and admissions could be regarded as reliable and thus true was the major issue in the trial. We have already quoted the comment which the learned judge made, and on the evidence which had been called before him, was perfectly entitled to make, in his summing–up. We believe that if Waller J had had before him the evidence we have had, both the fresh evidence or evidence of that kind, and the evidence which was in existence at the time of the trial and was not disclosed, he would not have made the comment he did.

In the light of all this evidence, we cannot now be satisfied that reliance can be placed upon the truth of any of Miss Ward's confessions or admissions. Accordingly on this ground her conviction on all counts is unsafe and unsatisfactory.

Overall conclusion

This was and is a most extraordinary case. For almost two years before her arrest, Judith Ward on frequent occasions both did and said things which were calculated to make those who saw and heard her believe that she was a supporter of the Provisional IRA and had assisted that organisation to the extent of committing serious criminal offences. It is to the credit of some of those in Northern Ireland who heard what she said that they did not believe her and therefore took no action against her. Then, after her arrest, she admitted, apparently voluntarily, being involved in three separate offences of causing explosions, all of them offences of the greatest seriousness, of which one in particular had horrifying results. Only at trial, so far as the jury knew, did she say that the confessions on which the prosecution relied were not true. But her confessions were supported, and the force of her denials accordingly weakened, by scientific evidence which appeared to show that after two of the explosions she had traces of nitroglycerine on her hands, with no innocent explanation, and that at a time relevant to the M62 bombing, nitroglycerine had been in her luggage and in the caravan in which she was living. On the evidence placed before the judge and jury, the prosecution had a strong case.

It is rare, but not unknown, for a person who is not subjected to any improper pressure or an inducement to confess to crimes he or she has not committed. It is even more rare for somebody, in such circumstances, to confess to crimes as grave as those for which Miss

Ward stood trial. Nevertheless our criminal courts, and all those who owe a duty to do what is necessary to ensure that the courts arrive at proper verdicts, must take account of the possibility that confessions, though not the result of any impropriety, may be untrue. For this reason amongst others it is essential that those who are responsible for a prosecution and for the provision of evidence upon which the prosecution is based should comply with their basic duty to seek to ensure a trial which is fair both to the prosecution, representing the Crown, and to the accused. In failing to disclose evidence in the various respects we have described, one or more members of the West Yorkshire Police, the scientists who gave evidence for the prosecution at the trial and some of those members of the staff of the DPP and counsel who advised them, to whom we have earlier referred, failed to carry out this basic duty. We greatly regret that as a result a grave miscarriage of justice has occurred.

If Mr Ollier had obtained the opinion of a psychiatrist, it may well be that he would not have been able to obtain evidence of the same nature or quality as that which we received from Dr MacKeith and Dr Bowden. If there had been no such evidence, but the evidence which should have been but was not disclosed had all been available to the defence, the prosecution’s case would have been much weakened; the defence would have been strengthened in seeking to establish Miss Ward’s unreliability, and the scientific evidence would have been shown to provide little if any support to the truth of her confessions.

Our conclusion overall on the three heads of appeal is therefore that, in the failure to disclose evidence, some in the possession of the police, some in the possession of the scientists and some in the possession of the DPP, there were material irregularities at the trial; and that, having regard to that non−disclosure added to the fresh evidence we have heard, the convictions were all unsafe and unsatisfactory. We therefore allow the appeal and quash the convictions of Miss Ward on all counts.