Case No: 199902010 S2

Neutral Citation Number: [2002] EWCA Crim 1141
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CRIMINAL DIVISION)

Royal Courts of Justice
Strand,
London, WC2A 2LL

Friday 10 May 2002

Before :

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
LORD JUSTICE MANTELL
MR JUSTICE LEVESON

- -

Between :

REGINA	**Respondent**
- and -	
JAMES HANRATTY deceased by his Brother Michael Hanratty	**Appellant**

- -

(Transcript of the Handed Down Judgment of
Smith Bernal Reporting Limited, 190 Fleet Street
London EC4A 2AG
Tel No: 020 7421 4040, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

- -

Mr Michael Mansfield QC and **Mr Henry Blaxland QC**
(instructed by Bindman and Partners) for the Appellant

Mr Nigel Sweeney QC, Mr Mark Dennis and Mr David Perry
(instructed by the Crown Prosecution Service) for the Crown

- -

Judgment
As Approved by the Court

Lord Chief Justice: This is the judgment of the Court

INTRODUCTION

1. On the evening of Tuesday 22 August 1961, Michael Gregsten and Valerie Storie were together in a grey Morris Minor car in a cornfield at Dorney Reach, Buckinghamshire. It was getting dark, when they were approached by a man who threatened them with a gun. On his instruction, the car was driven onto the A6. In the early hours of the following morning, at a lay-by south of Bedford, Michael Gregsten was shot twice at close range; he died almost instantly. Valerie Storie was raped and also shot: of approximately seven bullets fired, five entered her body. Miraculously, although she was left for dead, she was not killed; she did, however, suffer a catastrophic injury which resulted in paralysis to the lower part of her body. She was later able to describe the man responsible and provide considerable detail both of the events of the night and of what had been said.

2. On 14 October 1961, following an extensive police investigation, James Hanratty was charged with capital murder. Committal proceedings took place between 22 November and 5 December 1961. He was indicted only for capital murder; there was no charge in relation to Valerie Storie in accordance with the then practice.

3. The trial commenced before Gorman J and a jury on 22 January 1962. 83 witnesses were called as part of the prosecution case, James Hanratty and 14 others were called on behalf of the defence and 3 were called in rebuttal (of an alibi disclosed for the first time when Mr Michael Sherrard, for the defence, opened his case). The trial having lasted what was then a record 21 days, on 17 February, James Hanratty was convicted of capital murder and sentenced to death.

4. An appeal was mounted before the Court of Criminal Appeal; it was heard on 13 March 1962 by Lord Parker CJ, Ashworth and Fenton Atkinson JJ. The grounds of appeal which were pursued were that the verdict of the jury was unreasonable or could not be supported by the evidence; the learned judge failed properly or fully to put the defence to the jury; and the learned judge misdirected the jury as to the evidence and/or failed adequately or properly to sum up on the issues raised upon the evidence adduced by the prosecution. There was no application to adduce further evidence.

5. As to the first ground, giving the judgment of the court, Lord Parker CJ observed that "there was abundant evidence which, if accepted by the jury, would support the verdict". In relation to the other points, the Lord Chief Justice went on:

> "Mr Sherrard … referred to a number of points which he says the Judge failed to make and certain evidence to which he failed to refer. This was a case lasting 21 days … and it

> would indeed be remarkable if every item of the evidence were referred to and in which the Judge referred to every point or comment made by Counsel on either side. Indeed, we would emphasise that it is no part of the Judge's duty to refer to all the evidence or to mention all the points taken and comments made. His duty is to present the case on each side fairly and impartially to the jury concentrating of course on the vital issues in the case."

In dismissing each of the grounds advanced, he went on to observe:

> "[T]he summing up was clear, it was impartial, it was not only fair but favourable to the prisoner and contained no misdirections of law and no misdirections in fact on any of the important issues in the case. The Court is of the opinion that this was a clear case."

6. On 4 April 1962, just over 7 weeks after his conviction and 7½ months after the killing, James Hanratty was executed. It is worth observing that he was one of the last to suffer that penalty in this country. On 9 November 1965, by the Murder (Abolition of Death Penalty) Act 1965, capital punishment was abrogated, initially until 31 July 1970, but thereafter, by affirmative resolution of both Houses, permanently. It now offends Article 1 of the Sixth Protocol of the Convention for the Protection of Human Rights and Fundamental Freedoms.

7. In the years which have followed, there has been a vigorous campaign to establish that the conviction constituted a miscarriage of justice. In July 1963, Fenner Brockway submitted a dossier to the Home Office; on 2 August 1963, during an early day motion in Parliament, the Home Secretary of the day rejected calls for an enquiry into the conviction. In 1967, following a Panorama television programme, the then Home Secretary appointed a senior police officer to undertake an inquiry into the alibi evidence. He reported that the conviction was safe. On 1 November 1967, the Home Secretary made a Commons statement to that effect. There were further references to the case in the Houses of Parliament in 1969, 1971 (when a new inquiry was refused) and 1972.

8. In 1974, the then Home Secretary, the Rt Hon Roy Jenkins, appointed Lewis Hawser QC to conduct an inquiry. Messrs Bindmans (who continue to act for the Hanratty family) forwarded submissions. On 10 April 1975, Mr Hawser concluded that the case against James Hanratty was 'overwhelming'.

9. On 13 July 1994, further submissions were made to the Criminal Cases Unit of the Home Office. On 1 April 1997, responsibility for considering alleged miscarriages of justice passed to the Criminal Cases Review Commission ("the Commission") who took over responsibility for investigating the allegations as to James Hanratty's conviction. Having conducted further enquiries (including obtaining DNA evidence), on 26 March 1999, the Commission referred the

conviction to this Court pursuant to section 13 of the Criminal Appeal Act 1995. The Commission stated, in accordance with the statutory provisions, that there was a real possibility that the conviction would not be upheld.

10. The referral has been followed by Perfected Grounds of Appeal which rely on 17 grounds. These grounds overlap. Eleven are based on failures by the prosecution to disclose material to the defence, one concerns the conduct of the identification parade at which Valerie Storie identified James Hanratty, one relates to the interviews (and is supported by E.S.D.A. testing of interview notes) and four deal with directions given during of the course of the summing up (all but one based on stricter standards introduced since 1962).

11. On 17 October 2000, in the light of the DNA evidence then available, this Court ordered that the body of James Hanratty be exhumed for the purposes of obtaining specimens of his DNA. Extensive further scientific evidence has since been assembled.

12. In addition to raising factual issues the appeal has required us to consider issues of law which are of general importance as to the role of this Court in relation to fresh evidence relied on by the prosecution as well as the appellant. The appeal also raises the vexed question of how the changes in standards over the years affects appeals against convictions following trials which took place prior to those changes. We will deal with these issues after we have set out the facts

THE FACTS

13. It was about 5.30pm on Tuesday 22 August 1961 that Michael Gregsten, aged 36, and Valerie Storie, aged 23 (who were both Civil Servants employed at the Road Research Laboratory at Langley, Buckinghamshire) met after work. Using a borrowed grey Morris Minor car, 847 BHN, they went to the Old Station Inn, Taplow, for a drink. They left the Inn at about 8.45pm and drove to a nearby cornfield at Dorney Reach. About 30-45 minutes later, as it was getting dark, a man approached the vehicle and tapped on the driver's window. Valerie Storie could see from his shoulders to his waist: he was wearing "a dark suit and a white shirt and a tie - a very smart looking suit". Michael. Gregsten dropped the window halfway down whereupon a gun was thrust through the window and the man said: "This is a hold up. I am a desperate man. I have been on the run for four months."

14. After taking the ignition key from Michael Gregsten, the man, whose face was partially covered with a handkerchief, got into the back of the car. He remained with the couple for a period of about six hours. Initially, he told them that 'You will be all right if you do as I tell you'. They remained in the field until about 11.30pm. Thereafter, the car went on a rather roundabout journey through the Northwest outer suburbs (Slough, Kingsbury, St Albans) and on to the A6 where the murder took place.

15. A considerable amount of conversation took place during the following six hours. In the light of the emphasis placed by both sides on the extent to which what was said did or did not fit with James Hanratty, it is worth summarising the evidence which Valerie Storie gave about what he said. This included that:

i) He had not had the gun very long: "This is like a cowboy's gun: I feel rather like a cowboy". … "It is a .38".

ii) He had never shot anyone.

iii) He was very hungry, he had not eaten for two days and had been sleeping out the last two nights (which Valerie Storie thought was contradicted by his appearance); he had been in the Oxford area for the last few days. On any showing, these facts did not fit with James Hanratty's proved movements.

iv) He had never had a chance in life; when he was a child he had been locked in the cellar for days on end and only had bread and water to drink. There was no evidence that this applied to James Hanratty.

v) He had been to remand homes and Borstal: he had done C.T. (i.e. Corrective Training) and the next thing he would get would be P.D. (i.e. Preventive Detention). He said: "I have done the lot" and that he had "done housebreaking". Miss Storie believed he said he had done five years for housebreaking. The Crown argued that the phrase 'I have done the lot' was slang for the removal of all remission of sentence resulting in a requirement to serve a full custodial term. James Hanratty was one of only five prisoners at that time to have 'done the lot' in this sense. The defence did not accept that the phrase bore that meaning. Further, on any showing, James Hanratty was not then eligible for a sentence of Preventive Detention.

vi) He had been on the run for four months which he later changed to 18 months and that "every policeman in England" was looking for him.

vii) He did not like smoking and did not usually smoke.

viii) Having asked about the positioning of the gears when Michael Gregsten was driving, Valerie Storie concluded that he did not seem to have much knowledge of the Morris Minor car. Further, he appeared to be very nervous as a passenger and said things such as 'Oh be careful of the lights'. On the other hand, when asked by the couple whether he drove cars he said 'Oh yes I can drive all sorts of cars'.

16. Having listened to the man over a very considerable period of time, Valerie Storie felt able to describe his speech and voice. She did so in these terms:

> "He had got a London type voice. He could not say 'things' and 'think'. He said 'Fings' and 'Fink'. His voice was very quiet very soft spoken, not a deep voice. I should say from his voice he was 'twenty-ish'".

It was not disputed that, in common with many Londoners, James Hanratty pronounced "th" as "f".

17. During the course of the incident, the man took their watches and some money (although Valerie Storie was able to hide some of her money about her clothing); he subsequently returned both watches to her. At one stage, the man said that he would put Michael Gregsten in the boot and they got out of the car; in the event, he was not put in the boot. Throughout this time, Valerie Storie could not see the man's face as he had a handkerchief covering the lower part.

18. Some time after 11pm, on the instructions of the man, they drove off and went through Slough. The man said that he knew of a café where they could get some food. In Slough, Valerie Storie noticed the time was 11.45pm. Later, they stopped at a garage for petrol and obtained 2 gallons which cost 9.9d. It was paid for with a ten-shilling note. Valerie Storie said that the garage at which they had stopped was near London Airport.

19. They drove on and the man gave directions. At one point in the Harrow area the man said, "Be careful: round the corner there is some roadworks." Although there was no sign to give any warning, round the corner there were in fact some roadworks; he then, apparently hastily, added, "I do not know this area". In any event, it was Valerie Storie's evidence that he did seem to know the area and the prosecution relied on the fact that James Hanratty's family then lived at Kingsbury which is in the vicinity.

20. There came a time when the man began to say that he was feeling tired and "wanted a kip". He said this several times. They turned off the main road a couple of times, on his directions, the man saying he wanted to do so to have "a kip". Finally, again on his directions, they drove into the lay-by or slip road on the A6 a few miles south of Bedford. All the lights were turned out. The man repeated that he wanted "to kip" and said that he must tie them up. The use of the word "kip" and the phrase "to kip" became significant at the trial. According to the interviewing police officers (Detective Superintendent Acott and Detective Sergeant Kenneth Oxford), but denied by James Hanratty, it was used three times during the course of contemporaneously recorded interviews.

21. The man tied up Valerie Storie's arms. He said to Michael Gregsten, "I have got to find something to tie you up with". When it was suggested that he should use his tie, the man said, "No, I need that". Michael Gregsten was made to open

the boot of the car and the man found some cord which, together with Michael Gregsten's tie, he used to tie Valerie Storie's hands. Gregsten returned to the driver's seat and the gunman returned to the backseat.

22. In the front of the car was a duffel bag. He said to Michael Gregsten, "Give me that bag up". Michael Gregsten picked up the bag with both hands, turned towards the interior of the car and as the bag was just about to go over the back of the seat, the man fired two shots in quick succession at his head. Michael Gregsten died instantly. Valerie Storie screamed and said: "You shot him you bastard. Why did you do that?" His reply was, "He frightened me. He turned too quick. I got frightened." Miss Storie tried to persuade him to get Michael Gregsten to a doctor and on two occasions he said: "Be quiet will you. I am finking." The pronunciation of that word was relied upon by the prosecution. That, together with the direction to the jury which followed is the subject of argument on this appeal (Grounds 6 and 15).

23. Carrying on with the events of the night, the man asked Valerie Storie to kiss him. She refused. At this time they were facing each other and while in that position a car passed by lighting up the man's face. Miss Storie's evidence was that this was the first (and only) opportunity of "seeing what he looked like" and that "this was the only real proper glimpse of him that I had". Her evidence to the jury went on, "He had very large pale blue staring icy eyes." There was then this exchange:

> Mr Justice Gorman: "Very large pale blue staring icy eyes?"
>
> Miss Storie: "Staring icy eyes. He seemed to have got a pale face as I should imagine anyone would have having just shot someone. He had got brown hair combed back, no parting. The light was only on his face for a few seconds as the vehicle went past and then we were in complete darkness again."

She stated that she did not have good eyesight but was wearing her glasses when this happened. She added to the description that he was a man in his early 20s, clean-shaven, about her height (5 ft. 3½ ins.) or a little taller, very quiet and soft-spoken, voice not deep.

24. Valerie Storie's evidence to the jury was that by threatening her with the gun the man made her get into the back seat. He was wearing black gloves. He seemed to have difficulty in getting them off and made her pull one of them off. She could feel that they were of a very thin nylon type texture. He then raped her. After that, when she tried to persuade him to go, he again said: "Be quiet will you: I am finking".

25. On the man's instructions, Michael Gregsten was removed from the car by Valerie Storie who, with some assistance from the man, dragged him out to the

lay-by. The man asked her to start the car and show him where the gears were; this she did and she also showed him how the lights worked. She left the car running. It stopped; she re-started it and again showed him how the gears worked. He got in the car and she went over and sat down on the ground beside Michael Gregsten. The man then got out and went over to her. He threatened to hit her and she gave him a pound and asked him to go. He started to walk away and when about 6-10 feet away suddenly turned round and started to shoot. Miss Storie felt one bullet hit her; when the second bullet hit her she fell over and was hit by two or three more bullets while lying on the ground. She heard a clicking sound as if he was re-loading the gun, and then he fired another 3 shots which she thought did not hit her. (She was in fact hit by 5 bullets and, as we have recorded, was paralysed from the waist down in consequence.) He came over and touched her; she pretended to be dead. He then drove off in the direction of Luton. With her right hand she gathered up some stones and told the jury that she tried to make the words "blue eyes" and "brown hair".

26. Valerie Storie said that Michael Gregsten was shot at about 2.00-2.15am and that the man left about 3.00am. After he had shot Michael Gregsten the gunman asked Valerie Storie again what her name was and she asked "What shall I call you?". He thought and said, "Well, you can call me Jim." (Valerie Storie said, on at least one occasion before trial, that she thought that Jim was not his real name though in fact apparently it was the name by which James Hanratty was known.)

27. At about 6.30am Valerie Storie was found by John Kerr an Oxford undergraduate involved in a road census. According to his evidence, she told him:

> "We were held up by a man with a gun who shot us. He said it was a .38. We picked him up about 9 or 9.30 at Slough … He is about my own height. He has large staring eyes. He has light fairish hair".

John Kerr said that he made a note of Valerie Storie's name and address, the description and the number of the car which he gave to the police; the note was not found. As to the discrepancies, Valerie Storie denied saying 'light fairish hair'; she also denied ever saying that they had picked him up because they had not done so. These matters were fully investigated at the trial.

28. Valerie Storie was taken to hospital. While there, items of her clothing which included two slips and a pair of knickers were taken from her and submitted for scientific examination. Semen stains on the knickers were later found to have been derived from a person who was a group O secretor.

29. While at the hospital, Valerie Storie was seen by police officers. The first two officers to attend at her bedside were Detective Sergeant Rees and Woman Police Constable Rutland. Notes of what she then said had happened to her were made. These notes were disclosed after the trial and are the subject of

grounds of appeal (Grounds 1 and 2). The same is true of the fact that, in addition to making her witness statements, she was interviewed at length (at which she made certain remarks to which the appellant attaches significance) and was shown photographs (although it is not suggested that she was ever shown a photograph of James Hanratty) (Ground 3).

30. Returning to the chronology of events, three or four hours after the killing at about 7am on Wednesday 23 August, a Morris Minor was seen being driven along Eastern Avenue in the direction of Gants Hill. As a result of the way it was being driven, John Skillett who was driving his car to work, with his friend Edward Blackhall in the front passenger seat, decided to catch up with the car. He pulled up alongside the Morris Minor when they were almost stationary at a roundabout, leading to Gants Hill station, to give its driver a piece of his mind. Mr Skillett said that he had a 'very good view' of the driver's face'. The vehicles were abreast for about a few seconds. Mr Blackhall, the passenger, also expressed himself as "certain" that he would know the man again; he identified the car involved in the incident as the grey Morris Minor 847 BHN from three strips of red tape on the rear bumper and a torn green label on the rear windscreen. (The red tape was quite common on Morris Minors of that period and the appellant suggests that the torn green label might have been seen at the police station.)

31. A little later that same morning, James Trower was driving his car to work along Redbridge Lane East. He was about to pick up a friend of his, Paddy Hogan. He parked his car and heard a car being driven badly. The car, a light grey Morris Minor car passed him and turned into Avondale Crescent where it stopped. Mr Trower stated that he had a full-face view of the driver (for about three seconds) who was wearing a dark jacket and a white shirt. As will become apparent when detailing the defence evidence, Mr Hogan gave evidence to the effect that Mr Trower only arrived at his house some twenty minutes or so after Mr Hogan had himself noticed a Morris Minor turn into Avondale Crescent and come to a halt. Again, this dispute was fully investigated at the trial.

32. As to the presence of the motor car in Avondale Crescent, this evidence broadly fitted with that of Doris Athoe. She lived at 6 Avondale Crescent and recollected the interest shown by the police in what was the Morris Minor 847 BHN later on 23 August. She said that she had seen it "round about 7 o'clock in the morning" and that it remained there on the occasions ("at least twice") that she had passed up and down the Crescent. Her deposition was read and thus the time at which the car was left was not in issue: the availability of new material on sightings of what may have been the Morris Minor later that day provides a further ground of appeal (Ground 7).

33. On Thursday 24 August 1961, (the day after the killing), shortly before 9pm, the murder weapon, a .38 Enfield revolver, was found; it was wrapped in a stained handkerchief. The gun was fully loaded and was with five boxes of

ammunition and some loose ammunition. These items were all found by a cleaner, Edwin Cooke, underneath the back seat of a 36A bus at the garage at Rye Lane, near New Cross. (The back seat of the bus had been checked on the night of Wednesday 23 August 1961 and the gun and ammunition had not been there at that time.) The prosecution suggested that the gun had been deposited on the morning of 24 August. Complaint is now made that they did not call or disclose the identity of the bus conductress, Pamela Patt (Ground 11).

34. There are two aspects of the place in which the weapon was found. The first emerges from the evidence of Charles France (known as "Dixie"). James Hanratty was a friend who regularly visited Mr France's home in Boundary Road, London NW8 where he lived with his wife and children, one being a daughter Carol then aged 16. On an occasion prior to the 21 August 1961, James Hanratty was discussing his activities as a thief with Mr France and referred to the space under the back seat of a bus as a receptacle. James Hanratty's own account, given in evidence at the trial was that he told Charles France that if he got on a bus with stuff in his pocket he would sort it out upstairs on the bus and put the good stuff in his pocket and put the rubbish under the back seat. It is clear that James Hanratty knew about the space under the back seat and the fact that it was a good hiding place for anything he might want to dispose of. The second feature noted during the trial was the route of the 36A bus: it passes along Sussex Gardens, near the bottom of Sutherland Avenue, Maida Vale, on which is to be found the Vienna Hotel.

35. Although not revealed during the trial, the police put out an appeal to hotel staff generally requesting information about anyone behaving strangely. One such report concerned a man, Peter Louis Alphon, staying at the Alexandra Court Hotel in London. It is not suggested that there was any evidence implicating Peter Alphon in any way but he was interviewed and told the police that he spent the night of the murder at the Vienna Hotel also in London. Thus, and for that reason, this hotel came to be visited.

36. On 11 September 1961 (some twenty days after the killing), two cartridge cases were found in room 24 at the Vienna Hotel, Sutherland Avenue, Maida Vale; it was later established scientifically that they had been fired from the murder weapon. The circumstances in which they came to be found and the evidence given by four witnesses associated with the hotel (together with other material relating to them which was not disclosed) are the subject of a number of criticisms (Grounds 8-10). It is sufficient for present purposes to identify the evidence (agreed by the defence). This is that James Hanratty had spent the night of 21/22 August 1961 in room 24 at the Vienna Hotel in the bed adjacent to the chair under and on which they were found (which was in an alcove). He had used the name of "J Ryan" of 72 Wood Lane, Kingsbury (which, according to the evidence at the trial, was an address at which he had never lived although he had also used it when booking a hotel in Ireland). Further, it is also important to underline that the spent cartridges were discovered before James Hanratty had featured in the investigation: it was their presence in room 24 that

caused the police to seek to identify the "J Ryan". He had been one of only two people who had spent a night in that room (which had four beds) in the period between the week of the murder and the recovery of the cartridges.

37. Given the evidence of what was found at the Vienna Hotel, on or about the 22 September 1961, the police made a public appeal for Peter Alphon to contact them. As a result, he voluntarily presented himself to the police on 23 September; he had already been interviewed on 27 August and 7 September and he was interviewed again. He was then put on two identity parades. The first was on the 23 September (held at Cannon Row Police Station) when Edward Blackhall, James Trower and Harold Hirons (who was a garage attendant who served a light coloured Morris Minor with 2 gallons of petrol at about midnight on the night in question) attended. John Skillett was away and did not attend. Valerie Storie attended the second parade on 24 September 1961 at Guy's Hospital. No witness connected with the murder picked out Mr Alphon. Valerie Storie picked out a man who was in fact a volunteer; there is an issue about what was said of his description (Ground 4).

38. In their search for "J Ryan", on 25 September 1961, the police received information from a man who had written postcards for Mr J Ryan who was then visiting Ireland; one of the postcards was addressed to Mrs Hanratty, the mother of James Hanratty. Thus, for the first time, the police turned their attention to him.

39. At this stage, before continuing the chronology of the investigation, it is sensible to say something about James Hanratty and to provide a summary of evidence of his proved movements up to the time of his arrest. He was born on 4 October 1936 and was thus aged 24 at the time of the killing and 25 at the time of the trial. He was 5ft. 7in. to 5ft. 8in. in height and had blue eyes. His hair was brushed back without a parting but he had what is sometimes described as a "widow's peak," or tuft in the centre of his forehead, which he wore forward (although when he gave evidence, he accepted that before his last sentence he had worn it back). He had a London accent. He pronounced "th" as "f". His blood group was group O and he was in addition a group O secretor.

40. At the trial, at the request of the defence and doubtless in order to demonstrate discrepancies with the description provided by Valerie Storie, James Hanratty's character was put in evidence. He had appeared before the courts on four previous occasions, all for offences of dishonesty (taking and driving away or stealing cars, housebreaking, burglary or larceny). In March 1958 he was sentenced to three years' corrective training (C.T.). During the course of this sentence, he committed a number of serious disciplinary offences and attempted to escape several times as a result of which he was moved from a training prison to Manchester Prison and forfeited all his normal remission. (In other words, so the prosecution alleged, 'he had done the lot'.) He had not been in a remand home: nor to Borstal. He had not served a sentence of five years' imprisonment and would not in fact have been eligible for a sentence of

preventive detention (P.D.) until he was 30 years of age. There was no evidence that he had been locked in a cellar for days on end. By his own account at the trial he lived on the proceeds of housebreaking. He was never convicted of any offence involving violence or sex. Several witnesses described his general behaviour, including his behaviour with or towards girls and young women, as proper and respectable. None had seen any indications of violence. He had been released from prison in March 1961.

41. More information about his appearance was provided by Charles France's daughter, Carol. She was a trainee hairdresser who, on the Bank Holiday weekend of Saturday 5 August, at James Hanratty's request, tinted his auburn coloured hair black; his concern was apparently that it was too conspicuous for a housebreaker. Miss France said she re-tinted it black on Saturday 26 August as the colour was fading and there was some re-growth showing at the back. On 3 October 1961 (at a time when he knew the police were looking for a dark haired man in respect of the killing) he had the dye removed from his hair in an endeavour to restore it to its original auburn. On 9 October 1961, he had had his hair bleached in Liverpool. The dying and re-dying and bleaching had caused his hair to take on a vividly unnatural colouring.

42. Bearing in mind that Valerie Storie had described the gunman as neat and tidily dressed in a suit, clothing was also important. On 8 July 1961, James Hanratty, giving the address 12 Sycamore Grove, Kingsbury, ordered a dark suit with a stripe from Hepworths, Burnt Oak. He collected the suit on 18 August and wore it the whole of the following week (that is the week in which the murder took place). The jacket to the suit was never found. The trousers and waistcoat were ultimately seized; the labels from them had been removed. The prosecution argued that the jacket was the only part of the clothing likely to have become bloodstained.

43. As to James Hanratty's movements, evidence was called by the prosecution to the effect that he was at the France's house on Sunday 20 August and again on Monday 21 August from about 2.30pm until he left at about 7pm. Miss France remembered the date as she had a tooth out on 21 August and the date of the dental appointment was also proved. When he left, he said that he was going to Liverpool to visit an aunt, and that he intended to take her to 'the dogs'. He was wearing the Hepworths suit. In fact he did not go to Liverpool that night and his aunt, who did in fact live in Liverpool, gave evidence at the trial to the effect that she had not seen him for several years. In the light of evidence called by the defence in relation to a visit to a sweet shop in Liverpool, to which we shall return, whether and if so, when James Hanratty went to Liverpool at about this time was important and complaint is now made (as it was on the original appeal) that the jury were not appropriately reminded of the effect or consequences of this evidence: this is the one criticism of the summing up which does not relate to developments of the law since 1962 (Ground 17).

44. In any event, James Hanratty agreed that he arrived at the Vienna Hotel at between 11.30pm and midnight on Monday 21 August and stayed there that night in room 24. We shall return to his explanation of his movements at the time of the killing. As to the period thereafter, however, there was evidence to establish his presence in Liverpool on the evening of Thursday 24 August 1961 because an overnight telegram was sent by telephone at 8.40pm to Mr France which read:

> "Having a nice time. Be home early Friday morning for business. Yours sincerely Jim."

The telegram was sent from a telephone bar in the forecourt of St. George's Hall opposite the main railway station at Lime Street, Liverpool. The sender was given as "Mr P Ryan, Imperial Hotel, Russell Square, London".

45. When giving evidence, James Hanratty admitted sending the telegram and stated that he returned to London early Friday morning and went to see the Frances. They said this visit was on the Saturday 26 August, when he arrived at about 9am. According to Mr France, James Hanratty said that he had been waiting at the station for a couple of hours because he did not want to disturb them. He went on to say that he had stayed at the Vienna Hotel on Monday 21 August 1961 and produced the hotel bill. At no stage did James Hanratty tell any member of the France family that he had been to Rhyl.

46. On 4 September 1961, James Hanratty went to Ireland, travelling from Heathrow to Dublin using the name Ryan. He stayed at O'Flynn's Hotel, signed the register 'J Ryan' and gave his address as 72 Wood Lane, Kingsbury. On 5 September 1961, he obtained an Irish driving licence and travelled to Limerick where he stayed at the Lomond Hotel. On 6 September 1961, he hired a car and travelled to Cork. On 7 September 1961, he was involved in a road traffic accident. Gerrard Leonard who met James Hanratty in Ireland and accompanied him on trips in a hire car described his driving as fast and slightly reckless; it was Mr Leonard who informed the police of the link between the name "J Ryan" and James Hanratty.

47. There was evidence that James Hanratty was still wearing the Hepworth suit at the end of September 1961. By the beginning of October 1961, he was no longer wearing the jacket of that suit but was still wearing the trousers and waistcoat with a black jacket. At the beginning of October 1961, James Hanratty broke into two houses in the Stanmore area. From one he stole a black jacket. He stated that he did this because he damaged the Hepworth jacket in the course of one of these break-ins and that he disposed of that jacket (which was never found) in a nearby recreation ground.

48. On 5 October 1961, James Hanratty spoke to Mr France on the telephone and said the police wanted him in connection with the A6 murder. This led to a series of telephone calls to the police as to which there was a substantial dispute

at trial. The first telephone conversation on 6 October 1961, was made at about midday from a telephone box in Soho. The evidence of DS Acott was to the effect that James Hanratty said:

> 'I know I have left my fingerprints at different places and some different things and the police want me, but I want to tell you that I did not do that A6 murder.'

The second telephone conversation took place at about 11pm on the same day; that was limited to a discussion about getting in contact with a newspaper and some conversation about James Hanratty ringing his mother.

49. The final telephone conversation took place on 7 October and James Hanratty said: 'This is Jimmy Ryan again, but you will never guess where I am speaking from - Liverpool'. According to the officer this was the first time Liverpool had been mentioned. James Hanratty said that on 21 August he had spent the night at the Vienna Hotel and on Tuesday 22 August he had travelled to Liverpool by train and stayed there with three friends for five days before returning to London on Friday 25 August. He declined to name the three friends because they had criminal records. He said that they were receivers of stolen goods and would not come forward on his behalf.

50. James Hanratty's account of these telephone calls at the trial was that he had told the police during the first telephone conversation that he had been in Liverpool on the night of the murder. This had been a lie that was, in effect, made up "on the spur of the moment" while on the telephone to which, until the trial started, he had felt committed. On 6 October 1961, he had in fact telephoned Charles France and told him that he had an alibi for the murder from people in Liverpool.

51. On 11 October 1961, James Hanratty travelled from Liverpool to Blackpool, where he was seen and arrested. He gave the name Peter Bates but was quickly identified and, on the following day, he was seen by DS Acott and DSgt Oxford. He was interviewed with DSgt Oxford making what was described as a "sort of shorthand running note" of these interviews; they were written in pencil on foolscap sheets although there is an issue as to when and how this was done (Ground 12). It is not disputed, however, that after being cautioned James Hanratty said:

> "I understand, but, as I told you, I have got a perfect alibi for the murder … Fire away and ask me any questions you like. I will answer them and you will see I had nothing to do with the murder."

52. There were two interviews. The 'perfect alibi' was an account of his trip to Liverpool, when he had visited three former prison cellmates whom he was not

then prepared to name. Other aspects of the interview which James Hanratty accepted he had said included the following facts:

i) After coming out of prison in March 1961, he had enquired of a man called Fisher who lived in Ealing about a gun, "a shooter to do some stick-ups"; in evidence, he also admitted that he wanted to be "a stick up man", that he knew where to get a gun if he wanted one but going on to say words to the effect that he never owned a gun and that the whole thing was just talk.

ii) His response to being told about the cartridges found on the chair in the Vienna Hotel was to ask what size the bullets were.

iii) He had stayed at the Vienna Hotel on the night of 21 August, leaving at 9.00am the following morning of 22 August. He had then travelled to Paddington by mistake and then he went to Euston and had caught a train to Liverpool.

53. There were also a number of areas of dispute. In particular:

i) According to the officers, James Hanratty told them that the telegram had been sent on the Tuesday 22 August, the same day that he said he had arrived in Liverpool. His account (put to them and repeated in his evidence) was that he had told them at the first interview that the telegram was sent on the Thursday but that subsequently DS Acott said to him: "We have enquired about this telegram Jimmie. You said to me it was Tuesday. It was not you know." He had replied: "You have misunderstood me DS Acott. I said Thursday."

ii) In the course of the first interview he had said that he had thrown the Hepworth jacket away after damaging it in the course of a burglary committed in Stanmore; during the second interview, the officers alleged (although he disputed this) that he had then said that he had in fact destroyed the jacket.

iii) More important, the evidence of the officers was to the effect that at the end of each interview he had spoken of going to "kip", and in the second interview used that word not once but twice. This was, of course, a word which Valerie Storie recollected that the gunman had used on several occasions. James Hanratty not only denied that he had used the word in interview; he denied ever using it.

54. Although there was an issue about whether James Hanratty had mentioned his Liverpool alibi to the police on the telephone (which was an important detail because he explained his late change of alibi on the fact that he felt that he had already committed himself), on 13 October 1961, his solicitor, Mr Kleinman, certainly wrote and notified the police of the details of that alibi. It was explained that James Hanratty had gone to Liverpool on 22 August 1961, had then visited a sweet shop on Scotland Road and asked for directions to Carlton or Talbot Road and had stayed in Liverpool until 25 August; he provided details of a visit to the cinema and a visit to New Brighton on the Wirral.

55. James Hanratty had been arrested and interviewed in Blackpool. Identification parades were then arranged in Bedford and complaint is made about failure to disclose a concern expressed by DS Acott about steps which should be taken to cover his (Hanratty's) hair which was not reflected in the evidence (Ground 5).

56. At an identification parade held at Bedford Police Station on 13 October 1961, John Skillett, the driver of the car who had expressed concern about the way in which a Morris Minor had been driven in Gants Hill, identified James Hanratty as the driver. The passenger, Edward Blackhall picked out a volunteer. James Trower (who had seen a Morris Minor turn into Avondale Crescent) also identified James Hanratty.

57. The following day, there was an identification parade at Stoke Mandeville Hospital where Valerie Storie remained confined to bed (which had to be moved up and down the line). James Hanratty was on the parade. Valerie Storie subsequently made it clear that she was startled by James Hanratty's unusual hair colour: in cross-examination, she agreed with Mr Sherrard's evocative description that it stood out "like a carrot in a bunch of bananas". Here is an extract from the cross-examination:

> "A. I was satisfied after five minutes of the parade.
>
> Q. You were satisfied after five minutes?
> A. Yes; but I wanted to be sure – I was not going to make a mistake this time."
>
> . . .
>
> Q. Then you asked him to speak, or the men to speak?
> A. Yes.
>
> Q. Then you were wheeled up and down again at your request?
> A. Yes.
>
> Q. Again asked the men to speak?
> A. Yes.

Q. And then wheeled up and down some more?
A. Yes.

Q. Miss Storie, one appreciates your position of course, but it is my plain duty to suggest to you, and I do suggest to you that, although you may be convinced in your own mind, you are nevertheless absolutely honest, but absolutely wrong. I make that quite plain to you.
A. I do not agree with that suggestion."

58. And from the re-examination of Mr Graham Swanwick QC:

"Q. You have described the second parade as: being wheeled up and down; I think you said, asked the men to speak; wheeled up and down again and asked them to speak again. You said that after five minutes you were sure. At what stage in the process of being wheeled up and down and asking the men to speak were you first sure in your own mind?
A. I was absolutely certain as soon as I heard him speak.

Q. The first time?
A. The first time."

Mr Mansfield argues that the way in which the 'aural' identification took place was "incurably unfair" (Ground 6) and also points to the failure to provide what would now be required directions of law both as to the identification generally and the voice recognition (Grounds 14 and 15).

59. On 14 October, after the identification by Valerie Storie, James Hanratty was charged with murder but that was not the end of the evidence to become available for the prosecution. On 22 November 1961, a prison officer overheard a prisoner Roy Langdale talking to another prisoner on the bus taking them to court. He reported the conversation to the Governor; this led to an approach by the police. Langdale's evidence was to the effect that he had exercised with James Hanratty and become friendly with him. During the course of their conversations, James Hanratty eventually talked about the murder, denying, but then admitting responsibility, going on to discuss the circumstances in terms only consistent with guilt. Needless to say, Roy Langdale was a man with a criminal record and there were some discrepancies between his statement and the evidence which he gave. The confession was challenged in its entirety.

60. We turn now to the defence case which we shall outline in a little detail. First and foremost, James Hanratty denied being the man who had attacked Michael Gregsten and Valerie Storie, and the man who had driven the Morris Minor car. He explained that he had dyed his hair to make it less conspicuous; he agreed that

he had told 'Dixie' France that if he got on a bus with (stolen) stuff in his pocket, he would sort it out and put the less good stuff in the back seat of the bus.

61. He was able to give an account of his movements over the vital period albeit that this account had changed. It appears that within a few days of the commencement of the trial, James Hanratty informed his lawyers that he had lied about being in Liverpool; he then told them (and he repeated before the jury) that he had been in Rhyl on 22 and 23 August 1961. This information only came to the attention of the police on 6 February, the twelfth day of the trial, when Mr Sherrard opened the defence case.

62. James Hanratty's account of events on and after 22 August 1961 was broadly as follows. On 22 August, having left the Vienna Hotel at about 9.30am, he walked to Paddington Station by mistake. He then took a taxi to Euston Station and travelled by train to Lime Street Station, Liverpool (arriving at about 4.30pm); his intention was to meet a man whom he had met in prison, but whom he had not seen for 3-4 years, in order to dispose of a stolen ring worth £350. The man (Mr Aspinall) was apparently in the grocery or greengrocery business and James Hanratty believed that he lived in Carlton, Tarleton or Talbot Road. He had a wash at the station and then left his suitcase in the left luggage office with a man whose hand was deformed or withered. Having been directed by a woman, he got on a bus at or near the station, but then got off it when asked to pay the fare because the conductor did not know the place he was looking for. He got off in Scotland Road, spoke to two or three people and walked into a sweet shop asking for directions. He was told to go back into town because he had come too far. He then walked back to Lime Street but could not find the road. He had a meal and then came upon a man standing on the steps of a billiard hall to whom he had tried to sell a watch but was told that he could not go upstairs because the premises were licensed. He abandoned his search for Mr Aspinall.

63. The account which had initially been provided to the police was to the effect that James Hanratty then stayed in Liverpool on the nights of 22 and 23 August with three men (whom, repeatedly, he would not name he said for fear of exposing their criminal activities), in a flat in the Bull Ring. When opening the defence, however, Mr Sherrard made it clear that this account was untrue. He had, instead, gone to Rhyl.

64. James Hanratty told the jury that, in fact, he had left Liverpool on the same evening that he arrived and travelled (at about 7.30pm) by bus to Rhyl, where he stayed for two nights. His object was to find another man, Terry Evans, but then known to him only as 'John', whom he had previously met in Rhyl and who, he thought, would help him to dispose of the stolen jewellery.

65. In giving evidence, he provided a certain amount of detail about 'John'. John worked on the bumper cars on a fairground operated by a man called Arthur

Webber, and James Hanratty had first met him on about 25 July 1961 when he had travelled to Rhyl and visited the fairground where John worked. He had asked for a job at the fairground and, having nowhere else to stay, had spent the night at John's home. The following day, John had given him a pair of shoes on the understanding that James Hanratty would pay for them out of his wages; he did not, however, return to the fairground and disappeared with the shoes. They had never, in fact, made contact again.

66. James Hanratty also provided further information about Rhyl. He described the boarding house in which he had stayed, providing detail of its location and furniture. He spent the following day trying to find John but did not go to the fairground because he had gone away after he had been employed there and did not want to go back. Unsuccessful in his search, on Thursday 24 August, he returned to Liverpool where he saw a film, 'The Guns of Navarone'. Having tried unsuccessfully to see a boxing match, he sent the telegram to the Frances (which was, in fact, timed at 8.40pm) and returned to London on Thursday night. Again, he described the passengers. When he arrived on the Friday he went to see the Frances. He explained how he had worn the new Hepworth's suit save for when it was at the cleaners and how he had torn the coat (which he had discarded and then stolen a replacement during the course of a burglary).

67. In October, when a description was put out, he telephoned DS Acott and told him that he was in Liverpool on the relevant dates; in the second call, he said he was going to Liverpool and in the third call that he was in Liverpool and that his endeavours to get his friends to help had failed. He admitted that he had lied but had not understood that he was being sought as the murderer: he thought the police were looking for a man who may have slept in the same bedroom as the murderer. On the first occasion when DS Acott had asked about his whereabouts on 22 and 23 August, he had been confused and said Liverpool. The approach to the issue of lies is criticised (Ground 16).

68. During the interviews after his arrest, he said that he had invited the police to ask any questions because he had nothing to do with the murder; he told them about going to the pictures, the boxing match, the Vienna Hotel (but not room 24) and the sweet shop. He was told he had to give particulars of the three men but said he was too frightened to admit that this was a lie. He agreed that he had had a conversation about a gun but said that he had never intended to get one, had never become a stick-up man, had never got a gun and had never shot the man. Further, he denied ever having said anything in interview about going to sleep and had not used the word 'kip' either in the interview or at all. He said the evidence of Roy Langdale was untrue.

69. A number of witnesses were called to support different parts of this account. First, Mrs Olive Dinwoodie, an assistant in the sweet shop at 408 Scotland Road, Liverpool, said that a man who looked like James Hanratty did call at the sweet shop (of which she was temporarily in charge), in the afternoon and

asked for Tarleton Road: but she was certain that the incident occurred on Monday 21 August 1961. Mrs Dinwoodie was in the sweet shop with her granddaughter Barbara Ford, aged 13.

70. This evidence was similar to that given by Albert Harding, a long-distance lorry driver. He had been called by the prosecution to support their contention that 21 August was the date that Mrs Dinwoodie was at the shop; he had visited both on Monday 21 and Tuesday 22 August and said that Mrs Dinwoodie was only present at the same time as he was there on Monday. Bearing in mind that 21 August was the date that James Hanratty had stayed at the Vienna Hotel, it was the case for the prosecution that he had not been in Liverpool that day and that he had found out about someone else who had made the enquiry when he went to Liverpool to purchase an alibi.

71. Robert Kempt, the Manager of a billiard hall in Liverpool, confirmed his recollection of an occasion when he was standing at the bottom of the steps near Lime Street Station when a man approached and asked him to buy a watch. He gave evidence of a conversation in similar terms to that recounted by James Hanratty: he said it could have happened at any time between June and September. Similarly, Terry Evans confirmed that in July 1961, James Hanratty had asked for a job and worked for a couple of hours (which was confirmed by Mr Webber), sleeping at his (Evans') house. He said that James Hanratty had no reason to believe that he would be interested in stolen property.

72. The Rhyl alibi received further support from Mrs Grace Jones, who ran a bed and breakfast house at "Ingledene", 19 Kinmel Street, Rhyl, and whose own description of her house broadly matched that which James Hanratty had provided. She went on to say that a young man had stayed at her house for two nights of 22 and 23 August 1961 and she believed that it was James Hanratty; she thought he stayed in room 4. It is relevant to note, however, that Mrs Jones' credibility as a witness was damaged when she was seen talking to Terry Evans, notwithstanding the Judge's instruction, and was not truthful about what had been discussed (having, in fact, been talking about James Hanratty's appearance). Her records also had discrepancies and she agreed that he could have stayed any time after 19 August. Further, the prosecution called three witnesses in rebuttal who had in fact stayed in the house on the relevant nights, one of whom (Mr Sayle) in fact stayed in room 4 on the nights of the 21, 22 and 23 August 1961. The prosecution also relied on evidence to the effect that there were eight adults and at least five children staying at the guesthouse during the week of 19-26 August 1961 suggesting that there was no room for James Hanratty in addition. The police did not, however, disclose other information in their possession (Ground 13).

73. The defence also called:

i) Mary Meaden who had been out with James Hanratty on occasions in September 1961 and described him as very well behaved.

ii) Mrs Willis, who lived at Knebworth and who had been robbed at gunpoint on 24 August 1961 by a man who did not resemble James Hanratty.

iii) Mrs Dalal who lived in Upper Richmond Road West and who had been robbed on 7 September 1961 by a man who had claimed he was the 'A6 murderer'. She picked out Peter Alphon on an identity parade.

iv) Two prisoners from Brixton prison (Emery and Blythe) who said that they exercised with James Hanratty and that they had never seen Roy Langdale speak to James Hanratty.

v) Three witnesses who confirmed that two houses had been burgled in the Stanmore area on 1 October 1961 and that a black jacket had been stolen.

74. The remaining witness called on behalf of James Hanratty was Paddy Hogan. He was due to be picked up by James Trower. As foreshadowed in paragraph 30, his recollection was of a fawn or cream Morris Minor turning into Avondale Crescent some 20 minutes before James Trower arrived (and so contrary to Trower's evidence that the man whom he identified as James Hanratty drove into Avondale Crescent while he was there). He later saw the car in Avondale Crescent both that afternoon and evening (when the police were examining it). In the light of the arguments advanced in relation to other sightings of the Gregsten Morris Minor, it is worth noting that even this evidence has the car in Avondale Crescent from early on 23 August. From the defence perspective at the time, however, Paddy Hogan was inconsistent with James Trower and so cast doubt upon his very important identification.

Lord Justice Mantell:

SUMMARY OF THE SUBMISSIONS

75. When considering the effect of any material which is now relied upon (whether as new evidence or undisclosed material at the time of the trial), it is worth bearing in mind how the rival contentions were advanced at the trial itself. Fortunately, counsel's speeches remain available and the arguments advanced (albeit not necessarily in this order) can usefully be summarised.

76. Thus, the prosecution relied on the following features:

i) The identification made by Valerie Storie, involving as it did not only his physical appearance but also his voice (including his accent, pronunciation and use of the word 'kip') and his clothing. It is also possible to point to some of the things which the gunman said as being consistent with James Hanratty (including the name Jim): on the other hand, a number of the facts which she recalled did not fit with background information about him.

ii) The visual identifications by John Skillett and James Trower of James Hanratty as the erratic driver of the Morris Minor in the vicinity of Avondale Crescent (where the car used by Michael Gregsten was later found). In that regard, the prosecution also relied on the fact that Leonard in Ireland and Carol France in this country also spoke of James Hanratty's erratic driving.

iii) In the light of the fact that the gunman appeared to be familiar with the roadworks in the Harrow area, the fact was that James Hanratty's parents lived in Kingsbury with the result that he would, indeed, be familiar with the Harrow area.

iv) The presence, on 11 September 1961, of the two cartridge cases fired from the murder weapon, in room 24 at the Vienna Hotel. It was common ground that the room had been occupied by James Hanratty on 21 August 1961 and, on the evidence, it appeared that only one of the beds had been occupied on only one other occasion between then and the date they were found.

v) The fact that the murder weapon together with ammunition, wrapped in a handkerchief, were discovered under the back seat of a bus, that is, the very place which it was common ground James Hanratty had spoken of as a place to dispose of unwanted goods.

vi) James Hanratty's conduct in removing the dye from his hair on 3 October 1961 when he knew that he was wanted by the police.

vii) James Hanratty's admissions that he had made enquiries for a gun, his desire to be a "stick-up man", and his ability to acquire a gun.

viii) The admitted lies about the stay in Liverpool with the three men on the nights of 22 and 23 August 1961 and the implausibility of one of the explanations for these lies (maintained at trial) to the effect that James Hanratty did not think that he would be able to find the house in Rhyl.

ix) The implausibility of the reason given by James Hanratty for going to Liverpool and for abandoning the search for the man who lived in Carlton or Tarleton Road or Street.

x) The evidence that the sweet shop incident occurred on Monday 21 and not Tuesday 22 August 1961, so not involving James Hanratty.

xi) The implausibility of the reason given for the telegram sent on Thursday 24 August 1961 (namely that he had promised to write to Mrs France), and the inference that this was an attempt to provide or bolster up a false alibi: the telegram had been sent at 8.40pm to arrive the following morning, at the same time he would have been travelling on the midnight train.

xii) The confession to Roy Langdale during the course of exercise in prison.

xiii) The fact that James Hanratty put forward two alibis, one of which was admittedly false and the other, also implausible, asserted only after the commencement of the trial thereby limiting the opportunity to investigate. This compounds with James Hanratty's failure to take any steps between the 7 and 11 October 1961 (when James Hanratty was in the Liverpool area) to find the boarding house in Rhyl.

xiv) The implausibility of the reason for the visit to Rhyl, namely to find a man he had met only once before in order to sell stolen jewellery without knowing where Terry Evans was to be found or having any good reason to believe that Terry Evans was interested in buying stolen jewellery.

xv) The unsatisfactory state of the evidence emanating from Mrs Jones whose description of the house included a green bath (recollected by James Hanratty) albeit that the bathroom had a bed in it. This evidence had to be contrasted with the records which revealed only one single

room in which James Hanratty could have stayed (room 4, occupied on 21, 22 and 23 August by a witness called in rebuttal) and the evidence of the guests who did stay in Mrs Jones' house which effectively excluded James Hanratty's presence on 22 or 23 August.

xvi) The evidence of blood group consistency, namely that James Hanratty (albeit along with 80% of 40-45% of the male population) was a group O secretor as was the semen found on Valerie Storie's clothing (Michael Gregsten being a group AB secretor).

77. The defence described the case as "sagging with coincidences" and relied on the following features:

i) Valerie Storie had only a limited opportunity of seeing the man. Furthermore:

a) Her facial identification was weakened by her incorrect identification of the 24 September.

b) There was a conflict between her evidence and the evidence of John Kerr (the person who had discovered her); he said that Valerie Storie had spoken of the man as having light fairish hair and had said that he had been picked up at about 9.00pm or 9.30pm at Slough.

c) The mispronunciation of "th" was quite common among Londoners.

d) While some of the things said by the murderer were consistent with James Hanratty's personal history, others were not.

e) Her description of the murderer's knowledge of cars and how to drive them was inconsistent with James Hanratty's experience and driving ability.

ii) The other identifying witnesses (John Skillett and James Trower) also had only limited opportunity to see the driver of the Morris Minor. Further, Edward Blackhall (Mr Skillett's passenger) had picked out another man on 13 October (having already picked out a man on the 23 September 1961) and James Trower's evidence was also unsatisfactory and contradicted by Paddy Hogan who gave evidence for the defence.

iii) Harold Hirons, a garage attendant who put petrol in the car while Valerie Storie and Michael Gregsten were still in it, had not identified James Hanratty.

iv) It was unlikely that the murderer would have fired two bullets before the murder and then dropped or left the two spent cartridge cases in the Vienna Hotel and that on the probabilities these two cases came to be there after the murder. The implication of this submission is that these cartridge cases must have been placed in the room by others, perhaps in an effort to implicate James Hanratty and exculpate the true culprit, possibly Peter Alphon.

v) In any event, the witnesses who gave evidence from the Vienna Hotel were unreliable: room 24 had or may have been occupied by other persons (and, in particular, by Peter Alphon) in addition to the one other person said to have occupied the room for one night between 21 August and 11 September.

vi) The use of the space under the back seat of a bus as a receptacle was not uncommon with the result that the finding of the murder weapon in such a place was not probative against James Hanratty.

vii) There were a number of concerns about the evidence of the police officers. More must have been said during the course of the interviews than was written down and there were challenges as to that which was written. Thus, there were serious issues about when and how Liverpool and the three men were mentioned and the conversation about the telegram; further, James Hanratty denied ever using the word "kip".

viii) The interview also had to be approached with care in other respects and allowances had to be made for James Hanratty's character and personality. Thus, his admission to the police concerning a gun and about becoming a "stick-up" man were simply examples of his being boastful. His lies about Liverpool and the three men occurred on the spur of the moment, when he could not remember the details of the Rhyl boarding house; his persistence in them because he was afraid of the consequences of changing his alibi was down to foolishness rather than anything more sinister.

ix) James Hanratty was the man in the sweet shop incident which could only have occurred on the Monday 21 or Tuesday 22 August; as there was evidence, both from prosecution and defence, that he was in London on the Monday it could only have happened on Tuesday 22 August 1961 which, by itself, demonstrated that he was not the gunman.

x) Other features of James Hanratty's evidence were amply confirmed by independent witnesses. Thus:

a) a conversation in relation to the sale of a watch in Liverpool was confirmed by Mr Kempt;

b) he correctly described Grace Jones' boarding house and despite her confused and unsatisfactory evidence Mrs Jones was telling the truth when she said that he had stayed at her house on 22 and 23 August.

c) he had previously met Terry Evans and did try and find him in Rhyl.

xi) The evidence given by Roy Langdale was from a suspect source. It was controverted not only by James Hanratty himself (and was inconsistent with his constant reiteration of his innocence) but also by the evidence of two other prisoners.

xii) As to the scientific evidence, there was neither blood nor fibre found on any of his clothing. The fact that he was a group O secretor did not advance the case: some 36% of the white male population were group O secretors, including Peter Alphon.

xiii) The jury knew about James Hanratty's record and this incident was out of character. He had no previous convictions for offences involving violence, sexual assaults or dangerous driving.

78. From the account of the facts which we have set out, coupled with the summary of the submissions of counsel at the trial, it is apparent, that the only issue with which the jury was concerned at the trial was the identity of the person who was guilty of murdering Michael Gregsten and raping Valerie Storie. By finding James Hanratty guilty the jury resolved that issue. That on the evidence which they heard, the jury were entitled to come to this conclusion was made clear by the previous decision of this Court and the conclusion of Mr Hawser to which we have already referred (see paragraphs 4,5 and 8). Mr Mansfield does not suggest otherwise. In addition, he accepts that judged by the standards of 1962 the summing up of Gorman J, except in one respect, was extremely fair and beyond criticism.

79. With this background the onus must be squarely on the appellant to establish that the appeal should succeed. Why then is it said that an appeal which has previously failed should now after all these years succeed? The complaints which are made are based on non-disclosure for the purposes of the trial by the

prosecution, fresh evidence which was not available at the trial and, with one addition, omissions from the summing up of directions which by present day standards, as opposed to those which existed in 1962, should have been included in the summing up.

80. The prosecution do not dispute there was non-disclosure as alleged and have not relied on the substantial difference between the duties of disclosure on the prosecution today as compared with 1962. Furthermore, it is not suggested that the appellant's additional evidence is not admissible.

81. In opposing the appeal the prosecution unusually wish to rely on fresh evidence, in the form of DNA findings which do not directly address the grounds of appeal but which the prosecution contend as a result of scientific developments clearly establish the guilt of James Hanratty. The appellant challenges the admissibility and relevance of the DNA evidence which was obtained from a piece of fabric from Valerie Storie's knickers and from the handkerchief which was found with the murder weapon under the back seat of the bus. They also seek to give an explanation for the findings consistent with James Hanratty's innocence by alleging that the exhibits on which the tests were conducted could have been contaminated due to the failure to preserve them in the way they would be today.

THE LAW

The Role of the Court of Appeal

82. In support of the contention that the DNA evidence is not admissible or relevant, Mr Mansfield submits that it is the jury and not the Court of Appeal which, as the tribunal of fact, has the responsibility of determining the guilt or innocence of the defendant. He contends that if this Court were to rely on the DNA evidence they would be usurping the role of the jury. He adds that the Court of Appeal's role is one of review and fresh evidence which does not relate to and is independent of fresh evidence relied on by the appellant cannot assist this Court in the performance of its task as a court of review.

83. On behalf of the prosecution, Mr Sweeney argues that the DNA evidence is admissible and we should rely on it, if we are satisfied that it establishes James Hanratty's responsibility for the murder, as part of our reasoning for rejecting each of the grounds of appeal. Mr Sweeney suggests that the DNA evidence clearly establishes the correctness of the decision of the jury and proves beyond doubt that there has been no miscarriage of justice.

84. On the hearing of the appeal we allowed the evidence as to DNA to be placed before us, but indicated that we would give our decision as to whether we would admit the evidence in the course of giving this judgment.

85. The issues on this appeal and, in particular, the dispute as to the admissibility of the DNA evidence raise in acute form the question as to what is the precise role of this court when hearing an appeal and the extent of its discretion to admit fresh evidence. This question is undoubtedly one of general importance, but it is also one on which the authorities now provide considerable assistance, even though Mr Mansfield is right in submitting that they do not provide binding authority as to the relevance and admissibility of the DNA evidence.

The statutory provisions

86. The starting point for our consideration of these issues are the relevant statutory provisions. On references by the Criminal Cases Review Commission under section 9(1)(a) of the Criminal Appeal Act 1995, the references are to be treated in accordance with section 9(2) of that Act as an appeal against conviction under section 1 of the Criminal Appeal Act 1968.

87. Fortunately, the role of this Court on an appeal under the 1968 Act has recently been considered by the House of Lords in *R v Pendleton* [2002] 1WLR 72. Lord Bingham of Cornhill referred to the legislative history of that section and in particular section 4(1) of the Criminal Appeal Act 1907, which is the predecessor of section 2 of the 1968 Act. He described that provision as being the "core provision" and added that the section "clearly expresses Parliament's overriding intention that the interests of justice should be served (by this Court) and also its expectation that this Court would have to grapple with potentially difficult factual issues;" (paragraph 7). Lord Bingham then went on to state that:

> "Although the 1907 Act has been repeatedly amended, the scheme of the Act has not been fundamentally altered. The most notable change has been the granting by the Criminal Appeal Act 1964 and the extension by the Criminal Justice Act 1988 of a power, on the allowing of an appeal against conviction, to order a retrial. The core provision contained in section 4 of the 1907 Act is now expressed more shortly and simply in section 2 of the 1968 Act as substituted by section 2(1) of the Criminal Appeal Act 1995: "(I) Subject to the provisions of this Act, the Court of Appeal- (a) shall allow an appeal against conviction if they think that the conviction is unsafe; and (b) shall dismiss such an appeal in any other case."

The most important lesson to be learnt from this part of Lord Bingham speech is that Parliament's overriding intention in the 1907 Act, and now in the 1968 Act, is that it should be this Court's central role to ensure that justice has been done and to rectify injustice.

88. The next provision to which it is necessary to refer is section 23 of the 1968 Act as amended by sections 4(1) and 29 of, and Schedule 2 paragraph 4(1)(3) and Schedule 3 to, the 1995 Act. The section is in these terms:

> "(1) For the purposes of an appeal under this Part of this Act the Court of Appeal may, if they think it necessary or expedient in the interests of justice- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case; (b) order any witness who would have been a compellable witness in the proceedings from which the appeal lies to attend for examination and be examined before the court, whether or not he was called in those proceedings; and (c) receive any evidence which was not adduced in the proceedings from which the appeal lies.
>
> (2) The Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to- (a) whether the evidence appears to the court to be capable of belief; (b) whether it appears to the court that the evidence may afford any ground for allowing the appeal; (c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings.
>
> (3) Subsection (1)(c) above applies to any evidence of a witness (including the appellant) who is competent but not compellable.
>
> (4) For the purposes of an appeal under this Part of this Act, the Court of Appeal may, if they think it necessary or expedient in the interests of justice, order the examination of any witness whose attendance might be required under subsection (1)(b) above to be conducted, in any manner provided by rules of court, before any judge or officer of the court or other person appointed by the court for the purpose, and allow the admission of any depositions so taken as evidence before the court."

89. A feature of section 23 is that it makes the discretion which the section gives to this Court to receive fresh evidence, subject to an express requirement that this Court shall consider it is "necessary or expedient in the interests of justice" to do so. Thus, the section echoes the "core provision" identified by Lord Bingham which is implicitly a part of section 2 of the 1968 Act. Subsection (2) does no more than identify the different considerations to which the Court is required *to have regard* when exercising that discretion.

90. Mr Mansfield referred us to the legislative history of section 23 in its present form. He pointed out section 23 is derived from section 9 of the 1907 Act. He argues the amendments which were made to section 23 restrict the discretion of the court to admit fresh evidence. We do not accept that this is the position. The changes simplified the language of the section but did not affect the overriding purpose of the section which was, and is, that the power to admit fresh evidence should be to assist this Court in its task of furthering the interests of justice.

91. In performing this task the Court should have in mind that, in the same speech, Lord Bingham also emphasised, that while the Court of Appeal is entrusted "with a power of review to guard against the possibility of injustice", it should not intrude "into the territory which properly belongs to the jury" (paragraph 17). He also endorsed the approach in *Stafford v DPP* [1974] AC 878. What made a decision "unsafe" was to be determined by deciding what was the effect of the fresh evidence on the minds of the court and not by asking what might be the effect that the evidence would have on the mind of the jury. This Court has, however, to bear "very clearly in mind that the question for its consideration is whether the conviction is safe and not whether the accused is guilty". The Court has also to remember that it should not become the primary decision-maker as it has not heard the evidence which the jury heard. So it is perfectly in order for "the Court of Appeal in a case of any difficulty, to test their own provisional view by asking whether the evidence, if given at the trial, might reasonably have affected the decision of the trial jury to convict. If it might, the conviction must be thought to be unsafe" (paragraph 19). To cite Lord Bingham again:

> "Trial by jury does not mean trial by jury in the first instance and trial by judges of the Court of Appeal in the second. The Court of Appeal is entrusted with a power of review to be exercised with caution, mindful that the Court of Appeal is not privy to the jury's deliberations and must not intrude into territory which properly belongs to the jury" (paragraph 17).

92. On this aspect of the law, Lord Bingham's views were endorsed by all the other members of the House and they deserve our particular attention. (Lord Hobhouse of Woodborough delivered the only other separate speech and (at paragraph 35) he expressly agreed with this aspect of the speech of Lord Bingham.)

93. The decision in *Pendleton* was subsequently applied by this Court *in R v Hakala* (19th March 2002: case number 2000/03307/Z4). In his judgment, Judge LJ made this statement, which is particularly relevant to the issues before us:

> "The judgment in "fresh evidence" cases will inevitably therefore continue to focus on the facts before the trial jury, in order to ensure that the right question - the safety, or otherwise, of the conviction - is answered. It is integral to process that if the fresh evidence is disputed, this Court must decide whether and to what extent it should be

> accepted or rejected, and if it is to be accepted, to evaluate its importance, or otherwise, relative to the remaining material which was before the trial jury: hence the jury impact test. Indeed, although the question did not arise in Pendleton, *the fresh evidence produced by the appellant, or indeed the Crown, may serve to confirm rather than undermine the safety of the conviction.* Unless this evaluation is carried out, it is difficult to see how this Court can carry out its statutory responsibility in a fresh evidence case, and exercise its "powers of review to guard against the possibility of injustice". However the safety of the appellant's conviction is examined, the essential question, and ultimately the only question for this Court, is whether, in the light of the fresh evidence, the convictions are unsafe"(emphasis added).

The Admissibility of Fresh Evidence and the Two Different Grounds for Allowing an Appeal

94. Assisted by these authorities it is clear that the overriding consideration for this Court in deciding whether fresh evidence should be admitted on the hearing of an appeal is whether the evidence will assist the Court to achieve justice. Justice can equally be achieved by upholding a conviction if it is safe or setting it aside if it is unsafe.

95. Here it is important to have in mind that a conviction can be unsafe for two distinct reasons that may, but do not necessarily, overlap. The first reason being that there is a doubt as to the safety of the conviction and the second being that the trial was materially flawed. The second reason can be independent of guilt because of the fundamental constitutional requirement that even a guilty defendant is entitled, before being found guilty, to have a trial which conforms with at least the minimum standards of what is regarded in this jurisdiction as being an acceptable criminal trial. These standards include those that safeguard a defendant from serious procedural, but not technical, unfairness. A technical flaw is excluded because it is wrong to elevate the procedural rules that govern a trial to a level where they become an obstacle as opposed to an aid to achieving justice.

96. Fresh evidence which is of sufficient quality and is relevant to the question of guilt will usually contribute to the question of the safety of the conviction and so will be legally admissible if in its discretion the court decides to admit it. Where what is in question is not the evidence of guilt but the procedural quality of a trial, evidence relating to guilt will usually not be admissible because it will not address the defect in the trial unless it helps to place the defect in context. Evidence as to what happened at the trial may on the other hand be very important as to the extent to which the trial is flawed. It follows that relevance

of the fresh evidence may not be capable of being determined until after the purpose for which it is said to be relevant has been ascertained. The approach to procedural and evidential issues will not be the same.

97. It is also necessary to distinguish between procedural flaws which are technical and those which are not. Clear guidance as to this distinction has also been provided by Lord Bingham in the recent Privy Council decision of *Randall v R* (16 April 2002) [2002] UK PC 19 at paragraph 28:

> "While reference has been made above to some of the rules which should be observed in a well-conducted trial to safeguard the fairness of the proceedings, it is not every departure from good practice which renders a trial unfair. Inevitably, in the course of a long trial, things are done or said which should not be done or said. Most occurrences of that kind do not undermine the integrity of the trial, particularly if they are isolated and particularly if, where appropriate, they are the subject of a clear judicial direction. It would emasculate the trial process, and undermine public confidence in the administration of criminal justice, if a standard of perfection were imposed that was incapable of attainment in practice. But the right of a criminal defendant to a fair trial is absolute. There will come a point when the departure from good practice is so gross, or so persistent, or so prejudicial, or so irremediable that an appellate court will have no choice but to condemn a trial as unfair and quash a conviction as unsafe, however strong the grounds for believing the defendant to be guilty. The right to a fair trial is one to be enjoyed by the guilty as well as the innocent, for a defendant is presumed to be innocent until proved to be otherwise in a fairly conducted trial."

We would also refer to the way the subject was encapsulated by Carswell LCJ in *R v Iain Hay Gordon* [2002] unreported CAR (3298) at paragraph 29:

> "It seems to us that it is now possible to formulate two propositions in respect of irregularities at trial, which formed the subject of a good deal of argument before us:
>
> 1. If there was a material irregularity, the conviction may be set aside even if the evidence of the appellant's guilt is clear.
>
> 2. Not every irregularity will cause a conviction to be set aside. There is room for the application of a test similar in effect to that of the former proviso, viz whether the irregularity was so serious that a miscarriage of justice has actually occurred."

The Effect of the Passage of Time

98. The non-technical approach is especially important in references by the Commission such as this since standards may have changed because of the passage of time. For understandable reasons, it is now accepted in judging the question of fairness of a trial, and fairness is what rules of procedure are designed to achieve, we apply current standards irrespective of when the trial took place. But this does not mean that because contemporary rules have not been complied with a trial which took place in the past must be judged on the false assumption it was tried yesterday. Such an approach could achieve injustice because the non-compliance with rules does not necessarily mean that a defendant has been treated unfairly. In order to achieve justice, non-compliance with rules which were not current at the time of the trial may need to be treated differently from rules which were in force at the time of trial. If certain of the current requirements of, for example, a summing up are not complied with at a trial which takes place today this can almost automatically result in a conviction being set aside but this approach should not be adopted in relation to trials which took place before the rule was established. The fact that what has happened did not comply with a rule which was in force at the time of trial makes the non-compliance more serious than it would be if there was no rule in force. Proper standards will not be maintained unless this Court can be expected, when appropriate, to enforce the rules by taking a serious view of a breach of the rules at the time they are in force. It is not appropriate to apply this approach to a forty year-old case.

99. Another difference between a case such as this and a case which has only been tried recently is that this Court can expect in the latter type of case to be provided with an explanation for situations which give rise to a suspicion of possible impropriety. There may be an explanation for what happened which shows there is no cause for suspicion, but this may be impossible to discover due to the passage of time. This has to be borne in mind, particularly where to draw an adverse inference could reflect, as in this case, on the integrity of those who are not alive. (Here this is true of DS Acott and D Sgt Oxford.)

100. The question of whether a trial is sufficiently seriously flawed, so as to make a conviction unsafe because it does not comply with what would be regarded today as the minimum standards, must be approached in the round, taking into account all the relevant circumstances, and this is what we propose to do notwithstanding the fact that Mr Sweeney did not seek to rely on the different standards which existed at the time of the trial and the standards today.

Admitting Fresh Evidence at the Request of the Prosecution

101. It is now necessary to concentrate on situations in which it can be appropriate for this Court to receive fresh evidence at the request of the prosecution, such as the findings of the DNA tests on which the prosecution are seeking to rely in

this appeal. It is Mr Mansfield's contention that if this Court is not to exceed its role as a Court of review it can only receive fresh evidence on behalf of the prosecution if that evidence is being relied upon to rebut fresh evidence introduced on the appeal by an appellant. In support of his contention, Mr Mansfield focuses upon section 23(2). He points out correctly that the subsection contains a mandatory requirement, and that the requirement as to (b) in particular is only likely to be complied with by an appellant and not the prosecution. The prosecution are not going to submit evidence which will undermine the conviction. He therefore submits that evidence cannot be allowed to be placed before the Court by the prosecution unless the evidence on which the prosecution relies is to be used in order to evaluate or rebut fresh evidence that the appellant has adduced.

102. We do not accept this submission. Subsection (2) is subordinate to subsection (1). It is subsection (1) which confers a general discretion on the Court to be exercised in the interests of justice. Subsection (2) identifies the considerations to which this Court is required to have regard when exercising its discretion under subsection (1). If this Court has regard to the matters referred to in subsection (2), the Court has done its duty irrespective of how it exercises its discretion. If it is the prosecution which wishes to introduce fresh evidence which is intended to weaken the appeal this does not mean that the evidence cannot be admitted. All that section 23(2)(b) requires is that this Court, when exercising its discretion, has regard to the fact that the evidence will not "afford any ground for allowing the appeal" but on the contrary support the conviction. To apply subsection (2) as Mr Mansfield contends would mean that the Court would be unable to admit evidence even if the admission of that evidence is very much in accord with the interests of justice and its rejection could result in injustice. In addition, it would undermine the public's confidence in the justice system.

103. Furthermore Mr Mansfield's approach to section 23 is inconsistent with the decisions of this Court in *Gilfoyle* [1996] 1 Cr App R 302 and in *Craven* [2001] 2 Cr App R 12. In *Craven* there was a failure by the prosecution to disclose certain material which could have been of relevance to the defence at the trial, and in an important passage in the judgment, Latham LJ stressed:

> ". . . that this Court, empowered as it is under section 23 of the Criminal Appeal Act 1968 to consider the jury's verdict in the light of fresh evidence, should do so in the light of all the fresh evidence that is available to it. We are entitled, as it seems to us, to consider whether the material which was withheld could have affected the jury's verdict in the light of all the facts now known to this Court. If it could have done, the conviction would be unsafe. If, on the other hand, the material that has been withheld has not, on a proper analysis of the facts known to this Court, undermined in any way the verdict of the jury, then the

> conviction will be safe. In evaluating the significance of the evidence that has been withheld in the context of all the information now available, we consider we properly secure the rights of the defence for the purposes of article 6 of the Convention and serve the interests of justice. We acknowledge that in carrying out this exercise we are trespassing upon what at trial would be the function of the jury. But that is the inevitable consequence in any case involving fresh evidence. It seems to us that if on a proper analysis of the information available to this Court, the only reasonable conclusion is that the conviction is safe, in that the jury's verdict in the light of all the relevant material was correct, this Court would not be carrying out its statutory obligation if it did give affect to that conclusion."

104. Mr Mansfield argues that the approach of Latham LJ is inconsistent with the decision of the House of Lords in *Pendleton* and therefore we should not follow it. We do not agree. Latham LJ did not have the advantage that we have of the decision of *Pendleton* but his general approach can be satisfactorily reconciled with that of Lord Bingham. It is to be recognised that the evidence was not being introduced to remedy a trial which was fatally flawed because, for example, the trial was an abuse of process or should have been stopped on a submission of no case to answer for lack of evidence, but so that the question of the correctness of the conviction could be considered in the round.

105. Applying this reasoning we came to the conclusion that the DNA evidence on this appeal is evidence which we are entitled to admit under section 23. Furthermore we conclude that in our discretion we should admit the evidence while recognising:

> (1) that its weight, if any, will depend on whether the appellant may be right that the explanation for the DNA findings is contamination.
>
> (2) that if the appellant is able to show that because of lack of disclosure or the misdirections in the summing up the trial was still fatally flawed the DNA evidence will not rescue the conviction.

THE DNA EVIDENCE.

106. We turn to the DNA evidence. As already noted seminal fluid was found on Valerie Storie's knickers and one of her slips. At the time all that could be shown was that the rapist's and hence the murderer's blood group was O secretor. So was James Hanratty's and Peter Alphon's together with 40% of the male population. The handkerchief found with the murder weapon bore traces of nasal mucus. Mucus was not capable of being analysed for blood type. Evidence based upon the comparison of hairs and fibres was inconclusive. Apart from some

seminal staining on James Hanratty's striped trousers, said to be part of the Hepworth suit, that was the extent of the scientific evidence at trial.

107. During the 1980s and 1990s important work was carried out in the field of genetic profiling based on a complex chemical found in cells throughout the human body, the shorthand for which is DNA. As is now well known, DNA carries genetic information which determines the physical characteristics of the individual. The information comes in equal measure from each parent. It is the same in all body fluids and tissues, so, for example, DNA from a person's blood will be the same as that found in his or her saliva and hair roots. Identical twins apart, each individual's DNA is unique. In attributing DNA to a particular individual, however, success will depend, in part at any rate, on the completeness or otherwise of the profile obtained. Techniques for recovering genetic profiles gradually improved throughout the 1990s. Those employed in 2000 were much more sensitive than were available in 1995.

108. No doubt conscious of developments in this area there came a time in 1995 when the Hanratty family were anxious to apply DNA testing to such of the exhibits as had survived and which might show one way or the other whether James Hanratty had been responsible for the murder of Michael Gregsten and the rape of Valerie Storie. Attempts made in March 1995 were unsuccessful. However, in November 1997 after much consultation further DNA analyses were commissioned this time using highly sensitive DNA amplification techniques. The test was conducted on the small remaining piece of fabric from the knickers (part having been used in the 1995 experiment), a piece of material from one of the slips and the areas of staining from the handkerchief. This time the experiment did produce results in that profiles were obtained both from the fabric and from the handkerchief which could be compared with samples taken from James Hanratty's brother, Michael, and his mother, Mary. These comparisons confirmed that the male contribution to the profiling from the knickers almost certainly came from either a son of Mary or a brother of Michael. It was also shown at a much lower level of probability that it was a son of Mary and a brother of Michael who had been responsible for depositing the mucus stains on the handkerchief.

109. Following the order of the court on 17 October 2000, James Hanratty's body was exhumed and samples taken from which it has been possible for Dr Whitaker of the Forensic Science Laboratory to state with what a non-scientist would regard as equivalent to absolute certainty (or almost absolute certainty as makes no difference) that the DNA profile recovered from the fragment of knickers and the DNA profile recovered from the mucus staining on the handkerchief have come from James Hanratty. That is not in dispute and, indeed, it is conceded by Mr Mansfield on behalf of the appellant that, should it transpire that all possibility of contamination can be excluded, the DNA evidence points conclusively to James Hanratty having been both the murderer and the rapist.

Contamination.

110. As was so clearly explained by Ms Woodroffe, an independent scientific consultant and a most impressive witness, DNA may migrate from one surface to another by a variety of means. Primary transfer is what happens when there is direct contact between a donor individual and a recipient individual or surface as might occur during sexual intercourse. Secondary transfer is what happens when the DNA is moved via an intermediary as where a contaminated and an uncontaminated surface are brought into contact with one another. Then there may be movement of DNA again via an intermediary where perhaps the same hand first touches the infected surface and then another surface which had hitherto been uncontaminated as might happen where exhibits are handled without proper precautions in the witness box. Having said that, usually one can expect a greater quantity of DNA to be transferred as a result of primary as opposed to secondary contact. But it is always necessary to allow for particular circumstances as where the DNA is dry, as in the case of hair, or wet, as in the case of seminal fluid. Similarly, regard must be had to the duration of the contact. Up to the happening of the crime event, accidental movement of DNA in this way is referred to as "transfer"; after the crime event as "contamination". We are only concerned with the latter, but for ease of expression we shall use the terms interchangeably.

111. In this case it may be helpful first to identify the relevant exhibits or objects and then to trace their history through to their first examination in 1995 by which time it is accepted that there was no longer any risk of contamination.

112. Quite clearly the knickers (exhibit 26 at trial) and later the fragment cut from the crotch area and the handkerchief (exhibit 35) are of first importance. So too, as possible contaminators, are James Hanratty's intimate samples and items of clothing which may have borne traces of his DNA.

113. The knickers arrived at the Metropolitan Police Laboratory (MPL) on 23 August 1961 where they were examined by Dr Nickolls, the director and his assistant, Henry Howard. They were found to be stained with seminal fluid in the area of the crotch and at the back for five inches upwards from the crotch. Vaginal fluid from Valerie Storie was also present. There were smaller quantities of seminal fluid of blood group AB assumed to have come at some earlier stage from Michael Gregsten. Although the laboratory records are not dated, the notes are numbered sequentially and we are confident that the knickers were examined almost immediately and in any event no later than 23 September 1961 when the notes show that certain samples taken from Peter Alphon were examined at the laboratory. The handkerchief came to the laboratory on 25 August, was screened for blood and semen and, none being found, seems to have been put to one side.

114. On 7 October 1961 a suitcase containing James Hanratty's clothing was seized from the home of his girlfriend, Louise Anderson. It was received at the laboratory on 9 October. Amongst other items it contained a pair of dark pinstriped trousers (part of the Hepworth suit) and a green jacket and trousers. Some hairs and fibres were removed from the outside of the dark trousers as was a sample from a seminal stain on the inside of the fly. A suggestion, which has not been contradicted, is that the seminal stain may have been washed out and retained in the form of a liquid. On 13 October, the laboratory received samples of James Hanratty's blood and saliva. It was only at this point that the police became aware of his blood grouping. The records are incomplete but there would seem to be no reason for any of James Hanratty's items of clothing or for his intimate samples to be present in the laboratory at the same time as the knickers or the handkerchief. There is, of course, the possibility that all the exhibits were stored in the same place, albeit separately packaged, which, it is submitted, might have provided the opportunity for secondary contamination. Dr Nickolls is dead. Mr Howard is still alive though in poor health. His recollection is that the dangers of contamination were recognised even in 1961 and that the practice was to take elementary precautions such as making sure that clothing from victim and suspect were not examined on the same day.

115. All the exhibits, including those mentioned, were produced at the committal proceedings which took place between 22 November 1961 and 5 December 1961. If the usual procedures of the time were followed it would seem doubtful that any one of the exhibits, barring possibly the gun and certain of the cartridges, would ever have been removed from its packaging or container. Even so, as Mr Mansfield points out and the respondent concedes, the possibility that there was contact between the various exhibits cannot be excluded altogether.

116. As a result of correspondence between James Hanratty's then solicitors and the DPP, arrangements were made for the pathologist, Dr Grant, to have access to James Hanratty's intimate samples and also to certain of the exhibits. It appears from the records that Dr Grant examined the green jacket and trousers on 28 December 1961 and Valerie Storie's slips and knickers the following day. It was on this latter occasion that a portion of the crotch area of the knickers was removed and thereafter, as seems clear, stored separately from the other exhibits including the knickers from which it had been excised. As also seems clear, a fragment of the excised portion was retained by the laboratory having first been placed in a small envelope made of cellophane and sellotape which was in turn put into a small brown envelope and the small envelope into a larger envelope before being treasury tagged to a laboratory file. It was so placed when rediscovered in 1991.

117. At the trial which took place between 22 January 1962 and 17 February 1962 all the exhibits with the exception of a portion of the slip and the fragment of the knickers referred to previously were produced and in due course, taken out by the jury on retirement. Thereafter, on 9 April 1962, James Hanratty's

suitcase and clothing were returned to his father and on 22 May 1962 Valerie Storie's slips, her knickers and various samples were all destroyed.

118. The handkerchief seems to have remained with the Bedfordshire Constabulary until September or early October 1997 when it was discovered in the course of enquiries made on behalf of the Commission. It was in the original envelope inside another envelope marked with the exhibit number '35'.

119. The file containing the fragment from the knickers was discovered in 1991 by Jennifer Wiles. It was still packaged as described except that the cellophane package was no longer intact. Also found in the file were some broken slides and slide holders possibly having contained hairs and fibres collected at the scene of the murder. There were also two polythene bags each containing hairs thought now to have come from Alphon. There was another polythene bag containing a number of bullets and significantly, so Mr Mansfield submits, a polythene bag containing a small rubber bung and fragments of glass including a curved piece suggesting that the polythene bag had at one time contained a glass vial or tube.

120. Mr Mansfield submits against that background that the respondent has not been able to exclude the possibility of contamination. In making that submission, he is supported by Dr Martin Evison who is a senior lecturer in Forensic Biological Anthropology in the Department of Forensic Anthropology at The Medico Legal Centre in Sheffield and has many academic achievements and publications to his credit. He told the court that he had not been able to exclude "the realistic possibility of contamination". Dr Evison seems to accept that in the case of the knicker fragment the contaminant would have to be semen. That really limits the possibilities to (1) contact between the knickers and the Hepworth trousers and (2) contact between the contents of the broken vial and the fragment held on file. That would mean, so far as the first possibility is concerned, contact between the knickers and the fly area of the trousers in the laboratory, during storage or on production at committal. The mechanics are difficult to visualise and we gain the impression that it is neither Mr Mansfield's nor Dr Evison's preferred explanation. Contact could not take place any later than that because, as we know, Dr Grant cut out the fragment from the knickers before the trial took place and the fragment itself was not exhibited. The second possibility involves a hypothesis in which the broken vial contained a solution of James Hanratty's semen (extracted from the Hepworth trousers) which upon the vial being broken escaped in such a way as to invade the insecure packaging in which the fabric from the knickers was being kept. One of the respondent's witnesses, Mr Roger Mann, who has thirty-two years experience as a forensic scientist, gave evidence that he has never come across a vial or tube containing liquid being retained on a file and we are bound to say that, without having any kind of scientific experience at all, it would seem a curious method of storage. Mr Greenhalgh, who saw the file and examined the fabric in 1995, told us that he considered the risk of contamination to the fabric to be very low. We quote from his evidence.

> "As I examined the item, the piece of blue material from the knickers was in a sealed packet inside the two envelopes. I did not observe any damage to that packaging which I considered likely to be a risk of contamination. As far as I was concerned they were sealed, although the outer envelopes were not sealed there was no indication of any liquid damage on the brown paper envelopes, as might have been expected if a liquid sample had leaked onto them."

121. That said we should also record that not one of the respondent's witnesses excluded the possibility of contamination. They have expressed themselves in different ways but the general tenor of the evidence has been that they each considered the possibility to be remote. That, of course, has to be contrasted with the opinion of Dr Evison who never moved from his original position as stated in this judgment.

122. As far as the handkerchief is concerned, it will be remembered that when first examined it was considered to be of no scientific interest. No blood or semen was detected. When John Bark, a forensic scientist working at the Forensic Science Laboratory in Birmingham, examined the handkerchief in 1997 he found that:

> "The handkerchief appears to be stained with some body fluid, cellular material which has bonded strongly to the cotton fabric over a number of years. There is no microscopic evidence that semen is present."

That conclusion is supported by Roger Mann who subjected the handkerchief to chemical screening though he acknowledges the test carried out would not necessarily detect semen deposited by a male who did not produce spermatozoa. Realistically, however, it would seem to follow that the contaminant would have to be something other than semen and almost certainly liquid in form.

123. The handkerchief was placed in an open buff OHMS envelope from which, no doubt, it was produced both at the committal proceedings and at trial. It was not examined by Dr Grant. In those circumstances the opportunities for contamination would seem to be extremely limited. However, in common with the approach taken in the case of the knicker fragment, the respondent's experts are prepared to accept that there has been, at least, a theoretical risk of contamination.

124. Making it quite clear that for the time being we are simply considering the risk of contamination of a neutral surface without regard to the DNA profiles which were eventually obtained, we, too, accept that there was at least a theoretical

possibility of both the knicker fragment and the handkerchief having been in contact with a surface bearing DNA contaminants from James Hanratty.

125. But that is to ignore the results of the DNA profiling. With regard to the knicker fragment we have what Dr Whitaker would describe as a typical distribution of male and female DNA following an act of sexual intercourse leading to the obvious inference that the male contribution came from James Hanratty. For that not to be the case we would have to suppose that the DNA of the rapist, also of blood group O, had either degraded so as to become undetectable or had been masked by James Hanratty's DNA during the course of a contaminating event. Moreover, we would also have to suppose that Valerie Storie's DNA had remained in its original state, or at least detectable, and had escaped being overridden by DNA from James Hanratty. The same would have to be true of the DNA attributed to Michael Gregsten. Finally, we must visualise a pattern which is wholly consistent with sexual intercourse having taken place in which Valerie Storie and James Hanratty were the participants.

126. Much the same reasoning would apply to the handkerchief. The only DNA extracted from the handkerchief came from James Hanratty. The only places on the handkerchief from which his DNA was extracted were the areas of mucus staining. It is to be expected that whoever was responsible for the mucus staining would have left evidence of his DNA. If the explanation for James Hanratty's DNA being found on the handkerchief is subsequent contamination it must follow that either the original DNA had degraded so as to become undetectable or James Hanratty's DNA has in some way overwhelmed the original deposit so that the original is no longer capable of being traced. More than that the transfer must have taken place in such a way as to affect only the areas of mucus staining and not the unstained part of the handkerchief which was not found to bear DNA from James Hanratty or anyone else. In our view the notion that such a thing might have happened in either case is fanciful. The idea that it might have happened twice over is beyond belief.

127. Accordingly, we reject the evidence of Dr Evison where it is in conflict with the additional evidence of the respondents, agreeing as we do with the submission made by Mr Sweeney that the DNA evidence standing alone is certain proof of James Hanratty's guilt.

128. By way of postscript we should record that it has been agreed by Mr Sweeney and Mr Mansfield that on the evidence now available Peter Alphon could not have been the murderer. It is understood that this agreement arose out of the DNA evidence.

Mr Justice Leveson:

THE GROUNDS OF APPEAL

Valerie Storie

129. The first four grounds of appeal concern non-disclosure of material relating to the evidence of Valerie Storie. Before embarking upon an analysis of these grounds it is useful to make the following points:

(1) These questions fall to be judged against the background of contemporary common law rules, as exemplified by decisions such as *R v Mills and Poole* [1998] AC 382 and *R v Ward* 96 Cr App R 1, in the light of the analysis of the proper approach of the court.

(2) The law and practice relating to disclosure at the time of the trial differs from what it is today. It is summarised in Archbold, 35th edn. (1962) 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 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 & 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 … . 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."

130. The four facts which Mr Mansfield contends should have been disclosed relating to Valerie Storie are (a) that she had not been consistent, in her description of the gunman as having icy blue eyes; (b) her previous assertion that her opportunity to see the gunman had been when she was in the back of the car (whereas at trial she said that her view was when she was still in the front seat of the car); (c) that, when interviewed, she had said that her memory of the man was "fading"; and (d) the fact that the man she identified on the first parade (on which Peter Alphon appeared) had dark eyes. We deal with them in turn.

131. As to the first, Mr Mansfield points to two documents which the defence were not given (which today they would have been). The first contains a description given on 23 August, that is the very day on which Valerie Storie was admitted to hospital, to two police officers who were doubtless concerned that she might not survive. That description (as recorded) describes voice, hair, face, complexion, nose, height, dress and age. As to eyes, it records "Large, not deep set but face level". This interview concluded at 1.30pm and one of the officers then spoke to Sergeant Absolam who purported to record what he was told. He included a reference to the eyes as brown. The next recorded occasion on which Valerie Storie supplied a description of the gunman was on 26 August to Inspector Mackle (who constructed the identikit image) when she described the gunman's eyes as 'blue'. Thereafter, her written statement of 28 August and other descriptions refer to 'icy blue large saucer-like eyes' which is a phrase which achieved prominence in the trial.

132. There is no doubt that the defence was aware that a man with 'deep set brown eyes' was being sought by the police. The national press and the Police Gazette of 24 August were used for the purposes of cross-examination in an attempt to identify its origin. In fact, there was little room for challenging Valerie Storie: the best evidence of what she had first said contains nothing about the colour of the eyes and, from 26 August 1961, she had certainly been consistent. In addition, it will be remembered that at the scene she had attempted to write blue eyes and brown hair on the ground and as her veracity was never in dispute this really reduces the point to no more than a breach of the rules. Further, we agree with Mr Sweeney's submission that this material was of minimal value in the attack on Valerie Storie's accuracy compared to the other features carefully placed before the jury, namely variations between her evidence at the trial and that given in the committal proceedings, the difference between her evidence and that given by John Kerr, the identikit picture which showed the gunman's hair as flat and straight and brushed back from the forehead without a widow's peak and, most importantly, the incorrect identification on 24 September 1961. Neither, in all the circumstances, do we accept that DS Acott's answer that Valerie Storie had always been consistent in her description throws doubt upon his honesty. There is nothing to show this was anything other than an innocent mistake.

133. The second ground concerns the same note of the initial discussion on the day of the killing which records Valerie Storie as telling the officers:

> "I did have a good look at him when I was in the back of the car when I was trying to soften him up. I think I would be able to identify him. In fact I am sure I would."

This is to be contrasted with her evidence at the committal and at trial (and, incidentally, the undisclosed interview of 11 September to which we shall come) that the "only real proper glimpse" was when she was in the front of the car, wearing her glasses as a car "came along from behind and lit up his face".

134. Mr Mansfield points not only to the difference between the front and the back seat but also to the fact that when on the back seat of the car, which was the time when the gunman raped her, Valerie Storie could not see clearly because she was very short-sighted and was not wearing her glasses. Thus, not being shown this note (which, by any standard, should have been disclosed) deprived the defence of the opportunity to throw doubt both on her ability to have had a clear view of the gunman's face and on her reliability and consistency as a witness.

135. There is no doubt that questions could have been asked about this discrepancy but the point must be put into context. The defence did not doubt Valerie Storie's honesty (nor could they) and cross-examining her against an account within 12 hours of the horrific events to which she was a witness, while she was in hospital gravely ill, is unlikely to have had any serious impact on anyone's view of her reliability. As to consistency, it should be noted that after referring to the "real proper glimpse" from the front of the car, the deposition does record other, albeit less significant, sightings in these terms:

> "When I got in the back of the car there may have been cars passing. I think there were some heavy lorries. I only had an opportunity to see a side view, possibly a three quarters view whilst I was in the back when any vehicle went past. I can't really say how many vehicles went past – not more than about 6 or 8 but I didn't really count them. Their headlights would illuminate the man's face for less than 10 seconds."

136. The third ground of appeal concerns the non-disclosure of an interview with Valerie Storie on 11 September which took the form of a long series of recorded questions and answers over nearly five hours and covering 74 typed sheets. Mr Mansfield points to two features the non-disclosure of which he contends deprived the defence of highly significant evidence in relation to Valerie Storie's ability to identify the gunman. The first is an interruption of DS Acott explaining that he intended to show her photographs when she said "My memory of this man's face is fading" to which he responded "Yes but if you see the face, it will come back to you". The second is the photographs to which she was referred and, in particular, the one photograph which she said was "most like him".

137. The first point to be made is that although this interview would be disclosable by present standards it is far from clear that it necessarily fell to be disclosed by the standards of the day. In fact, the defence knew full well that Valerie Storie had been interviewed many times and at length because the first questions asked by Mr Sherrard at the committal were directed to that issue. Valerie Storie said:

> "I have been interviewed by police officers on numerous occasions since this dreadful thing happened. … On one

occasion I was interviewed by DS Acott for a little under 5 hours."

There is no suggestion that Mr Sherrard then made, let alone pressed, an application to see whatever record there was. This is not a criticism of him but the fact that he did not may provide insight into the extent to which this type of material was, on what the law was then understood to be, then considered disclosable.

138. In any event, the observation about fading memory has to be taken in the context of a gravely injured young lady, traumatised by her experience, concerned to do her best to help the police to catch the killer and anxious about her ability to deal with identification. In the same interview, when shown the identikit picture which she had helped to compile, she observed that "it is similar and a good guide to the man I remember so well". She later explained that what worried her was that when confronted with the man "I may not be able to pick him out". The fact is that she found her fear unfounded because she did make a positive identification in the circumstances described when she was cross-examined about it (see paragraph 57 above). The care which the jury had to take was emphasised and we have no doubt that this feature is of far less significance than the differences to which we have already referred (paragraph 132).

139. The same is so for the photographs which she was shown. At its highest, Valerie Storie identified one as "most like him", a phrase utterly subjective in content and of very little forensic value in the absence of a lengthy examination of every photograph and the features to which she was then referring. Given that the photograph she picked out was apparently of a man with blue eyes and light brown hair, this point is unlikely to have advanced the defence case.

140. The fourth ground of appeal concerns the failure by DS Acott to disclose a note which he had made in his notebook to the effect that the man identified by Valerie Storie on the first identification parade (on which Peter Alphon was standing) had 'dark eyes'. A note to that effect was written in the back of his notebook (that is, not in the sequence of events that he recorded whether for evidential purposes or otherwise). Mr Mansfield also submits that this feature is relevant to the attack on the Superintendent's credibility because when asked to describe the man, the officer only said: "I can tell you this from my own knowledge: 5ft 9in, dark short cropped hair, about 27 years of age and he was heavily built". Other aspects of the noted description also omitted from his evidence included 'long round face, square chin, pale complexion, … born 7.12.35'.

141. The notebook would fall to be disclosed under contemporary common law rules; it is less clear that it represented an inconsistent statement by 1962 standards. Further, it would have been open to the defence to require that the

identified man be brought to court. Mr Sherrard asked if he was available to be brought and was told:

> "He was some time ago, but I cannot say off-hand."

The officer was not pressed further.

142. As to DS Acott's answer (omitting 'dark eyes'), it is only fair to him to record that he was prepared to give a description (which in the light of his earlier evidence is likely to have come from his notebook) saying:

> "I think I had better give it in detail from start to finish then."

He was then asked whether it was the result of his own observations and he responded, "Not all of it". Mr Sherrard, clearly concerned about what the officer might say, was prepared to leave the matter but the judge pressed. The answer upon which Mr Mansfield relies comes after a request both from Mr Sherrard and the judge to restrict himself to his own knowledge. Given that the Superintendent had specifically said that not all of the description came from his own knowledge and we do not know why this description was in the back of the notebook, it would be wrong to conclude that of his own knowledge he could describe the man's eyes as 'dark'.

143. Finally, the evidence about the man whom Valerie Storie had identified was not consistent on this point. Dr. Rennie, who had treated Valerie Storie, was present at this parade and was asked if he could recall the appearance of the man whom Valerie Storie had identified. He stated: "As far as I remember he had rather fairish hair and bluish eyes". In our view, there was no great mileage for the defence in this point. The most important feature (namely that Valerie Storie had identified a volunteer on the parade who could not have been involved) was fully deployed before the jury.

The Identification Parade

144. The next two grounds of appeal concern the identification parade. The fifth ground raises another issue of non-disclosure which, it is alleged, demonstrates that DS Acott was aware that the distinctive colour of James Hanratty's hair at the time of the identification parades on 13 and 14 October 1961 unfairly placed him at a disadvantage.

145. The facts can be shortly stated. The officer caused a message to be sent on 12 October concerning the arrangements for the identification parades. This reveals that he advised that skull-caps should be obtained to be worn by the parade participants and suggested those worn in operating theatres. In the event, the advice was not followed by the Bedfordshire officers who arranged the first parade on 13 October or the Buckinghamshire officers who arranged the parade

attended by Valerie Storie in her bed at Stoke Mandeville Hospital on the following day. It is worth adding that this message would not have fallen to be disclosed in 1962 albeit that it now would be.

146. It is clear from the brief particulars of all the members of the second parade that men were chosen with hair variously described as fair, auburn, brown and ginger. There is no doubt that James Hanratty's hair was different. On 3 October or thereabouts the appellant had his hair dyed a deep auburn colour and by the time of the parade it was a vividly unnatural colour. In her deposition Valerie Storie said of the identification parade:

> "I was startled by the most unusual colour of the hair of the accused. I had never seen hair quite that colour before."

At the trial she agreed with Mr Sherrard's suggestion that the appellant stood out like "a carrot in a bunch of bananas".

147. It is far from clear that DS Acott was concerned that the parade would be unfair to James Hanratty; his instruction is equally consistent with a concern that his hair might be off-putting to an identifying witness who would be sure that the killer (seen by Valerie Storie) and the driver (seen by John Skillett, Edward Blackhall and James Trower) did not have hair of the colour of James Hanratty. In any event, DS Acott's view is not to the point. The parades were organised by independent officers charged to ensure that every precaution is taken to eliminate unfairness as described in the Home Office guidance then governing the procedure. It was conducted in the presence of James Hanratty's solicitor who made no complaint at the time and the fairness of the parade was fully explored at the trial.

148. The sixth ground of appeal relates to Valerie Storie's request to hear the members of the parade speak and criticises the fact that she was allowed to do so based on H.O. Circular 109/1978 (which was promulgated many years after this case had concluded). We have referred to her evidence as to her state of mind (see paragraphs 56 and 57) and, notwithstanding answers provided in re-examination to the effect that absolute certainty came after she had heard the men speak, she had previously made it clear that she was satisfied after five minutes. Thus, if asked whether she could identify the man on the basis of appearance in accordance with the circular, it seems clear that she would have replied in the affirmative because she was making her request to enable her to confirm the preliminary identification she had already made. So hearing James Hanratty's voice went to confirm her view and was, in a way, a protection against her selecting the wrong person. Thus, non-compliance with the circular is of very limited significance.

149. Furthermore, if Valerie Storie had been depending only upon voice identification, then not to have on the parade volunteers who had a similar

accent to James Hanratty would have been a mistake. Valerie Storie was looking for the right appearance and then the right voice, and this being the position the criticism of not selecting those on the parade from the point of view of their voices loses considerable force. In the circumstances of this case, we do not believe that the questions asked on the parade caused any unfairness. We return to the absence of direction when dealing with the summing up.

150. Having completed the review of all the grounds affecting Valerie Storie, one further point ought to be made. Although we have set out our views as to the impact of these various non-disclosures, neither that nor the conclusion that we have reached about the DNA evidence (which necessarily has the effect that Valerie Storie's identification was, in fact, entirely accurate) is decisive of these grounds of appeal. The fact is that by contemporary standards all this material should have been available to the defence and, even by the standards of the day, at least a large part should have been. We shall return to the overall effect of these failures in the context of the fairness of the trial as a whole having analysed the other complaints.

Identification of the Driver of the Morris Minor

151. One of the important planks of the prosecution case was the identification of James Hanratty by John Skillett and James Trower, the drivers who had seen a Morris Minor being driven erratically along Eastern Avenue in the direction of Gants Hill and near Avondale Crescent at or around 7am on 23 August. With the evidence of Doris Athoe that the car found by the police later that day (which was the car Michael Gregsten had been driving) was in Avondale Crescent from about 7am, there was a direct link through the car between the killing and James Hanratty.

152. The seventh ground of appeal concerns the fact that (not disclosed to the defence) there were other reported sightings of the Morris Minor car during 23 August 1961 in different parts of the country and evidence that a different light grey Morris Minor had been parked directly opposite where Mr Gregsten's car was recovered. This evidence consists of the following:

i) At 6.30am on Wednesday 23 August, William Lee saw a grey Morris Minor being driven by a man wearing a woollen pom-pom hat on the A6 near Matlock in Derbyshire. He wrote the registration number down as 847 BHN which was the registration of Michael Gregsten's car in the boot of which there was such a hat (although there is no evidence that the murderer otherwise was seen wearing it).

ii) At 12 midday on the same day, John Douglas, a petrol pump attendant at a garage at Birstall, north of Leicester, made a mental note of the registration number of a bluish grey car as 847 BHN occupied by a man

and a woman. The man spoke with a southern accent which sounded to him as coming from Somerset.

iii) Other sightings of a car with the registration number 847 BHN were noted at 1.00pm between Hitchin and St. Ippollits (which would mean that the car stayed in the vicinity of Bedford all morning) and at 5.25pm in Coventry (which given the time the car was seen by the police in Avondale Crescent is simply not possible).

iv) Doreen Milne said she parked her grey Morris Minor in Avondale Crescent at 8.15am opposite where Michael Gregsten's car was subsequently found without recalling any car parked opposite hers. Margaret Thompson saw police interest around what she called a grey Morris 1000 at 8.00pm and reported that it had not been there at 5.30pm when she passed with her three year-old son.

Needless to say, the sightings in Matlock, Coventry and north of Leicester are inconsistent with the Morris Minor being seen in Eastern Avenue, near Avondale Crescent, or in Avondale Crescent by 7am although it is somewhat difficult to visualise for what purpose the gunman might have made these trips and then returned to Ilford (as he must have done) using a car which he would have known the police would be seeking as soon as Michael Gregsten was identified and the car he was driving ascertained.

153. There is no doubt at all that this material would fall to be disclosed by contemporary standards: the contrary is not suggested. In our judgment the names and addresses of these witnesses also fell to be disclosed under the more restrictive regime described in *R v Bryant & Dickson*. We are not in a position to say why that did not occur although DS Acott may have discounted these identifications, at least in part, because of other material which was also not disclosed (and about which the appellant also complains).

154. Unknown to the defence at the trial was the fact that a record was kept by Michael Gregsten of the mileage when he put petrol in the car. On 22 August 1961, the odometer was recorded as 51,875 miles. When the vehicle was recovered in Avondale Crescent, the police noted the odometer reading to be 52,107 miles. Thus, 232 miles had been travelled in the period which elapsed. Depending on when petrol was put in the car, this may have included Michael Gregsten's driving that day (57.4 miles) but must include the drive from the cornfield at Dorney Reach to Deadman's Hill on the A6 (58-65 miles) and, at the very least, the minimum distance from the A6 to Avondale Crescent, Ilford (48.6 miles). We say 'at the very least' because there is, of course, no direct evidence of where the gunman went having left Valerie Storie for dead on the A6 and neither do we know that, in any event, he took what present investigation

reveals would then have been the shortest route. These distances are comfortably within the distance which, if the record is correct, the odometer recorded.

155. The most impressive evidence of sighting must surely be that of Mr Lee in Matlock. The straight-line distance from Deadman's Hill to Matlock and then to Redbridge is estimated at 268 miles. That itself exceeds the 232 miles record and takes no account of the trip from Dorney Reach to Deadman's Hill. A route planner puts that total distance as 333.3 miles. Thus, if the odometer readings are correct, this identification must also be flawed. Mr Sweeney makes the same point about the identification north of Leicester.

156. In any event, Mr Sweeney argued that this evidence would not have been utilised by the defence who were arguing that the presence of the cartridges found at the Vienna Hotel was explicable on the basis of the involvement of Peter Alphon who had been seen at the hotel during the morning of Wednesday and so could not have been driving the car around the country. Whether Mr Sherrard would have changed his strategy, however, or at least tested the evidence rather differently (bearing in mind that Mrs Athoe's account was read to the jury and thus not put in issue at all) is one which we are simply not in a position to determine and neither should we.

157. Having said that, none of this evidence was without its difficulties for the defence and although this represents the high watermark of non-disclosure in this case we do not consider that, on its own, this feature reveals such fatal unfairness as itself to render the conviction unsafe. We return below to the question of the impact of this material, taken with the other complaints about the trial, and in the context of the DNA evidence, upon the overall safety of the conviction.

Concealment of the Gun

158. The 36A bus route ran from Rye Lane Depot in New Cross to Victoria, Hyde Park Corner, Marble Arch, Edgware Road, Maida Vale and West Kilburn. It passed Sussex Gardens (the home of James Hanratty's friend with whom he occasionally stayed) and Sutherland Avenue (the location of the Vienna Hotel). On the morning of 24 August (ie over 24 hours after the killing), Pamela Patt was the bus conductress. After the gun was found that evening, she made a statement describing one unknown passenger going to the top deck of the bus. The eleventh ground of appeal is that neither her statement nor her name and address were disclosed. We proceed on the basis of a failure to comply with contemporary standards of disclosure and the relevant standards of the time.

159. The gun was found under the back seat on the top deck of the 36A bus on the night of 24 August by a cleaner, Edwin Cooke. He had cleaned the bus the previous evening and said that it had not been there then. Because James Hanratty had sent a telegram from Liverpool to London at 20.40 on 24 August,

it was the prosecution case that he had deposited the gun during the early morning run on 24 August when Arthur Embleton was the driver. He referred to being accompanied by woman conductor Patt.

160. Pamela Patt's statement (taken on 26 August 1961) was to the effect that the passengers during the northern part of the journey to West Kilburn were all regulars, with one exception. At 6.10am a young man of dirty appearance, wearing a dirty raincoat got on near the Grosvenor Hotel and went to the upper deck, where he was the only passenger for a time. On the return journey the bus was full between Harrow Road and Victoria. When giving evidence, DS Acott agreed that there would have to have been nobody sitting on the back seat of the bus for it to have been lifted sufficiently to allow the gun to be deposited. He also agreed that the murder weapon and the boxes of cartridges were bulky items.

161. Mrs Patt was due to appear at the committal proceedings, but was unwell. The prosecution must, therefore, have considered her evidence probative but did not serve it as additional evidence. Mr Mansfield argued that it was significant because, according to her, the only person who would have had an opportunity to deposit the gun and cartridges was the man whom she described and whose description was not consistent with that of James Hanratty. Had the defence been provided with her statement, he suggests that steps could have been taken to find out if she recognised the appellant as the person she observed (notwithstanding the fact that by seeking to call her at the committal, the prosecution most certainly did not believe that she undermined their case).

162. By the standards of the time (which would have required disclosure of name and address only), the defence had the relevant information in the statement of Arthur Embleton (with the result that if they had wished to trace her, it would not have been a difficult exercise). In any event, her description of the man (about 25, 5 ft. 7 ins., medium build, thick wavy hair, mousey colour, clean shaven) is unlikely to have taken the defence very far and it would have been remarkable had they sought to call this witness to make a positive non identification and risk her cross-examination on the various features of similarity. We nevertheless refer below to the effect of this failure by the prosecution.

The Vienna Hotel

163. Three grounds of appeal (8-10) relate to the non-disclosure of material from witnesses linked to the Vienna Hotel. The first concerns earlier statements of Juliana Galves, who lived and worked at the Vienna Hotel, and Robert Crocker, the manager of the parent hotel. They both gave evidence at the trial of finding, on 11 September 1961, two spent cartridge cases (which had been fired by the gun used in the killing) on a chair next to a bed in an alcove of room 24, where James Hanratty, using the name Ryan, had stayed on 21 August. They had, however, made earlier statements (in the case of Mrs Galves prior to the finding of the cartridges) about the movements of the man Durrant (Peter Alphon).

164. As we outlined at paragraph 35 above, it was not revealed that enquiries had been directed to the Vienna Hotel, not because of the recovery of the cartridges but because of the behaviour of Peter Alphon at another hotel, as a result of which he was interviewed on 27 August, when he asserted that he had stayed at the Vienna Hotel on the night of 22/23 August. It was this claim to an alibi that led to the original statements. Other statements to do with the register were also not disclosed although it was clear from the cross-examination of DS Acott that because of questions Mr Sherrard put, he was aware that Juliana Galves had changed her evidence about the occupation of the room subsequent to 21/22 August.

165. Also undisclosed at the time of the trial was a police log, dated 6 September 1961, which recorded a message confirming that Peter Alphon (using the name F. Durrant) had stayed at the Vienna Hotel arriving at 11.30pm on 22 August. The message goes on "Statement will be forwarded". The box "Action taken" has then been completed:

> "Please make perfectly sure that it is a positive fact that Durrant was in the hotel at 11.30 p.m. on 22nd August 1961 – Include this in the statement please."

There is then (presumably written by a different person) "Will be done!!".

166. A statement to that effect (albeit later modified by the witness) was taken. Mr Mansfield submits that this is evidence of police malpractice, as was the failure to disclose statements and the log (which would only be by contemporary standards and not those appertaining at the time). Mr Mansfield argues further, that it is legitimate to infer that the hotel register had been altered to conceal the entry in relation to Ryan and that the defence were deprived of the opportunity to submit that the police were prepared to tailor the evidence to fit the theory that Durrant/Alphon was guilty, that someone with knowledge that Alphon was under investigation had planted the cartridge cases; and that the hotel record had been altered in some way.

167. Whereas there was a failure to disclose material to which we shall have to return, we do not accept that the events bear this construction, or give rise to the possibility of that type of submission. The police log does no more than underline the importance to whoever was charged with taking a statement that it should cover the time of his arrival at the hotel. Far from implicating Peter Alphon, the effect of the requested statement would exonerate him at a time when there was no other suspect. There was no reason for anyone to alter the hotel register. Finally, this material provides no support for the proposition that anyone (let alone the police who had the gun and the ammunition from 24 August) planted the cartridges. They were, after all, found at a time before James Hanratty had entered the frame of possible suspects but when Alphon, according to the message recorded on the log of 6 September, appeared to have an alibi and so was about to leave it. The circumstances in which they were found (and the discrepancies involved) were fully ventilated at the trial.

168. The next ground of appeal concerning the Vienna Hotel relates to undisclosed inconsistent interviews of William Nudds and Florence Snell (although inconsistent statements were disclosed and were the subject of detailed cross-examination at the trial). Mr Mansfield argues that this failure deprived the defence of material affecting the credibility of two important prosecution witnesses.

169. These inconsistencies go to the time at which these witnesses saw Peter Alphon at the Vienna Hotel and whether, in fact, they provided him with an alibi for the killing and would have provided additional ammunition with which to damage their credibility although the prosecution, the defence and the Judge all warned the jury about the care needed in relation to what they said. In that context, it is worth adding that there is, in fact, no evidence that Peter Alphon was in any way involved (and it was common ground that the DNA findings are inconsistent with his being the murderer/rapist).

170. The only other evidence given or confirmed by these witnesses upon which Mr Mansfield relies as demonstrating unfairness in the trial is the account, which is disputed of how, when James Hanratty left the hotel, he asked for directions to Queensway and was advised by William Nudds (partly corroborated by Florence Snell) to walk to Harrow Road and catch a 36 bus. We do not consider that this evidence, even if accepted, took the prosecution anywhere. This request, if made, was on the morning of 22 August, that is before the killing, and provides no link with a trip on a 36A bus to abandon the gun and ammunition. On the prosecution evidence, this was two days later on the morning of 24 August.

171. The final ground of appeal concerning the Vienna Hotel relates to the date when the hotel register was seized by the police and the failure to disclose a note in DS Acott's notebook to the effect that he did so on 20 September. Mr Mansfield argues that DS Acott's evidence to the jury (that he did so on 11 September when the cartridges were found) was thus untrue, thus raising further doubts about his credibility and about the integrity of the evidence in relation to the finding of the cartridge cases.

172. In 1962, there would have been no question within the current rules of prior disclosure of the notebook although had the officer used it to refresh his memory while giving evidence, Mr Sherrard would have been entitled to see it. Under present rules, it would fall to be disclosed. In fact, however, there was evidence in the form of a statement from DSgt Oxford to the effect that the register was seized on 20 September (which militates against the Superintendent deliberately lying as Mr Mansfield implies). The fact is that James Hanratty agreed that he stayed at the Vienna Hotel on the night of 21/22 August and there would be no reason, after the finding of the cartridges, for the hotel register to be forged by anyone.

173. More significantly, we do not accept that this material impugns the integrity of the evidence relating to the cartridge cases in any way. We have already referred to the state of the investigation at the time that they were said to have been found. The police had the gun; they had no reason to look further at Peter Alphon or the Vienna Hotel, let alone think about James Hanratty. Whatever coincidence this was, there is nothing in this error to support any theory of fabrication or plant.

Interviews and the ESDA Evidence

174. After the appellant had been arrested in Blackpool on 11 October 1961, the following day DS Acott and DSgt Oxford interviewed him. During two interviews DS Acott asked the questions while DSgt Oxford made notes of the questions and the appellant's answers. The notes were recorded on a bundle of loose foolscap size pieces of paper. The notes indicated that the first interview began at 7.45am and finished at 9.30am, and that the second interview began at 2.15pm and concluded at 2.45pm. The notes also record that they were read and checked by DS Acott in the presence of DSgt Oxford, in the case of the morning interview, at 11am and, in the case of the afternoon interview, at 4.30pm. The notes extended over 20 pages. The two officers jointly corrected and initialled the notes. The notes were subsequently reproduced in the officers' respective notebooks.

175. During the trial both police officers were cross-examined as to the manner in which the notes had been recorded. For example, DS Acott denied the suggestion that he had altered his notebook and DSgt Oxford refuted the suggestion that the notes were not honestly recorded. The point was made that the appellant was not given an opportunity to confirm the accuracy of the notes. However, it was not suggested that there were major differences between what is recorded and what was actually said.

176. On the hearing of the appeal, Mr Mansfield primarily directed his criticism of what is recorded as having been said by the appellant at the end of both interviews using the word "kip". At the first interview he is recorded as saying "OK I'll go to 'kip'" and at the second interview he is recorded as saying "I'm going to have a good 'kip'" and "No, I'm not tired but I can always 'kip' any time and place".

177. Mr Mansfield directed his attention to the use of the word "kip" because Valerie Storie recalled the murderer using the word "kip", and because the use of that word was relied upon by the prosecution to identify the appellant as the murderer (see paragraph 20 above). The appellant gave evidence that he was not in the habit of using the word 'kip, and that he did not use the word 'kip' during the interviews.

178. After the trial, evidence was obtained from an expert in forensic document examination, Dr David Baxendale, that certain parts of the notes had been rewritten. He was able to give this evidence because he subjected the notes which had been produced at the trial, as exhibit 117, to an ESDA test. An ESDA test reveals whether a document has been written when positioned over another document by enabling the indentations in the lower document which such writing can cause to be visible to the naked eye. This feature is the basis of the twelfth ground of appeal.

179. Dr Baxendale gave evidence before us on this appeal. He explained that you could expect, if someone was writing on a pad of pages that the impressions made by writing on the first page could be detected on the second page and so on. So here, by using ESDA, he found that page 2 reveals the impressions from the handwriting on page 1 and page 3 bears the impression of the handwriting on page 2. However, Dr Baxendale was not able to detect any impressions from page 3 on page 4. Instead he detected on page 4 some faint impressions which came from page 20. On page 5 more than one set of impressions were identified but the only feature of significance were impressions which suggested that there was more than one previous page 4. The differing impressions on page 15 established that there had been more than one version of page 15. The same was true of page 19. Dr Baxendale was of the opinion that pages 4, 15 and 19 in exhibit 117 had been rewritten. In addition, that page 4 in exhibit 117 had been under page 20 at the time that that page was written. Otherwise his findings on the different pages were generally in accordance with what you would expect if the notes had been recorded in a straightforward manner and no second copies made.

180. We accept Dr Baxendale's evidence, but we do not consider that his evidence establishes that it is probable there was anything improper about the manner in which the notes were recorded. Taking fully into account the evidence of the two officers at the trial, it is our opinion that there could well be a wholly innocent explanation for Dr Baxendale's findings. What we regard as significant is that Dr Baxendale found no evidence that anything had been added or removed from the notes in the course of pages being rewritten. This does not rule out alterations but it does suggest that while the copying was being done, material changes to the content of the notes were not being made. The impressions which were found of what was on the missing pages do not always follow the same pattern as that on the pages constituting exhibit 117. This could be due to the position of the page underneath not being precisely the same as that of the page above at the time when the writing took place, or it could be an incidental consequence of the copying process.

181. For the officers to have deliberately inserted the word "kip" into the notes without it being used by the appellant would have been serious misconduct. However, it was misconduct which could equally have been achieved without rewriting the pages of the notes and it is not obvious if this was what was wanted why it could not have been more simply and less laboriously achieved.

182. The impressions, which Dr Baxendale found, were from the upper half of the page. This is apparently not unusual. What the notes confirm is that during the course of the interview, there were substantial pauses. While this is speculation, a possible explanation for the findings was that DSgt Oxford was taking advantage of the pauses to rewrite more clearly what he had previously written. It has to be remembered that it was only the pages, which were agreed and authenticated by the two officers, which were reproduced in their notebooks. The position may not even be different today, but, it is our belief that at the date of the interviews importance would not have been attached to the rewriting (as long as this was done in the same terms) of the notes taken in the course of an interview prior to the notes being reproduced, in accordance with the then practice, in the officers notebooks.

183. If at the trial the defence had been aware of the rewriting, then no doubt this would have been explored in cross-examination. However, it is unlikely that this would have been a matter of any significance since it was accepted by DS Acott that nothing said by the appellant could be considered a confession. We do not accept that Dr Baxendale's evidence demonstrates, as is suggested in the perfected grounds of appeal, that the evidence given at the trial by each officer was, at least in part, untrue.

184. Reduced to its proper significance this ground of appeal is of peripheral, if any significance.

The Rhyl Alibi

185. Mr Mansfield does not advance any attack on the conduct of the prosecution in relation to that part of James Hanratty's alibi which concerned his departure from London and his arrival and initial movements in Liverpool. The jury heard evidence about the train times from London Euston to Liverpool Lime Street (12.15pm arriving 4.45pm) and it was for them to evaluate the evidence of Olive Dinwoodie and Albert Harding as to the incident in the sweet shop.

186. Following Mr Sherrard's opening speech to the effect that James Hanratty had left Liverpool by bus on the same day that he arrived and gone to Rhyl, it is not surprising that the police commenced enquiries. By the end of the day on which the speech was made, they had obtained details by telex of the bus service from Liverpool to Rhyl. This showed there was a double-decker bus, which departed at 6pm and arrived at 8.19pm. The appellant asserts that this information was not disclosed; in common with other, similar, claims, the prosecution invites the Court to proceed on the basis that this is correct.

187. Although there is no doubt that under modern common law rules, this material should have been disclosed, it is arguable whether the information (not in the form of a statement from a person whom the prosecution know can give material evidence) fell for disclosure at the time. To the initiated, it must have

been clear that Mr Swanwick had been given information on this topic for he cross-examined as to the name of the carrier, whether it was a single-decker or a double-decker, and its colour.

188. Whatever is the true position, we do not consider that this failure is of significance in itself or adds anything to the other allegations where breach of the rules is established. Furthermore, emphasis of the timing serves to underline the little time available to James Hanratty while he was in Liverpool. Thus, in the 75 minutes between the arrival of the train and the departure of the bus, his evidence was that he has left the train, had a wash in the station, deposited property in the left-luggage office, made enquiries outside the station about Carleton, Tarleton or Talbot Road, got on and off a bus, gone to the sweet shop in Scotland Road, walked back to Lime Street, looked for but been unable to find the road, gone for a meal, discussed the sale of a watch, decided to go to Rhyl, presumably collected what he had left at the left luggage office, found the bus station and got on the bus. It was his evidence, of course, that he only left Liverpool at 7.30pm.

189. The real issue under this thirteenth ground of appeal concerns three other witnesses which the investigation of the Rhyl alibi revealed. These are Margaret Walker, Ivy Vincent, and Christopher Larman. First, on 8 February 1962, a statement was taken by police from Mrs Walker. She said that she lived in South Kinmel Street and that one night during the third week of August 1961 at between 7.30pm and 8.00pm (when it was dark), she was standing by the gate of her home, when a young man wearing a dark suit aged between 24 and 27 years-old asked if she could put him up for a night or two nights. She noticed that he had dark hair 'but streaky, funny, not all the same colour'. She had no room, but referred him across the way to Mrs Vincent.

190. In accordance with the practice at the time, this statement was not disclosed to James Hanratty or his advisers, although her name and address were. Unfortunately, neither files of the correspondence between the Director of Public Prosecutions and James Hanratty's solicitor have survived the passage of time but a letter dated 19 February 1962 (which would have been the Monday following conviction on the Saturday) from enquiry agents to the solicitors makes it clear:

> "Mrs Walker was one of the persons out of the six, supplied to you by the D.P.P.'s Dept. She had gone to the police and made a statement. When seen by us she was not definite in anything but gave the impression she wanted to be in on it."

For our part, the only proper conclusion to draw is that her name and address had been provided before the end of the trial.

191. Mr Mansfield acknowledges the strength of that inference and further accepts that early interview of Mrs Walker would have led to Mrs Vincent (whom Mrs Walker mentions). The same is not so in relation to Christopher Larman who came to the attention of the police as late as 15 February (after the summing up had started but before the jury retired on 17 February). At 8.15pm, a Detective Sergeant in Staines reported a message he had received apparently from "Mrs Christopher Edward Larman" (although the telephone subscriber at the given address was Mrs Margaret Smith. The name provided may be a typing error for Mr Larman) to the effect that he was in Rhyl on 22 August 1961 when a man asked if he could find him digs; he directed him to a house opposite the Windsor Hotel. He described him as "a man in his 30s, 5 ft. 5½ ins, hair bronze or black, the sun was shining on it and I could not see the colour properly". The message was passed to DS Acott and was annotated:

> 'Copy of message handed to Det Supt. Acott at 9.10pm 15/2/62 on the instructions of D.Supt. Barron. Det. Supt. Acott said he would see that the information was handed to the defending counsel in the morning'.

192. Mr Sherrard QC has written to the appellant's solicitor about this note in these terms:

> "I am morally certain that no such information either oral or written was conveyed to me at the trial. 16 February 1962 was a Friday and the Judge was summing up. Had this statement or anything like it been brought to my attention, even at that stage, I would surely have asked the Judge to give me a little time to consider the implications of some information which had been provided to me. The transcript will show that at no stage did I make such an application.
>
> I am quite sure that if there had been need to communicate information of this kind to me, it would have been done by prosecuting counsel. I am sure that this did not happen with regard to the Larman material."

We have no hesitation in accepting Mr Sherrard's recollection which is entirely consistent with the careful way in which he marshalled material during the trial. Equally, we do not doubt that prosecuting counsel would have acted in accordance with their duty. Unfortunately, DS Acott is now dead and cannot be asked specifically with the result that we do not know precisely what went wrong.

193. A full statement was taken from Christopher Larman by the police on 16 February. The statement is to the effect that at approximately 7.15pm on 22 August, he left a hotel on the corner of Kinmel St., when he was approached by a man aged in his late twenties, wearing a dark suit who asked him if he knew a place where he could get bed and breakfast. Mr Larman pointed him towards Ingledene. Although he described the man's hair as black observing 'but as he

walked away from me with the sun shining on it, his hair had a bronze effect in parts of it', he also made it clear that he would not be able to recognise the man if he saw him again.

194. Neither this statement, nor Mr Larman's name and address, were disclosed to the defence team by the prosecution. Mr Mansfield submits that it may be inferred that it was deliberately suppressed by DS Acott. He goes on to argue that had the statement of Mrs Walker been disclosed to James Hanratty before the conclusion of the defence case at trial, then she could have been available to give evidence at the appropriate time. A statement could also have obtained a statement from Mrs Vincent, who was named in Mrs Walker's statement. Had Mr Larman's statement been served, then an application could have been made to the trial judge to allow this evidence to be given before the jury retired notwithstanding the fact that the time for calling evidence had passed. In that regard, the prosecution accept that Gorman J, anxious to be as fair as possible to the man on trial, would certainly have allowed time for such an application to be considered. Mr Mansfield concludes that the non-disclosure of this and the other statement itself deprived James Hanratty of the opportunity to call important evidence and so deprived him of a fair trial.

195. That the failure to disclose represents a breach of standards is clear but before considering the effect of such a failure, it is important to record what happened after the conviction. Statements were, in fact, obtained by James Hanratty's legal advisers from these witnesses. On 19 February, Mrs Walker provided a statement to the effect that she had been approached at about 7.30pm by a man in a dark suit asking for somewhere to stay. She was shown photographs of the appellant and stated: 'The photographs you have shown to me are very like the man who called here, but the hair was dark.' She repeated what she had told the police that the man's hair 'was not quite natural, as though it was streaky or tacky.' As to the date, she stated "It was definitely the Tuesday before the 25 August, because I had some personal news of something that was to happen on the Friday".

196. On the same day, a statement was taken from Mrs Ivy Vincent. She stated that about the third week in August there was an occasion when a man had approached her, having come from Mrs Walker's house, and asked if she had any vacancies. She said that she did not and suggested that he try further up South Kinmel Street and, failing that, that he try Kinmel Street. She stated that she had seen the appellant's photograph in the paper and "I seem to recognise his face".

197. Finally, on 21 February a statement was taken from Christopher Larman. Although the account which he provided was broadly similar to that given to the police, namely that he had spoken to the man at about 7.30pm on 22 August 1961, there was one very significant difference. Whereas to the police he had

made it clear that he would not be able to recognise the man again, in this statement, he said:

> "On Sunday, 18th February 1962, I saw photographs in the Sunday Papers of James Hanratty and I immediately remembered that I had seen him before and also the occasion when and where I had … I particularly remember this man because of his hair, which was most outstanding being brown and dark in parts…The photographs I have been shown are definitely of the man I saw and spoke to at about 7.30 p.m. on Tuesday 22nd August 1961."

198. It follows that statements from each of these witnesses were in the possession of James Hanratty's legal advisers well before the 13 March 1962 when the matter came before the Court of Criminal Appeal. Following an article clearly critical of the way in which James Hanratty had been defended, in a letter to the Sunday Times dated 30 September 1968, his solicitor, without divulging matters covered by professional privilege, explained the reason for the decision not to seek to call that evidence before the court on the basis that the statements were not consistent with the evidence which James Hanratty had given. He went on:

> "Quite apart from inconsistencies as to identification and detail (as well as some mutually contradictory features) there was no point in seeking to rely on the evidence of Mr Larman, Mrs Walker and Mrs Vincent because their statements (even without the test of cross-examination) did not match Hanratty's evidence on the crucial issue of time. He could not have spoken to any of these people at 7.30 p.m. because his evidence on oath was that he did not leave Liverpool by coach for Rhyl until after 7.30 p.m. and that when he arrived at Rhyl it was late evening and dark. It was, of course, not dark at Rhyl at 7.30 p.m. That the statements in other respects did not find support from Hanratty himself added substantially to the difficulties."

In his letter, Mr Sherrard added that, after the trial, he did see statements of Mr Larman and other potential witnesses which were considered for the purposes of appeal. He goes on to add that he need not rehearse the reasons for not seeking to adduce any of this evidence at the appeal.

199. Mr Mansfield challenges the solicitor's reasoning in his letter pointing to the consistency of description (with two commenting on the unusual hair consistent with the evidence regarding the use of dye), recognition of photograph, the fact that two had reasons to fix the date and James Hanratty's evidence that he had enquired "on five or six occasions" about bed and breakfast accommodation. He argues that witnesses are notoriously unreliable about time and that had the legal team known of the bus time table, they would have appreciated that James

Hanratty would have arrived in Rhyl at 8.19pm (sunset being 8.30pm according to the information supplied by Mr Swanwick from his diary during cross-examination) so that the timing was not as awry as might have been thought. In the circumstances, he submits that the court should receive the evidence of the three witnesses under section 23 Criminal Appeal Act 1968 on the grounds that it is expedient in the interests of justice.

200. Implicit in this submission is a criticism of the failure to seek to call the evidence before the Court of Criminal Appeal by which time, after all, there was nothing to be lost in pursuing every possible point. We have no doubt that most anxious thought was given to this line. It is unlikely that the times of buses were unknown to the defence team (given that it is clear they had made their own enquiries about train times); a consequence of emphasising the 6.00pm departure is to underline the extent of James Hanratty's necessary activity in the preceding 1¼ hours. Further, two of the witnesses speak specifically about 7.30pm whereas James Hanratty could not have arrived in Rhyl until 8.19pm and his evidence was that he found it very hard to find accommodation, that he had travelled in and out through other streets and it was dark at the time when he came upon a small private house with the 'Bed and Breakfast' sign. Time discrepancies are one thing; differences between light and dark, another. Finally, the solicitor's observation that "the statements in other respects did not find support from Hanratty" cannot be ignored; his reasons are unknown although his instructions, in the end, would be conclusive. In the circumstances, we do not criticise the decision not to seek to call this evidence before the Court of Criminal Appeal.

201. If that decision was legitimate, it is almost inconceivable that a different view would have been taken had this material been available before the Judge concluded his summing up. At that time, the verdict was still in the future. Seeking to call further evidence carries real risks and if there was appropriate concern about whether it should be called at the appellate level, that concern would have been much greater at the trial. In the circumstances, we do not accept that the failure to disclose such material as the police had in relation to Rhyl would have made any difference to the way in which the trial was conducted.

202. As to the application under section 23 Criminal Appeal Act 1968 now to rely upon the same evidence (which goes to the question of the identity of the killer), the DNA evidence to which we have referred leads conclusively to the view that this material does not render the verdict unsafe.

Lord Chief Justice:

The Summing Up

Identification

203. We now come to the summing up and the fourteenth and fifteenth grounds of appeal. While Mr Mansfield accepts that in general the summing up was of high quality and very fair measured by the standards of 1962, it is equally not in dispute that by today's standards the summing up would be regarded as defective. This is particularly true of the manner in which the judge dealt with the critically important issue of identification.

204. The decision in *Turnbull* [1976] 63 Cr App R 132 which increased the scale of the warnings which were to be included in a summing up as to identification had not yet been decided. In any event this case required a particularly careful and full direction as to identification. This is because Valerie Storie, in making her identification, relied at least in part on her ability to recognise the murderer's voice. As to this aspect, the appellant relies upon the unreported decision of this Court in *Hersey* (1 December 1997, No. 1996/8495/Y3) in which it was stated that the warnings which are appropriate in identification cases apply equally to voice recognition cases. These points are linked to the points we have dealt with already in relation to the identification parade and the appellant's vivid rainbow-coloured hair.

205. If the trial had taken place today, a judge would be required to give fuller warnings than were given by Gorman J. In particular it would be necessary for there to be a greater explanation for the reason for the warnings (see *Reid v R* [1990] AC 363). But the way the question of identification was dealt with by the judge did provide substantial protection for James Hanratty. The summing up appropriately stressed the importance of Valerie Storie's evidence. The jury was also reminded of the evidence of Mr Skillet and Mr Trower and the matters that might undermine their evidence. There are references to the considerations which the jury should take into account in assessing the reliability of the evidence of identification, including the opportunity of the identifying witness to observe the person subsequently identified. There are also references to the need for caution in approaching the identification evidence. The judge reminded the jury that Mr Blackhall had failed to pick out James Hanratty. As to which he said, "All this …must go to impress on you the carefulness, which one has to consider the identification evidence in this case." He also stated in relation to Valerie Storie's evidence that; "One has to be very sure of an identification".

206. As to the appellant's complaint about his hair (as we have already explained) this is very much a matter which is as likely to have been in James Hanratty's

favour, as against him, since it would certainly make him look different from the person who attacked Miss Storie.

207. Non-directions of the categories relied on in this case can result in a conviction prior to the date of the decision in *Turnbull* being quashed today (see *Johnson* [2001] 1 Cr App 26). Whether in pre-*Turnbull* cases this should be the consequence, involves not merely asking whether there has been a breach of the *Turnbull* rules but assessing the risk of the jury failing to understand the dangers in the context of the facts of the particular case. Here, the assessment has to be made against the knowledge that the jury was aware that Valerie Storie herself, and other witnesses, had either made a mistaken identification or not identified James Hanratty. The jury could not but have appreciated that honest witnesses could be unreliable in relation to identification. Furthermore, although there was no specific warning about voice identification, the fact is that Valerie Storie had heard her attacker speak for six hours so she was in an excellent position to identify him by his voice, as the jury would recognise having heard him give evidence. They were in an excellent position to assess whether his voice was likely to help identification.

208. In our judgment if the non-directions stood alone, even without the DNA evidence, they would not justify the quashing of the conviction.

Absence of an Explanation of the Significance of Lies

209. Today a judge is required when this is desirable to point out to a jury that the fact that the defendant lied does not mean he is guilty of the offence with which he is charged. But here this is a technicality. The sixteenth ground of appeal goes to the change of alibi. James Hanratty gave his explanation for the change and the jury was told that if the second alibi might be true he could not be guilty. They needed no more than that. The explanation and the second alibi were linked. We do not consider this ground of appeal is of any substance.

Inaccurate Summary of the Evidence of Charles France and Carole France

210. The judge's summing up can properly be criticised (and is in the seventeenth ground of appeal) for not being entirely accurate in relation to Mr France and his daughter, Carole, but the inaccuracy only goes to whether the appellant was in London on 21 August. The other evidence that he was in London on that date, as he said, is overwhelming and, in common with the views of the Court of Criminal Appeal before whom this point (with others) was taken, we consider that there is nothing in it.

CONCLUSION

211. We have already stressed the importance of looking at a case such as this in the round. The grounds of appeal are of differing significance and although we have dealt with them individually it is also necessary to consider them collectively in asking ourselves the critical question is the conviction of James Hanratty of murder unsafe either on procedural or evidential grounds? As to the evidential issues they all ultimately relate to the single issue which dominated the trial and this appeal, the identity of the killer. In our judgment for reasons we have explained the DNA evidence establishes beyond doubt that James Hanratty was the murderer. The DNA evidence made what was a strong case even stronger. Equally the strength of the evidence overall pointing to the guilt of the appellant supports our conclusion as to the DNA.

212. Mr Michael Sherrard apparently opened the defence at the trial by saying appositely that this was a case "sagging with coincidences". Just let us consider some of the more striking coincidences in the light of the DNA evidence if James Hanratty was not guilty. He was wrongly identified by three witnesses at identification parades; first as the person at the scene of the crime and secondly (by two witnesses) driving a vehicle close to where the vehicle in which the murder was committed was found; he had the same identifying manner of speech as the killer; he stayed in a room the night before the crime from which bullets that had been fired from the murder weapon were recovered; the murder weapon was recovered from a place on a bus which he regarded as a hiding place and the bus followed a route he could well have used; his DNA was found on a piece of material from Valerie Storie's knickers where it would be expected to be if the appellant was guilty; it was also found on the handkerchief found with the gun. The number of alleged coincidences means that they are not coincidences but overwhelming proof of the safety of the conviction from an evidential perspective.

213. As we have seen, even by contemporary standards of the time, there are criticisms of some substance which can be made as to the procedural defects, but these criticisms have to be seen in the context of the case as a whole. On the appeal we focus on what are alleged to have been defects in the trial process. This is particularly true in relation to non-disclosure. However, when we consider whether this was a flawed trial we have to consider the sum total of the defects against the backcloth of what was undoubtedly a thorough exploration of the real issue, namely was James Hanratty the killer and on that issue the jury came to the right answer. In making this comment we are not ignoring the two different grounds for saying a conviction is unsafe. We are recognising those two grounds but also acknowledging that the purpose of the rules is to ensure that an individual is not wrongly convicted and in the case of the procedural errors in this case this involves taking into account whether they interfered with the ability of James Hanratty to defend himself by raising a doubt as to his guilt. In that context we are satisfied the procedural shortcomings fell far short of what is required to lead to the conclusion that the trial should be regarded as flawed and this

conviction unsafe on procedural grounds. The trial still met the basic standards of fairness required. We are satisfied that James Hanratty suffered no real prejudice.

214. The appeal must therefore be dismissed. However before we end this judgment it is right we should mention the Hanratty family and their supporters. Throughout the appeal we have observed that they have attended in significant numbers and followed the proceedings behaving impeccably. Although their cause, to establish the innocence of James Hanratty has failed, we consider they deserve commendation for the extraordinary loyalty and commitment they have shown to what they thought was a just cause, to right an injustice. They have also been remarkably well served by the lawyers who acted on their behalf.

215. Finally we appreciate the immense amount of diligence shown by the Commission. We do not consider it would be right to attempt to judge the Commission with the benefit of hindsight in relation to this case. We do however emphasise that there have to be exceptional circumstances to justify incurring the expenditure of resources on this scale, including those of this Court, on a case of this age.

Friday, 10 May 2002

Court 4
Royal Courts of Justice

JUDGMENT SUMMARY

(This summary forms no part of the judgment of the Court)

The judgment in this case is of considerable length and this summary only provides a brief outline of the reasons for the Court's decision to dismiss the appeal. The judgment commences with an **introduction** (paras 1-12); it then refers in detail to the relevant background **facts** (paras 13-81). There is then a section on the **law** as there were points of general importance argued with regard to the role of the Court of Appeal upon which the Court was required to give a decision; namely what is the correct approach to:

- the safety of a conviction when hearing an appeal, particularly where the trial took place many years ago when the rules of practice were different from those which exist today?
- allegations that a conviction is unsafe on (a) evidential and (b) procedural grounds?
- the admissibility of fresh evidence on which the prosecution wishes to rely to show that the conviction should be upheld as being safe? (paras 81-105)

The Court having decided that the DNA evidence is admissible then gives its decision as to the effect of that evidence: (paras 106-128) and having done so proceeds to consider the merits of each of the 17 grounds of appeal (paras 128-210) and finally sets out its **conclusions**. (paras 211-215).

The Background

1. On the evening of Tuesday 22 August 1961, Michael Gregsten and Valerie Storie were together in a grey Morris Minor car in a cornfield at Dorney Reach, Buckinghamshire. It was getting dark, when they were approached by a man who threatened them with a gun. On his instruction, the car was driven onto the A6. In the early hours of the following morning, at a lay-by south of Bedford, Michael Gregsten was shot twice at close range; he died almost instantly. Valerie Storie was raped and also shot: of approximately seven bullets fired, five entered her body. Miraculously, although she was left for dead, she was not killed; she did, however, suffer a catastrophic injury which resulted in paralysis to the lower part of her body. She was later able to describe the man responsible and provide considerable detail both of the events of the night and of what had been said.

2. On 17 February 1962, after a trial lasting 21 days, James Hanratty was convicted of the murder by shooting of Michael Gregsten. On 13 March 1962, an appeal

against conviction was dismissed by the Court of Criminal Appeal and, on 4 April 1962, James Hanratty was executed.

3. Over the 40 years which have followed, a vigorous campaign has been mounted to establish that the conviction constituted a miscarriage of justice. A police enquiry into the alibi in 1976 declared the conviction safe, and, in 1975, Lewis Hawser QC considered the case against James Hanratty 'overwhelming'. In 1994, submissions were placed before the Criminal Cases Unit of the Home Office and, on 1 April 1997, responsibility for the further investigation was assumed by the Criminal Cases Review Commission. On 26 March 1999, the Commission referred the conviction to the Court of Appeal on the statutory ground that there was a real possibility that the conviction would not be upheld. Following an order of the court on 17 October 2000, the body of James Hanratty was exhumed and samples of his DNA obtained.

The Grounds of Appeal and the DNA Evidence

4. The 17 Grounds of Appeal include eleven based on failures by the prosecution to disclose material to the defence, one concerns the conduct of the identification parade at which Valerie Storie identified James Hanratty, one relates to the reliability of the evidence of his interviews (supported by ESDA testing of the interview notes) and four concern directions given during the course of the summing up (of which one repeats a complaint made and dismissed at the original appeal and three are based on standards introduced since 1962). The Crown have sought to rely on the results of DNA analysis of a fragment of Valerie Storie's knickers (kept on the forensic file since 29 December 1961) and the handkerchief in which the murder weapon was found wrapped on the day following the killing. It was contended by the prosecution that the DNA evidence proves conclusively that James Hanratty was, indeed, the murderer. Mr Hanratty's family argue that the DNA evidence was not admissible on the appeal and, in any event, the Court cannot exclude the real possibility that the results are due to innocent contamination from articles of James Hanratty's clothing and from a suitcase of his belongings seized after his arrest.

5. The Court decided that the DNA is admissible. This is under section 23 of the Criminal Appeal Act 1968, that makes the over-riding consideration whether the evidence would assist the Court to achieve justice, bearing in mind that the conviction could be unsafe either because there was a doubt as to the guilt of the appellant or because the trial was materially flawed. [A trial is materially flawed if it does not conform with at least the minimum requirements of a trial to which every defendant is entitled.]

6. As to the effect of passage of time, the Court decided that although current standards of fairness must be applied irrespective of when a trial took place, this does not mean that because contemporary rules have not been complied with, a defendant has been necessarily treated unfairly so that a conviction must be

quashed. The question whether a trial is sufficiently seriously flawed so as to make a conviction unsafe must be approached in the round, taking into account all the relevant circumstances.

Conclusion

7. While some of the 17 grounds of appeal are shown to be of little or no significance when considered in context, other grounds, particularly when judged by contemporary standards, are material. However, there was no dispute that DNA from James Hanratty was found on a fragment from the knickers and the handkerchief and Mr Mansfield QC (for the appellant) conceded that, should it transpire that all possibility of contamination could be excluded, the DNA evidence would decide conclusively that James Hanratty was the murderer and rapist. The Court rejects the possibility of contamination and accepted the prosecution's submission that the DNA evidence, standing alone was, in fact, certain proof of James Hanratty's guilt.

8. The DNA evidence does not "stand alone" and the Court refers to some of the more striking coincidences in the light of the DNA evidence if James Hanratty was not guilty. He would have been wrongly identified by three witnesses at identification parades; first as the person at the scene of the crime and secondly (by two witnesses) driving a vehicle close to where the vehicle in which the murder was committed was found. He had the same identifying manner of speech as the killer. He stayed in a room the night before the crime from which bullets that had been fired from the murder weapon were recovered. The murder weapon was recovered from a place on a bus which he regarded as a hiding place and the bus followed a route he could well have used. His DNA was found on a piece of material from Valerie Storie's knickers where it would be expected to be if he was guilty; it was also found on the handkerchief found with the gun. The Court concludes that this number of alleged coincidences mean that they are not coincidences but provide overwhelming proof of the safety of the conviction from an evidential perspective.

9. The Court deals in turn with each ground of appeal and places the allegations made on behalf of the appellant in their proper context. It then decides that neither the individual grounds nor the ground collectively establish that the trial was so seriously flawed or unfair as to make the conviction procedurally unsafe. In the circumstances, the appeal is dismissed.

10. Finally, the Court commends the Hanratty family for the manner in which they have logically but mistakenly pursued their long campaign to establish James Hanratty's innocence. The Court does not criticise the Commission, but points out that a case of this age must be exceptional to justify this level of expenditure.