

ADVICE ON LIABILITY AND QUANTUM

1. On 18 June 1984 Mr. Barber was detained in Highfield Lane, ~~Orgreave Road~~, near Sheffield, South Yorkshire by an officer from the Merseyside police force, PC Gray. Mr. Barber was subsequently charged with riotous assembly. He faced his trial in May, June and July 1985 and was acquitted when the prosecution abandoned their case against him and offered no further evidence on 17 July 1985.

2. I am asked to advise on the civil remedies now available to Mr. Barber and the likely quantum of damages he stands to recover. For the reasons set out below in this Advice, I accordingly strongly advise that Mr. Barber should apply for legal aid immediately as I feel he stands a very good chance of recovering substantial damages for assault, false imprisonment and malicious prosecution.

3. The Facts:

I shall deal firstly with Mr. Barber's account of his arrest which is a straightforward one. He arrived by car at ~~Orgreave~~ with two friends and went to a field where the police again directed the demonstrators to stand. After a short time, he left and went to a supermarket to buy some refreshments. on his return from the supermarket, he was walking down to the field again along the roadway when he became aware of a police charge. There were people running everywhere. As a result of the confusing scene, he himself stepped away from the roadway and on to a path by the entrance of part of the electricity substation in Highfield Lane. he saw a number of people running past him and then heard a voice say: 'Stand where you are, you have done nothing wrong.' He stood still and the next thing he saw was a police officer close by him with a truncheon in his hand. The police officer said to Mr. barber: 'Get off home'. Mr. Barber replied: 'I've only just arrived' when at the same moment, he was struck a truncheon blow on the

side of the head and nose by this officer with such force that he, Mr. Barber fell to the ground amongst stinging nettles. Two other officers then arrived and Mr. Barber was struck a number of blows about his body. PC Gray then arrived and hit Mr. Barber around the legs and foot a number of times with his truncheon, whilst Mr. Barber was being held by the two original officers. Another officer wearing a flat cap came up to the group and said: 'That's it, Put the cuffs on and take him down.' Mr. Barber was then handcuffed and taken away by PC Gray.

4. Mr. Barber is a man of 44 years of age of good character and his evidence ^{false imprisonment + malicious prosecution} discloses a prima facie case of assault and ~~unlawful detention~~. The strength of his case is now supported on all material particulars by PC Gray's live evidence at the criminal trial and by the photographs of Mr. Barber's arrest which is in the possession of those instructing me. As a result of his being arrested, Mr. Barber was unable to return to his vehicle which was damaged in incidents later that day. The prosecution version of the facts falls into two categories; firstly, the statement of PC Gray dated 18 June 1985, a copy of which is appended hereto, PC Gray being the sole officer concerned in giving or making any statement in relation to Mr. Barber and the only officer who gave evidence concerning Mr. Barber at trial. On the face of PC Gray's original statement, it would be difficult to find a more simple scenario of how Mr. Barber came to be arrested. A further document worth mentioning at this point is the detention sheet which was filled in on Mr. Barber's arrival at the police detention centre. This sheet revealed the following information:

- a) Under section headed 'Reasons For Arrest Or Detention' the only word that appears is 'discussing' (it should be noted that PC Gray alleges that Mr. Barber was told he was being arrested for threatening behaviour);

- b) the only injury noted that Mr. Barber was alleged to have at the time the detention sheet was being completed was 'nettle rash'.

At the trial however, PC Gray gave a wholly different version of Mr. Barber's arrest and detention and I shall comment briefly on the most important points.

- i) PC Gray accepted that although Mr. Barber was of similar appearance to the stone thrower, he nevertheless could have been mistaken in his identification. He accepted that he had lost sight of the person he was chasing completely during the course of the chase and could give no proper explanation as to why the fact that he had lost sight of the person he was pursuing was not mentioned in his original statement.
- ii) When he saw Mr. Barber after entering the field from the roadway, PC Gray accepted that when he first saw Mr. Barber Mr. Barber was in fact being punched and pushed to the ground by three other uniformed officers and PC Gray went on to say in clear terms that he did not see Mr. Barber do anything to provoke these officers.
- iii) PC Gray then said that these officers then simply left Mr. Barber there on the ground and that he, PC Gray, was not pleased with the actions of the other officers, that it had shocked him and when asked by the Trial Judge why he had not reported such an incident or mentioned it in his statement, PC Gray could give no explanation at all.

- iv) PC Gray was unable to explain why no mention of the injury to Mr. Barber was made, either on the detention sheet or in his statement.
- v) PC Gray was a trained short shield officer and had been trained in accordance with manoeuvres 6 and 7 in the Association of Chief Police Officers' Trainign Manual: Public Order and Tactical Options. These manoeuvres are appended hereto and it is my firm opinion that such manoeuvres are prima facie unlawful as they involve officers in offences of assault on persons merely standing their ground and committing no offence.
- vi) PC Gray however, was under the impression that he had even greater powers and gave in evidence his opinion that having been ordered to disperse the crowd, he, PC Gray, could arrest someone for simply standing there. (He did qualify this later by saying that he would have had to have justified such an arrest to the officer dealing with prisoners.)
- vi) PC Gray accepted that the first part of his statement was dictated by South Yorkshire detective and while this is not necessarily improper, a number of the factual matters referred to in PC Gray's statement could not have been personally observed by him because his unit was deployed in another location at times during that day.

5. False Imprisonment:

False imprisonment is the complete deprivation of liberty for any time, however short, without lawful excuse. In all cases, the burden is on the police to

prove that they had a lawful excuse for arresting and detaining. It is difficult to see how, on PC Gray's evidence in Court, it could be maintained that there was in any way a proper arrest. It should be borne in mind that PC Gray admitted that he could arrest ~~the~~ demonstrators for simply being there. It is likewise clear that he was not sure of the identity of the stone thrower at the time of Mr. Barber's arrest. It follows that if Mr. Barber was unlawfully arrested, his subsequent detention over night was unlawful amounting to the tort of false imprisonment.

6. Malicious Prosecution:

The substance of malicious prosecution is that the Defendant has wrongly set the law in motion against the Plaintiff. To succeed, each Plaintiff must prove and the burden of proof, unlike false imprisonment is on him or her that -

- a) he or she was prosecuted;
- b) the prosecution was determined in the Plaintiff's favour;
- c) it was without reasonable and probable cause and
- d) it was malicious.

It is difficult to see how, in making this particular arrest and his statement thereafter, that PC Gray could have failed to realise the importance of his losing sight completely of the stone thrower. he does not appear to have questioned or taken the numbers of the assaulting officers to see if they could corroborate his belief that Mr. Barber was throwing stones or to see if they had any reasonable basis for their original detention of Mr. Barber. PC Gray was likewise acting quite improperly in failing to report or mention the assault that he had seen the three officers commit until the trial of Mr. Barber. It is clear that one view is that PC Gray deliberately fabricated

part of his statement and that there is a prima facie case of malicious prosecution.

7. Parties:

Under the Police Act 1964 the Chief Constable for an area is responsible for the tortious actions of officers under his control or instruction. The Chief Constable of South Yorkshire is therefore the appropriate Defendant in this case under the Police Act 1964 Section 48, PC Gray being present under mutual aid at the time. I would however advise further that PC Gray should be added as Second Defendant. He was drafted to ~~argue~~ ^{argue} that day under Mutual Aid but the Chief Constable may seek to argue in defence that PC Gray, in fabricating his statement to justify the detention and prosecution of Mr. Barber, was acting outside the status of his employment and that therefore he, the Chief Constable, is not liable for the tortious act of PC Gray. This 'defence' is circumvented by PC Gray being joined as Second Defendant.

8. Jurisdiction:

It is my view at this stage that the High Court is the proper venue for this case. I take this view for the following reasons:

- i) Mr. Barber was charged and prosecuted for the serious offence of riot as a result of PC Gray's arrest and statement.
- ii) Mr. Barber was in custody over night for the first time in his life.
- iii) Mr. Barber suffered not only physical injury but considerable mental anguish at the time of his arrest and for ^{over} ~~nearly~~ a year afterwards until the prosecution was dropped, during

which time the Home Secretary spoke in public of life sentences for convicted rioters, causing even greater distress to Mr. Barber and his wife. It is quite clearly established that exemplary damages may be awarded where the wrong proved is^{an} oppressive, arbitrary or unconstitutional action by an officer of the law. (Rookes -V- Barnard [1964] AC 129). In this particular case, Mr. Barber having awaited trial for nearly a year and then having attended Court for ten weeks then faced the prosecution abandoning its case the day after PC Gray completed his evidence. Bearing in mind the manner in which PC Gray gave evidence at trial, I have little doubt that exemplary damages may well be considered in this case despite the 'demonstration' background. A recent example of the sort of award that can be made is George -V- Commissioner of Police for the Metropolis reported in The Times, 31 March 1984 where exemplary damages of £2,000 were awarded together with a total of £8,030 in the Plaintiff's action for trespass and assault after several police officers had forcibly entered her home on 30 September 1980 and assaulted the Plaintiff. I shall also mention at this point that a case worth noting should it be thought in such an action that attendance at a demonstration might negate the action, or be a bar to damages being awarded, I quote the case of Ballard -V- Metropolitan Police [1983] 133 New Law Journal 1138 where £3,000 was awarded to a woman who had attended a women's demonstration in London and had been assaulted by a police officer with a truncheon.

8. It is premature for me to deal with the specifics of quantum at this stage. However, after the close of pleadings and discovery I shall be in a better position to make a proper assessment of likely damages and in my opinion,

it will be appropriate at that stage to advise on quantum with a possible view to settlement.

Marguerite Russell.

MARGUERITE RUSSELL

2 Garden Court
Temple
EC4

11 September 1985

STATEMENT OF WITNESS

(C.J. Act, 1967, s.9; M.C.A., 1980, s. 102; M.C. Rules, 1981, r.70)

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STATEMENT OF GARY GRAY

AGE OF WITNESS (if over 21 enter "over 21") OVER 21

OCCUPATION OF WITNESS POLICE OFFICER

ADDRESS AND TELEPHONE NUMBER WALTON LANE POLICE STATION, WALTON,
LIVERPOOL 4 MERSEYSIDE

This statement, consisting of 2 pages each signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 18th day of June, 19 94

Signed..... GARY GRAY

Signature witnessed by.....

(..... being unable to read the statement below,

I, of read it to him before he signed it.

Dated the day of 19

On Monday 18th June 1984 I was part of a large contingent of police officers assigned to duty at the Orgreave Coking Plant, Highfield Lane, Orgreave.

During the morning there had been a steady build up of pickets, there was approximately 1,000 pickets facing us as we blocked off Highfield Lane on the southern side of the works entrance. As we stood there in the line a continuous stream of missiles came from the pickets into the police line. There was no shields being used at this time I saw a number of officers being hit by these missiles.

To protect police officers in the line from the missiles officers with protective head gear and shields were called up. The line of police opened up and I was part of a contingent of officers assigned to break the pickets up. As I ran through the line of officers I saw a wire stretched across the road, there was a large number of stopes and

signed..... G GRAY

Signature witnessed by..... PC 4139 'C'

STATEMENT OF WITNESS

(C.J. Act, 1967, s. 9; M.C.A., 1980, s. 102; M.C. Rules, 1981, r.70)

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Continuation of statement of GARY GRAY

broken glass spread out across the road.

I saw the accused BARBER throwing stones at the approaching officers.

Myself and a number of other officers ran towards BARBER and he jumped off the road and into a field. I took a hold of BARBER and cautioned

him and pointed out what I had seen. He replied "I've only just arrived".

I told him I was arresting him for threatening behaviour. I then handcuffed

BARBER and escorted him back to the police room. The scene I saw today

was of an equally frightening nature as the Toxteth riots in 1981.

GEN/6

Signed..... G GRAY

Signature witnessed by..... PC 4139 'C'

Manoeuvre 6.

Brief Description : Short shield baton carrying team deployed into crowd.

Detailed Description : Long shield officers deployed into crowd and deployed across the road. Behind long shield units are deployed all the short and round shield Officers with batons. On the command the short shield Officers run forward either through and/or round the flanks of long shields into the crowds for not more than 30 yards. They dispersed the crowd and incapacitate missile throwers and ring-leaders by striking in a controlled manner with batons about the arms and legs or torso so as not to cause serious injury. Following the short shield units the long shield units advanced quickly beyond the short shields to provide additional protection. Link were from long shield units until move in and take prisoners.

Manoeuvre 7.

Brief Description : Short shield teams deployed into crowd.

Detailed Description : Officers with short shields and batons are formed in 2 double 5 men files with a Sergeant at the back of each file and the Inspector between the 2 files. This unit will initially be protected by long shield Officers or personnel carriers and on the command will run at the crowd in pairs to disperse and/or incapacitate. Long shields will follow to gain ground and give additional protection for arresting Officers.

MOUNTED POLICE

Mounted branch officers may be deployed in the public disorder context to achieve one or more of the following objectives:

- a. confronting a hostile crowd with a display of strength to discourage riotous behaviour. This may be merely 'within view' or at 'close quarters' with the crowd.
- b. Applying pressure at close quarters to hold or ease back a solidly packed crowd, preserving the police line or gaining ground.
- c. Protecting buildings from a hostile crowd.
- d. Opening gaps in a crowd or separating sections of the crowd by the measured use of the weight of horses.
- e. Dispersing a crowd using impetus to create fear and a scatter effect.
- f. Dispersing a crowd using impetus and weight to physically push back a crowd.
- g. 'Sweeping' streets and parklands of mobile groups and individuals.
- h. Combining with other officers on foot (they employing varied tactics) to achieve any of the above objectives.

GROUP FOUR - CROWD DISPERSAL

When officers are deployed in close contact with crowds there is always the option of gradually pushing the crowds back thereby achieving a slow dispersal. The dispersal manoeuvres discussed below, however, provide for a more rapid dispersal based on fear created by the impetus of horses.

A generalisation can be made about all dispersal tactics of this nature; that they are only a viable option when the hostile crowd has somewhere to disperse to rapidly. It would be quite inappropriate to use such a manoeuvre against a densely packed crowd.

MANOEUVRE 10

a. Brief Description

Mounted officers advance on a crowd in a way indicating that they do not intend to stop.

- b. Detailed description - This manoeuvre can be applied whether there are foot police in close contact with the crowd in a 'stand-off' position or no foot police at all. The mounted police officers form in a double rank, line abreast facing the crowd and advance together at a smart pace (i.e. fast walk or steady trot) towards the crowd. Foot officers stand well aside to let them through and re-form behind following at the double. The horses stop at a pre-determined spot foot officers forming up behind. If missiles are thrown protected officers are brought through the horses, which are then in a position to repeat the manoeuvre.

MANOEUVRE 11

Description: This manoeuvre is identical to No. 10 except that the advance is made towards the crowd at a canter. The same considerations as regards foot police and halting the horses at a predetermined place apply.

MANOEUVRE 12

Description - Combining a rapid advance of mounted police with foot police.

Mounted officers with their horses formed in line abreast advance on the crowd followed by shield units jogging behind the mounted formation. When the horses make contact with the crowd the foot officers, with shields, are in a position to make any necessary arrests.

A warning to the crowd should always be given before adopting mounted dispersal tactics.

E. BARBER

- and -

THE CHIEF CONSTABLE OF SOUTH YORKS

- and -

PC 543 GRAY

A D V I C E

Ms. M. Russell
2 Garden Court
Temple
EC4

*Advice drafted letter
filed to Russell
12/9/85*

ADVICE ON LIABILITY AND QUANTUM

1. On 18 June 1984 Mr. Bell was detained near the Electricity Sub Station in Highfield Lane, Orgreave, near Sheffield, South Yorkshire by two officers from West Yorkshire police. He was subsequently charged with riotous assembly. He faced his trial in May, June and July of 1985 and was acquitted when the prosecution abandoned their case and offered no evidence on 17 July 1985. I am asked to advise on the civil remedies now available to Mr. Bell and the likely quantum of damages he stands to recover. For the reasons set out below in this Advice, I accordingly advise that Mr. Bell stands an excellent chance of recovering substantial damages for assault, false imprisonment and malicious prosecution.
2. Mr. Bell received serious injury on 18 June 1984 in that his left leg was fractured and he was detained overnight in hospital where his leg was put in plaster from ankle to groin. He also received other injuries of a less serious nature.
3. The Facts:

Mr. Bell's account of how he came to be arrested and detained is a simple and straightforward one. He attended the demonstration and as a result of a police decision to move demonstrators out of a field where previously they had been permitted to stand, by a three stage push manoeuvre, Mr. Bell, during the first of these manoeuvres became isolated from the friends with whom he had attended the demonstration. Mr. Bell was feeling some discomfort with his left leg at this time (he had previously been in a serious car accident which had resulted in him being in intensive care and amongst injuries received in this accident was a fractured leg). In the lull between pushes however, he was able to rejoin one of his friends. When the final charge by the police came however, he was unable to run and in fact hopped for a considerable distance away from the police as the police forced the demonstrators to retreat. One of his friends waited for him and helped him over a small fence by the Electricity Sub Station. Thereafter, Mr.

Bell was in such pain that he unable to retreat further and he sat down by a wall of the Electricity Sub Station. His friend called out to officers near by in an attempt to get their assistance for Mr. Bell. Two officers, having had their attention drawn to Mr. Bell and his friend in this manner firstly told Mr. Bell's friend to get a move on and then as four or five other officers arrived, hit out towards Mr. Bell's friend with truncheons. Thereafter, one of these officers hit Mr. Bell who was still seated on the ground at this time. Mr. Bell put his arms over his head to protect himself. The officers hit Mr. Bell two or three times, one blow landing on the side of Mr. Bell's head and one on his shoulder. One policeman stood on or kicked Mr. Bell's injured leg and then grabbing Mr. Bell by his clothing, forced him to stand told him to get lost. As the officer pushed Mr. Bell away, Mr. Bell tried to hobble but in fact fell against the chest of another officer. Mr. Bell fell to the ground again where he was picked up by two ^{other} officers who asked him what was wrong with him. Mr. Bell said that he thought his leg was broken and thereafter, these two officers grabbed him by the arms and frog-marched him away. Mr. Bell says further that despite him complaining that he thought his leg was broken, the officers who marched him away were not in fact taking him to an ambulance and in fact only did so after the intervention of a senior officer who told the arresting officers that Mr. Bell should be taken to an ambulance. Mr. Bell was then taken to hospital where his leg was X-rayed, found to be fractured and put in plaster.

4. Mr. Bell's evidence discloses a prima facie case of assault and unlawful detention. The strength of his case is that it is supported in all material particulars by independent evidence produced during his trial. The source of such evidence is in the police's own video of June 18 1984, together with a number of still photographs which are in the possession of those instructing me.
5. The prosecution version of the facts falls into two categories: firstly, the statements of PC's Grundy and Holmes dated 18 June 1984 which are appended hereto.

On the face of these statements a simpler scenario would be almost impossible to imagine. Mr. Bell according to these officers, is seen throwing, chased and caught after falling over a fence.

6. At the trial however, the officers' version of events changed on a number of material aspects. I shall enumerate some of the most material changes: firstly, the officers said latterly that there was a large time gap between the throwing and the final chase and that they had lost sight of Mr. Bell in the interim period.

Neither officer could give any explanation of a still photograph showing Mr. Bell standing in a field by himself with no other demonstrators nearby at a time when according to the original statement by the officers, he had already thrown at the police line. Finally and most importantly, when confronted with a photograph showing Mr. Bell being detained by an officer other than themselves, neither officer could explain how, on their original version of events, this photo could have been taken and indeed, they both conceded that it showed the following:

- a) Mr. Bell being detained by an officer who was not even from the same police force as these two officers;
- b) that this took place in an entirely different location from the location by the fence where they alleged they had detained him;

- c) that the second of the alleged arresting officers, PC Grundy, admitted with some embarrassment that he was either not shown in this photograph or else he was possibly an officer shown casually walking by with his back to the photographer and apparently looking at the incident at a time when Mr. Bell was being grabbed by his clothing by a grinning police officer with truncheon drawn from a force other than that of West Yorkshire.
- d) The first officer, PC Holmes, having denied Mr. Bell's allegation that a senior officer intervened before Mr. Bell was taken to an ambulance, PC Grundy, the second officer then admitted that they had indeed been spoken to by a senior officer whose name and rank he did not now remember. It is worth noting at this point that according to senior officers, no orders to draw truncheons had been given to officers in ordinary uniform. It is quite clear that whoever the officer shown in the photograph having hold of Mr. Bell is, he is in clear breach of police regulations regarding the use of truncheons as it cannot be stressed enough that the photograph shows Mr. Bell surrounded by officers, some of whom are casually walking by that Mr. Bell's expression was one of terror and his posture entirely defensive as contrasted with the expression and posture of the officer who has hold of him and indeed, with the posture of PC Holmes, who is apparently standing in front of him at this time.

I have little doubt given the inconsistencies at trial between the original account given by these two officers and their lack of explanation for the photograph showing the arrest of Mr. Bell that his (Mr. Bell's) version of the incident is the one likely to be believed. The officers further alleged that Mr. Bell made admissions in hospital. However as they were so discredited on other matters, in my view this part of their evidence (which is denied by Mr. Bell) is unlikely to be believed.

7. False Imprisonment:

False imprisonment is the complete deprivation of liberty for any time however

short, without lawful excuse. In all cases, the burden is on the police to prove that they had a lawful excuse for arresting and detaining. The officers' credibility at Court was called seriously into question. I should emphasise that the photographic material available showing the arrest of Mr. Bell which flatly contradicts the versions of the officers will establish without doubt Mr. Bell's account of his arrest is the one likely to be believed.

8. Malicious Prosecution:

The substance of malicious prosecution is that the Defendant has wrongly set the law in motion against the Plaintiff. To succeed, each Plaintiff must prove, and the burden of proof unlike false imprisonment, is on him or her that (a) he or she was prosecuted; (b) the prosecution was determined in the Plaintiff's favour; (c) it was without reasonable and probable cause and (d) it was malicious. It is difficult to see, bearing in mind the contradictions in the officer's account and the photographic evidence available that once these matters are established, how it could possibly be suggested that the officers had done anything else other than fabricate evidence in this case. Accordingly, I take the view that there is a prima facie case for malicious prosecution.

9. It is quite obvious from all the above that there is a prima facie case of assault.

10. The Parties:

Under the Police Act 1964, the Chief Constable of an area is responsible for the tortious acts of officers under his control or instruction. The Chief Constable of South Yorkshire is therefore the appropriate Defendant in this case under Section 48 of the Act. Both PC's Grundy and Holmes were present

under the Mutual Aid scheme. I would however advise further that PC's Grundy and Kelsey be added and second and third Defendants as although they were drafted to Argreave that day under Mutual Aid, it may be that the Chief Constable may seek to argue that the officers in fabricating their statements to justify their prosecution of Mr. Bell, or in allowing him to be assaulted, were acting outside the scope of their employment and that therefore he, the Chief Constable is not liable for the tortious acts of these officers. This defence is circumvented by PC's Grundy and Holmes being joined as second and third Defendants.

11. Jurisdiction:

It is my view at this stage that the High Court is the proper venue for this case. I take this view for the following reasons:

- i) Mr. Bell, a young man, found himself charged and prosecuted for the most serious offence of riot as a result of the actions of PC's Grundy and Holmes.
- ii) Mr. Bell received considerable injuries in that his leg was broken.
- iii) Mr. Bell suffered not only physical injury that day but considerable mental anguish from the time of his arrest for over a year until the prosecution case was dropped during which time the Home Secretary spoke in public of life sentences for convicted rioters causing even greater distress. It is quite clearly established that exemplary damages may be awarded where the wrong proved is an oppressive, arbitrary or unconstitutional action by officers of the law (Rookes -V- Bernard [1954] AC 1129. In this case, Mr. Bell, having awaited trial for nearly a year and then having attended Court for ten weeks, then faced the prosecution abandoning the case. bearing in mind the manner and

content of the evidence given at trial, I have little doubt that on full hearing of these matters, exemplary damages may well be considered despite the 'demonstration' background. A recent example of the sort of awards that can be made is George.-V- The Commissioner of Police for the Metropolis [31/3/84] The Times, where exemplary damages of £2,000 were awarded together with a total of £8,030 in the Plaintiff's action for trespass and assault after several police officers forcibly entered her home on 30 September 1980. A further case worth mentioning should it be thought that attendance at such a demonstration is a bar to damages being awarded is Ballard.-V- The Metropolitan Police [1983] 133 NLJ 1138 where £3,000 was awarded to a woman who had attended a women's demonstration in London and been assaulted by a police officer with a truncheon. At this stage it would be quite wrong for me to advise in any detail on quantum of damages. Obviously those instructing me will have to get further information re financial and medical aspects of Mr. Bell's case. However, after the close of pleadings and discovery, I shall be in a better position to make a proper assessment of likely damages with a view to possible settlement. I therefore advise that legal aid should be applied for as soon as possible in this case.

Marguerite Russell

MARGUERITE RUSSEL

2 Garden Court
Temple
EC4

23 September 1985

STATEMENT OF WITNESS

JCU

(C.J. Act, 1967, s.9; M.C.A., 1980, s. 102; M.C. Rules, 1981, r.70)

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STATEMENT OF

Bernard GRUNDY.

AGE OF WITNESS (if over 21 enter "over 21") Over 21.

OCCUPATION OF WITNESS

Police Constable 3650.

ADDRESS AND TELEPHONE NUMBER

Silsden Police Station, Bolton Road,
Near Keighley. Tel: Steeton 52303.

This statement, consisting of 2 pages each signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 18th day of June, 1984.

Signed..... B. Grundy - Police Constable 3650.

Signature witnessed by..... J. Hudson - Detective Constable 476.

(..... being unable to read the statement below,

I, of read it to him before he signed it.

Dated the day of 19.....

At 11.25 a.m. on Monday, 18th June, 1984, I was on uniform duty engaged in the public order disturbances at the Orgreave Coking Plant in Yorkshire. At this time I was in company with Police Constable 456 HOLMES, also of the West Yorkshire Metropolitan Police. We were on the Police line in front of the pickets. At this time missiles were being thrown at the Police by a large number of pickets. These missiles varied from large stones to bottles and wooden stakes.

At this point I saw the defendant BELL. He was throwing a bottle at fellow Police Officers some twenty yards in front of us. Police Constable HOLMES and myself gave chase after BELL, who was limping. He fell over and was caught by Police Constable HOLMES and myself.

Police Constable HOLMES took hold of him and told him he was under arrest and he replied after being cautioned by Police Constable HOLMES, "OKAY."

STATEMENT OF WITNESS

JCU

(C.J. Act, 1967, s. 9; M.C.A., 1980, s. 102; M.C. Rules, 1981, r.70) Page 2.

Continuation of statement of Bernard GRUNDY - Police Constable 3650.

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It was apparent at this stage that BELL had injured his left leg in some way and appeared to be in some pain. He was immediately taken to a nearby ambulance and conveyed to Rotherham General Hospital. After being treated for an injured leg, which had been fractured, BELL was again seen by Police Constable HOLMES and myself in Ward E2. Police Constable HOLMES reminded BELL of the caution and said:-

Q "Do you understand why you have been arrested?"

R "Yes, it's obvious."

Q "So you admit throwing missiles at the Police and not dispersing when you were requested."

R "Yes. What can I say?"

Q "What were you throwing?"

R "Stones."

Q "We saw you with a bottle."

R "Yes, but I didn't throw that, I only threw stones. I threw down the bottle."

Q "So you admit throwing stones at Police who were on duty at the picket line."

R "Yes."

Police Constable HOLMES then formally cautioned BELL and told him the facts would be reported, to which he replied, "OKAY."

GEN/6

Signed B. Grundy.
Police Constable 3650.

Signature witnessed by J. Hudson.
Detective Constable 472

STATEMENT OF WITNESS

- JCU

299

(C.J. Act, 1967, s.9; M.C.A., 1980, s. 102; M.C. Rules, 1981, r.70)

STATEMENT OF

Lee HOLMES

AGE OF WITNESS (if over 21 enter "over 21") Over 21.

OCCUPATION OF WITNESS

Police Constable 456.

ADDRESS AND TELEPHONE NUMBER

Keighley Police Station, West Yorkshire
Tel: 0535-604261.

This statement, consisting of 3 pages each signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 18th day of June 1984.

Signed..... Lee Holmes.

Signature witnessed by..... J. Hudson - Detective Constable 476.

..... being unable to read the statement below.

I, read it to him before he signed it.

Dated the day of 1984.....

At 11.25 a.m. on Monday, 18th June, 1984, I was on uniform duty engaged in the public order disturbances at the Orgreave Steel Coking Plant in Yorkshire. At this time I was in company with Police Constable 3650 GRUNDY, also of the West Yorkshire Metropolitan Police. We were on the Police line in front of the pickets.

At this time missiles were being thrown at us, the Police, by a large number of pickets. These missiles varied from large stones to bottles and wooden stakes. At this point I saw the defendant BELL. He was throwing a bottle at fellow Police officers some twenty yards in front of us. Police Constable GRUNDY and myself gave chase after BELL who was now limping. He fell over and was caught by Police Constable GRUNDY who took hold of him and told him he was under arrest. He replied, after caution, "OKAY."

Lee Holmes.

J. Hudson.

Signed..... Signature witnessed by.....

Continuation of statement of Lee HOLMES - Police Constable 456

300

It was apparent at this stage that BELL had injured his left leg in some way and appeared to be in some pain. He was immediately taken to a nearby ambulance and conveyed to Rotherham General Hospital.

After being treated for an injured leg, which had been fractured, BELL was again seen by Police Constable GRUNDY and myself in Ward E2. I reminded him of the caution and said:-

"Do you understand why you have been arrested?"

He replied:

"Yes, it's obvious."

I then said:

"Do you admit throwing missiles at the Police and not dispersing when you were requested."

He replied:

"Yes what can I say?"

I then said:

"What were you throwing?"

He replied:

"Stones."

I then said:

"We saw you with a bottle."

He replied:

"Yes, but I didn't throw that I only threw stones. I threw down the bottle."

I then said:

"So you admit throwing stones at the Police who were on duty at the picket line."

... replied:

"Yes."

I then formally cautioned him and told him the facts would be reported.

He replied, "OKAY."

GEN/6

Signed Lee Holmes.Signature witnessed by J. Hudson.
Detective Constable 476

Re: DAVID BELL

- and -

THE CHIEF CONSTABLE OF SOUTH YORKS

- and -

PC HOLMES 456

- and -

PC GRUNDY 3650

A D V I C E

Ms. M. Russell
2 Garden Court
Temple
EC4

Done here

*M J Russell
25/9/85*

ADVICE ON LIABILITY AND QUANTUM

1. On 18 June 1984, Mr. Wysocki was detained in Highfield Lane, ~~Argreave~~, near Sheffield, South Yorkshire by two police officers from the West Midlands Police Force. A PC Skelton and a Police Sergeant Kelsey. He was subsequently charged with riotous assembly. He faced his trial in May, June and July of 1985 and was acquitted when the prosecution abandoned their case and offered no evidence on 17 July 1985. I am asked to advise on the civil remedies now available to Mr. Wysocki and the likely quantum of damages he stands to recover. For the reasons set out below in this Advice, I accordingly advise that Mr. Wysocki stands a good chance of recovering substantial damages for assault, false imprisonment and malicious prosecution.
2. Mr. Wysocki received bruises on his right knee, right leg, lacerations on the nose and a black eye and was seen by a doctor on 19 June 1984.
3. The Facts:

Mr. Wysocki's account of how he came to be arrested and detained is a simple and straightforward one. He attended the demonstration and was forced during the course of the morning by various police charges to retreat up Highfield Lane. he took no aggressive action (which is clearly shown in a number of photographs, some of which were produced in evidence at trial). Eventually, he was forced by the police charges to run and shelter in a doorway when a number of police officers arrived. A police officer said 'Out you bastards, out' and someone else shouted 'Not him, get the big bastard with the white shirt on'. Mr. Wysocki then found himself taken hold of and denied immediately that he had been involved in any missile throwing and even went to the extent of asking the officers who ahd hold of him to examine his hands as proof of this. He was marched down Highfield Lane towards the Detention Centre during the course of which he was thrown against a shield cordon by the officers who had arrested him (this was apparently

observed by another acquitted defendant, Mr. William Greenaway) and then, as he was taken through the police cordon, he was kicked and punched by officers in that cordon.

4. On Mr. Wysocki's own account, there is a clear, prima facie face of assault, false imprisonment and malicious prosecution. However, apart from the witness referred to above, a number of police witnesses at trial accepted that prisoners were struck as they went through the cordons in Highfield Lane and indeed, there was photographic evidence produced by the prosecution which showed in one photograph in particular, officers in an aggressive stance as prisoners were brought towards them. The police version of how Mr. Wysocki came to be arrested and injured is contained in the statements of PC Skelton dated 18 June 1984 and PS Kelsey dated 16 July 1984, appended hereto. On the face of these statements, there is a simple and clear allegation that Mr. Wysocki was seen throwing a stone, chased and arrested and thereafter taken to the Detention Centre. There is no reference to Mr. Wysocki being injured at the time he went through the cordon in these statements.
5. At trial, the officers faced certain difficulties with the account given in their statements and I shall enumerate the most important points:
 - i) Their account of their position just prior to the arrest of Mr. Wysocki flatly contradicted the evidence of a number of other officers.
 - ii) Their account of what was taking place with the demonstration just prior to the arrest again, flatly contradicted the evidence of other officers, one of whom clearly said in terms in evidence: 'There was no charge by demonstrators'.

- iii) There was clear photographic evidence available which showed the incident just prior to this arrest which again did not support the evidence of the officers.
- iv) Their version of what happened at the cordon which resulted in the injuries altered during their live evidence.
- v) The officers accepted that they had been trained and were acting in accordance with the Assistant Chief Police Officer's Manual, Public Order and Tactical Options, Manoeuvres 6 and 7 appended hereto which in my clear opinion are illegal manoeuvres.
- vi) PC Skelton accepted that he had made his particular statement at a time when parts of it were being dictated by South Yorkshire detectives which though not improper in itself, resulted in the officers giving evidence in Court which clearly indicated that ~~their~~ personal knowledge of these items was at variance with other evidence given in trial.

6. False Imprisonment:

False imprisonment is the complete deprivation of liberties for any time, however short, without lawful excuse. In all cases the burden is on the police to prove that they had a lawful excuse for arresting and detaining. The officers' credibility at Court was called seriously into question. There is little doubt that at the time of Mr. Wysocki's arrest, officers were out of control with chaotic charging on the basis of the illegal manoeuvres referred to above and the police would have to prove the lawful basis for arrest once the detention by the police is established. There should be no difficulty in this area and I would further emphasise that there is

substantial photographic material, particularly in the form of photographs showing Mr. Wysocki just prior to his arrest which flatly contradict and would establish without doubt that his account of the incident is the one likely to be believed.

7. Malicious Prosecution:

The substance of malicious prosecution is that the defendant has wrongly set the law in motion against the plaintiff. To succeed, each plaintiff must prove, and the burden of proof, unlike false imprisonment is on him or her that (a) he or she was prosecuted, (b) the prosecution was determined in the plaintiff's favour, (c) it was without reasonable and probable cause and (d) it was malicious. It is difficult to see, bearing in mind the contradictions, and the photographic evidence that once these matters are established, how it can be suggested that the officers had done anything else other than fabricate evidence in this case and accordingly, I take the view that there is a prima facie case of malicious prosecution.

8. The Parties:

Under the Police Act 1964, the Chief Constable of an area is responsible for the tortious acts of officers under his control or instruction. The Chief Constable of South Yorkshire is therefore the appropriate defendant in this case under Section 48 of the Act. Both PC Skelton and PS Kelsey were present under the Mutual Aid scheme. I would however advise further that PC Skelton and PS Kelsey should be added as second and third defendants as although they were drafted to Argreave that day under Mutual Aid, it may be that the Chief Constable may seek to argue that the officers, in fabricating their statements to justify their prosecution of Mr. Wysocki or in running him into the shields cordon and allowing him to be assaulted

whilst under their detention, were acting outside the scope of their employment^{ent} and that therefore he, the Chief Constable is^{not} liable for the tortious acts of these officers. This defence is circumvented by PC Skelton and PS Kelsey being joined as second and third defendants.

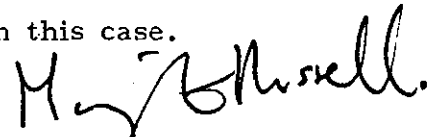
9. Jurisdiction:

It is my view at this stage that the High Court is the proper venue for this case. I take this view for the following reasons:

- i) Mr. Wysocki, a man of 38 with only one minor conviction many years ago, now spent, for theft of a bag of fertiliser for which he was fined £10. He is therefore essentially a man of good character and found himself charged and prosecuted for the most serious offence of riot as a result of the actions of PS Kelsey and PC Skelton.
- ii) Mr. Wysocki was in custody over night for the first time in his life.
- iii) Mr. Wysocki suffered not only physical injury that day but considerable mental anguish from the time of his arrest for over a year until the prosecution case was dropped, during which time the Home Secretary spoke in public of life sentences for convicted rioters, causing even greater distress.

It is quite clearly established that exemplary damages may be awarded where the wrong proved is an oppressive, arbitrary or unconstitutional action by officers of the law (^{Rookes}~~Brooks~~ -V- Bernard [1954] AC 1129). In this case, Mr.

Wysocki, having awaited trial for nearly a year and then having attended Court for ten weeks then faced the prosecution abandoning its case. Bearing in mind the manner and content of the evidence given at trial, I have little doubt that on full hearing of these matters, exemplary damages may well be considered despite the 'demonstration' background. A recent example of the sort of awards that can be made is George -V- Commissioner of Police for the Metropolis reported in The Times, 31 March 1984 where exemplary damages of £2000 were awarded, together with a total of £8,030 in the plaintiff's action for trespass and assault, after several police officers forcibly entered her home on 30 September 1980. A further case worth mentioning should it be thought that attendance at such a demonstration is a bar to damages being awarded, Ballard -V- Metropolitan Police [1983] 133 NLJ 1138 where £3,000 was awarded to a woman who had attended a women's demonstration in London and been assaulted by a police officer with a truncheon. At this stage, it would be quite wrong for me to advise in any detail on quantum of damages. Obviously, those instructing me will have to get further information re financial and medical aspects of Mr. Wysocki's case. However, after the close of pleadings and discovery, I shall be in a better position to make a proper assessment of likely damages with a view to possible settlement. I therefore advise that legal aid should be applied for as soon as possible in this case.



MARGUERITE RUSSELL

2 Garden Court
Temple
EC4

13 September 1985

STATEMENT OF WITNESS

(C.J. Act, 1967, s.9; M.C.A., 1930, s. 102; M.C. Rules, 1981, r.70)

STATEMENT OF

Jack SKELTON.

AGE OF WITNESS (if over 21 enter "over 21") Over 21.

OCCUPATION OF WITNESS

Police Constable 9479.

ADDRESS AND TELEPHONE NUMBER West Midlands Police O.S.U.,
Bradford Street, Birmingham.

This statement, consisting of 3 pages each signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 18th day of June, 1984.

Signed..... J. Skelton.

Signature witnessed by..... R. Kelsey - Sergeant 3356.

(..... being unable to read the statement below)

I, of
It to him before he signed it.

Dated the day of 19.....

On Monday, 18th June, 1984, I was part of a large contingent of Police Officers assigned to duty at the Orgreave Coking Plant, Highfield Lane, Orgreave. During the morning there had been a steady build-up of pickets. There were approximately 3,000 pickets facing us as we were blocking off Highfield Lane on the southern side of the works entrance. As we stood there in the line a steady flow of missiles came from the pickets into the Police line. There were no shields being used by the Police at this time. I saw a number of officers in the Police line hit and fall down.

At that time my unit was equipped with shields and protective headgear and were being held in reserve behind the main Police cordon. Because of the loss of sight of the pickets, my unit was deployed. The main cordon opened up and together with other officers, I ran towards the pickets, who retreated. We gained about 40 yards then held that line.

Signed..... J. Skelton. R. Kelsey.

(C.J. Act, 1967, s. 9; M.C.A., 1936, s. 102; M.C. Rules, 1981, r.76)

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Page 2.

Continuation of statement of

Jack SKELTON, Police Constable 9479.

whilst the main Police cordon deployed with long shields moved forward to join us. We repeated this manoeuvre twice more. Throughout we experienced a number of obstacles and traps left by the pickets, across the road. These included a car placed across the width of the road. There were railway sleepers placed across the road. Approximately 30 yards before the railway bridge a piece of telegraph wire had been fixed across the road, head height. The main cordon then formed on the railway bridge, Highfield Lane. There was still a constant barrage of missiles. The main cordon opened up allowing mounted officers through and we followed behind. We again formed a line in front of the main cordon. A huge barrage of missiles then shoved us from all sides. Simultaneously the large body of pickets charged us. Our Police line moved towards the pickets.

I saw a man I now know to be Stephen WISOCKI, born 6.1.50, wearing a white shirt, blue jeans and a cap. He had a stone in his right hand. He was standing directly in front of me. I saw WISOCKI throw the stone at the Police line. He then started to run away. I gave chase and together with Police Sergeant KERSHAW, caught him.

I said to WISOCKI: "I am arresting you for throwing stones at the Police line."

I cautioned him and he replied:-

"I'm here to picket them luvvies, that's all."

(C.J. Act, 1967, s. 9; M.C.A., 1980, s. 102; M.C. Rules, 1981, r. 70)

Page 3.

Continuation of statement of Jack SKELTON, Police Constable 9479.

WYSOCKI was then escorted to the Police detention centre situated opposite Orgreave Coke works.

On our way to the Police detention centre, we had to break through two Police shield cordons. We had difficulty breaking through the first cordon as the shields were tightly wedged together.

On arrival at the prisoner reception I noticed that WYSOCKI had bruising under his right eye and a small cut to his nose. He refused medical treatment. He alleged that a Police Officer had caused the injury but refused to elaborate or make a complaint.

STATEMENT OF WITNESS

29 WCU

(C.J. Act, 1967, s.9; M.C.A., 1980, s. 102; M.C. Rules, 1981, r.70)

STATEMENT OF

Keith KELSEY.

AGE OF WITNESS (if over 21 enter "over 21") Over 21.

OCCUPATION OF WITNESS

Police Sergeant 3356.

ADDRESS AND TELEPHONE NUMBER

West Midlands Police.

This statement, consisting of _____ pages each signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the _____ day of _____, 19 _____

Signed.....K. Kelsey - Sergeant 3356.....

Signature witnessed by.....A. Bennett - Acting Chief Inspector.....

(..... being unable to read the statement below.

I, _____ of _____ read it to him before he signed it.

Dated the _____ day of _____, 19 _____

On Monday, 18th June, 1984, I was part of a large contingent of Police Officers assigned to duty at the Orgreave Coking Plant, Highfield Lane, Orgreave. During the morning there had been a steady build-up of pickets. There were approximately 3,000 pickets facing us as we were blocking off Highfield Lane on the southern side of the works entrance. As we stood there in the line a steady flow of missiles came from the pickets into the Police line. There were no shields being used by the Police at this time. I saw a number of officers in the Police line hit and fall down.

At that time my unit was equipped with shields and protective headgear and were being held in reserve behind the main Police cordon. Because of the hail of missiles thrown by the pickets, my unit was deployed. The main cordon opened up and together with other officers I ran towards the pickets, who retreated. We gained about 40 yards then held that line.

STATEMENT OF WITNESS

(C.J. Act, 1967, s. 9; M.C.A., 1930, s. 102; M.C. Rules, 1981, r.70)

Page 2. 297

Continuation of statement of Keith KEMLEY - Police Sergeant 3356.

whilst the main Police cordon deployed with long shields moved forward to join us. We repeated this manoeuvre twice more. Throughout we experienced a number of obstacles and traps left by the pickets, across the road. These included a car placed across the width of the road. There were railway sleepers placed across the road. Approximately 30 yards before the railway bridge a piece of telegraph wire had been fixed across the road, head height. The main cordon then formed on the railway bridge, Highfield Lane. There was still a constant barrage of missiles. The main cordon opened up allowing mounted officers through and we followed behind. We again formed a line in front of the main cordon. A huge barrage of missiles then shoved us from all sides. Simultaneously the large body of pickets charged us. Our Police line moved towards the pickets.

I saw a man I now know to be Stephen WYSOCKI, born 6.1.50, wearing a white shirt, blue jeans and a cap. He had a stone in his right hand. He was standing directly in front of me. I saw WYSOCKI throw the stone at the Police line. He then started to run away. I gave chase and together with Police Constable 9479 SKELTON, caught him. Police Constable SKELTON said to WYSOCKI: "I am arresting you for throwing stones at the Police line."

He was cautioned and replied: "I'm here to picket them lorries, that's all."

WYSOCKI was then escorted to the Police detention centre situated opposite Orpavee Coke works.

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Signed K. KEMLEY

Signature witnessed by A. Barrett
Acting Chief Inspector.

STATEMENT OF WITNESS

(C.J. Act, 1967, s. 9; M.C.A., 1980, s. 102; M.C. Rules, 1981, r.70)

Page 3.

Continuation of statement of Keith KELSEY - Police Sergeant 3356.

On our way to the Police detention centre, we had to break through two Police shield cordons. We had difficulty breaking through the first cordon as the shields were tightly wedged together.

On arrival at the prisoner reception I noticed that WYSOCKI had bruising under his right eye and a small cut to his nose. He refused medical treatment. He alleged that a Police Officer had caused the injury but refused to elaborate or make a complaint.

Manoeuvre 6.

Brief Description : Short shield baton carrying team deployed into crowd.

Detailed Description : Long shield officers deployed into crowd and deployed across the road. Behind long shield units are deployed all the short and round shield Officers with batons. On the command the short shield Officers run forward either through and/or round the flanks of long shields into the crowds for not more than 30 yards. They dispersed the crowd and incapacitate missile throwers and ring-leaders by striking in a controlled manner with batons about the arms and legs or torso so as not to cause serious injury. Following the short shield units the long shield units advanced quickly beyond the short shields to provide additional protection. Link were from long shield units until move in and take prisoners.

Manoeuvre 7.

Brief Description : Short shield teams deployed into crowd.

Detailed Description : Officers with short shields and batons are formed in 2 double 5 men files with a Sergeant at the back of each file and the Inspector between the 2 files. This unit will initially be protected by long shield Officers or personnel carriers and on the command will run at the crowd in pairs to disperse and/or incapacitate. Long shields will follow to gain ground and give additional protection for arresting Officers.

Re: STEPHAN WYSOCKI

- and -

THE CHIEF CONSTABLE OF SOUTH
YORKSHIRE

- and -

POLICE SGT.3356 KELSEY

- and -

POLICE CONSTABLE 9479 SKELTON

A D V I C E

Ms. M. Russell
2 Garden Court
Temple
EC4

Advised by letter
John E Russell
19/9/85