

IN THE MATTER OF:-

Rex

-v-

ALICE WHEELDON

WINNIE MASON

ALFRED GEORGE MASON

1917

**EXPANDED ARGUMENT**

**IN SUPPORT OF**

**APPLICATION TO THE CRIMINAL CASES REVIEW COMMISSION**

THE ILLUSTRATED LONDON NEWS, FEB. 10, 1917.—174

## THE EXTRAORDINARY CASE AT DERBY: THE COURT AND THE PRISONERS.

PHOTOGRAPHS BY ILLUSTRATIONS BUREAU.



THE SCENE IN THE GUILDHALL AT DERBY DURING THE ATTORNEY-GENERAL'S OPENING SPEECH: SIR FREDERICK SMITH (STANDING IN CENTRE) ADDRESSING THE COURT.



CHARGED WITH CONSPIRING TO MURDER THE PREMIER: ALFRED GEORGE MASON.



THE WOMEN PRISONERS IN CHARGE OF A WARDRESS (ON LEFT): HETTIE WHEELDON; WINNIE MASON; AND MRS. WHEELDON—CHARGED WITH CONSPIRING TO MURDER THE PRIME MINISTER AND MR. ARTHUR HENDERSON.

The extraordinary conspiracy case opened on February 3 in the Guildhall at Derby, where the Mayor, Mr. H. J. Bonas, presided, with a number of other magistrates on the Bench. The four prisoners were: Alice Wheeldon, 50, of Pear Tree Road, Derby; Harriett Ann (otherwise known as Hettie) Wheeldon, 27, of Pear Tree Road, Derby; Winnie Mason, 30, of Millbrook Road, Southampton; and Alfred George Mason, 24, of Millbrook Road, Southampton. The charge was: "That the defendants on divers dates between December 26, 1916, and the date of the laying of the information did, amongst

themselves, unlawfully and wickedly conspire, confederate, and agree together, one, the Right Hon. David Lloyd George, and one, the Right Hon. Arthur Henderson, wilfully, and of their malice aforethought, to kill and murder, contrary to the Offences Against the Person Act, 1861, and against the peace of our lord the King, his crown, and dignity." The Attorney-General, Sir Frederick Smith, opened the case for the Crown, and in his speech gave some interesting details regarding various poisons. At the moment of writing, the proceedings at Derby have not yet come to an end.

## About this document

**This is the Expanded Argument supporting the Skeleton Argument for the application to the Criminal Cases Review Commission in respect of *R v Wheeldon* 1917.**

It presents each part of the Skeleton Argument, followed by material that supports it. The Expanded Argument can therefore be read in its entirety without needing to refer to the Skeleton Argument document.

The supporting material both addresses the Commission's criteria for exercising its discretion to refer, and presents persuasive evidence for grounds of appeal.

It collates, analyses and distills a vast amount of source material, including court reports, newly released government and institutional records, photographs, family papers, historical research and digitized newspapers.

All this material has been extensively referenced and organized, with copies of original documents provided, to assist the Commission in assessing the application.

*The Skeleton Argument was prepared by Ben Williams and Andrew Smith QC, for the Applicant, Chloë Mason, descendant of the convicted Defendants.*

*The Expanded Argument was prepared by the Applicant.*

## Referencing

Most of the source documents cited in the text can be found in the **Documents** folder, with the location specified through a series of nested subfolders [Held: xxx > yyy > zzz]

For example, to view a document whose location is cited as [Held: TNA > MEPO 9356 > MEPO 9356 - Family Letters 1917 > 01] the reader would go to the folder TNA - The National Archives, find the MEPO 9356 subfolder inside that ('MEPO' refers to the Metropolitan Police), then the MEPO 9356 - Family Letters 1917 subfolder inside that, and finally the 01 subfolder, where the document can be viewed.

Where appropriate, a subfolder or document contains a standard Description of Document/s page that gives the record number or provenance, description of contents, and as needed, a numbered index and comments. For some handwritten documents, selective passages are transcribed in the Description of Document/s.

Generally, multi-page documents have been combined into a single pdf. However, some documents in subfolders, for example, those relating to Colney Hatch, an asylum, are more easily read by accessing separate page(s).

The Applicant would be happy to obtain and supply copies of the few materials designated as 'not held'.

The structure of the **Documents** folder is set out in Appendix 1.

## Proceedings

The copy of trial proceedings given here is from the unique volume titled *Record of Proceedings Rex v Wheeldon*, copied by the University of Cambridge Library. This source is used because it contains the only copy of the full trial, whereas the copy in the DPP files held in The National Archives does not include the first two days of the five-day trial. This volume has sequential numbering, handwritten at top right, unlike the DPP files. Citations give page numbers from this *Record* in the format: 'in *Record* p. X [Held: Proceedings]'.

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Grant v The Queen [2007] 1 AC 1.  
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Pendleton [2002]1 Cr App R 34.  
R (Adams) v Secretary of State for Justice [2012] 1 AC 48.  
R v Banks [1916] 2 KB 621.  
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R v Haringey Justices, Ex parte Director of Public Prosecutions [1996] QB 351.  
R v Harris [1927] 2 KB 587.  
R v Knighton [2002] EWCA Crim 2227 (17 October 2002).  
R v Luckhurst [2010] EWCA Crim 2618 (22 October 2010).  
R v Mahmoud Mattan [1998] EWCA Crim 676.  
R v Maxwell [2010] UKSC 48.  
R v Mills [ 1998] AC 382.  
R v Mullen [2000] QB 520.  
R v Oliva [1965] 1 WLR 1028.  
R v Puddick (1865) 4 F & F 497.  
R v Rodley [1913] 3 KB 468.  
R v Woodhead 175 ER 216.  
Randall v The Queen [2002] 1 WLR 2237.  
Russell-Jones [1995] 1 Cr App R 538.  
Seneviratne v The King [1936] 3 All ER 36.  
Westlake v Criminal Cases Review Commission [2004] EWHC 2779 (Admin) (17 November 2004).  
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# 1. PREAMBLE

## Skeleton Argument

### *Summary of the case*

- 1.1. On 7 December 1916, in the midst of the First World War, David Lloyd George succeeded H. H. Asquith as Prime Minister. Lloyd George had been at the heart of the War Cabinet as Minister of Munitions and the Secretary of State for War, and a vocal proponent of the controversial introduction of general conscription during May 1916.
- 1.2. On 21 December 1916, a man using the name 'Alex Gordon', an undercover agent employed by Herbert Booth, Ministry of Munitions (PMS2), was sent to Derby from Liverpool. Posing as a conscientious objector seeking accommodation, he was referred to Hettie Wheeldon, who had until recently been the local secretary of the No-Conscription Fellowship, and to her mother, Alice Wheeldon.
- 1.3. Alice Wheeldon was a 50-year-old resident of Derby. She earned money selling second-hand clothes, and was a politically active pacifist, socialist and feminist. She and her husband, William Augustus, had four adult children: three daughters (Nellie, Hettie and Winnie) and a son, William Marshall (Will), who was a conscientious objector. Only two of her daughters, Hettie and Nellie, were living in the Derby household with their parents.
- 1.4. Alice and her children were supportive of the anti-war movement and members of the No-Conscription Fellowship. 'Alex Gordon' visited the Wheeldons for the first time on 26 December. After sharing a meal with them, he was referred to lodgings elsewhere by Hettie Wheeldon. He returned to the Wheeldon household the next day, 27 December 1916.
- 1.5. On 27 December 1916, 'Gordon' telegraphed Booth. Booth then travelled by train to Derby via London following instruction from his senior officer at PMS2 (Labouchere). Booth was met by 'Gordon' in Derby.
- 1.6. On the evening of 29 December 1916, 'Gordon' introduced Booth to Alice Wheeldon as 'Comrade Bert', another conscientious objector.
- 1.7. On 1 January 1917 a parcel was intercepted at the Derby railway station. It contained poison that had been sent from Southampton by Alice Wheeldon's daughter, Winnie Mason, and supplied by her son-in-law, Winnie's husband, Alfred Mason, a pharmacist.
- 1.8. This parcel of poison formed the basis of the Crown case.
- 1.9. Alice Wheeldon and her daughters Harriet Wheeldon and Winnie Mason, along with Alfred Mason, were arrested on 30 January 1917, with charges laid on 3 February 1917. They were prosecuted on charges of conspiring to murder (and of soliciting and

proposing<sup>1</sup> the murder of) the Prime Minister, David Lloyd George, and Sir Arthur Henderson, Labour leader and a member of the small War Cabinet.

- 1.10. The Crown's case was that the Defendant Alice Wheeldon had suggested to 'Gordon' that she would procure poison for 'Gordon' to assassinate Lloyd George and Henderson. The Defendants' case was that Alice believed 'Gordon' to be a conscientious objector who would help Alice with an 'emigration scheme' for her son and two others (referred to by Alice as 'her three boys'). For his part, 'Gordon' sought assistance from Alice for his friends wishing to escape from an internment camp. At 'Gordon's' request Alice agreed to get the poison for 'Gordon', who had told Alice it was to kill guard dogs to assist in this escape.
- 1.11. The Defendants came up for trial at the Central Criminal Court on 6 March 1917, before Low J, prosecuted by the Attorney-General, The Right Hon. F.E. Smith KC MP (later Lord Birkenhead), leading Mr Hugo Young KC, Sir Archibald Bodkin and Mr Maddocks. The Defendants were all represented by Mr Sayed H. Riza.
- 1.12. The Defendants were introduced by the Attorney-General as follows: 'a very desperate and dangerous body of people, consisting of persons who are bitterly hostile to this country, shelterers of fugitives from the Army, and persons who do their best to injure Great Britain in the crisis in which this country finds itself to-day'.
- 1.13. At trial Booth gave evidence, but 'Gordon' was not called. No explanation was given by the Attorney-General beyond that there were reasons 'which seem to me good'.
- 1.14. The trial was restarted on 8 March due to a juror falling ill. Prior to this point, the trial had heard, over two days, the Attorney-General's opening address, all prosecution witnesses, and the opening of the defence case, with the evidence of the principal Defendant, Alice Wheeldon.
- 1.15. This 'second' trial consisted of 11 original jurors and one new juror. It concluded on 10 March 1916 with the Defendants, apart from Harriet Wheeldon, being convicted. Alice, Alfred and Winnie were sentenced to 10, 7 and 5 years' penal servitude respectively.
- 1.16. Permission to appeal was refused on 2 April 1917.
- 1.17. In failing health, Alice Wheeldon was released from prison on licence in December 1917. Prisoners Winnie and Alf Mason were released on 26 January 1919, after serving almost two years.

### *Core arguments of application for a reference*

- 1.18. The essential premise of this application for a reference is that the case was driven through by unfair means. In particular, it is contended that a deliberate decision was made to keep 'Gordon' out of the way that amounted to an abuse of process. Further, this happened in a politically febrile atmosphere, generating enormous publicity and successfully degrading the reputation of the anti-war movement.

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<sup>1</sup> DPP 1-50 Counts of proposing & soliciting Sheet 167. [Held: TNA > DPP 1-50].

- 1.19. Primarily, it is contended that the decision to keep 'Gordon' out of the way was born of oblique motives. 'Gordon' can be demonstrated to have been William Rickard, a mentally unstable convicted criminal. In any event the effect of the decision was to render the trial unfair.
- 1.20. Such unfairness in the trial was compounded by other defects:
  - 1.20.1. Following replacement of the ill juror, the trial was restarted but evidence was rushed through on the basis that 11 of the jurors had heard it before; and
  - 1.20.2. Inadmissible bad character evidence was led against the Defendant, Alice.
- 1.21. This case presents the Commission with a unique opportunity to refer to the Court of Appeal an historic injustice, with minimal investigation. All of the core material has been collated, organised and helpfully analysed by the Applicant.

### ***Applicant***

- 1.22. Chloë Mason is the Applicant, and worked on the case jointly with her sister, Deirdre Mason, prior to the latter's untimely passing in 2017. Their father was Peter Mason, only child of Winnie and Alfred Mason, and grandson of Alice Wheeldon.

## Supporting Material

The following material is provided here in support of the Skeleton Argument

- **Dramatis personae** (below).
- **Profiles of the Defendants** (page 22): Alice Wheeldon, Harriet (Hettie) Wheeldon, Winnie Mason, Alfred (Alf) Mason.
- **Evidence of the Defendants’ difficulties in funding and securing legal representation** (page 26).
- **Personal statements from the Applicant** and former Joint Applicant (page 29).
- **Representations/statements from third parties in support of the CCRC’s referral** (Table 1-1, page 35).
- **Contextual chronology**, including chronology of legal proceedings (Table 1-2, page 36).

### *Dramatis personae*

Organised as follows:

#### **At trial** (page 13)

- The Honourable Mr Justice Low
- For the prosecution: Sir Frederick Edwin (F.E.) Smith, Sir Alexander Bodkin, Hugo Young, Hugo Maddocks, Sir Charles Mathews, Seward Pearce
- For the defence: Sayed H. Riza, Jacob Prag. R. Sutton Clifford (until 26 February 1917)
- People mentioned in trial and relevant to new material (*alphabetical order*): Neil Cassidy, Walter Hill, Ferdinand Kehrhahn, Ellen Land, Alexander Main Macdonald, J. Ramsay MacDonald, Arthur McManus, David Ramsay, Francis Leonard Rimington, Lydia and Dorothy Robinson, Nellie Wheeldon, William Augustus Wheeldon, William Marshall (Will) Wheeldon

#### **Politicians and officials** (page 17)

- War cabinet: David Lloyd George, Arthur Henderson, Lord Milner
- Home Office: Sir Ernley Blackwell, Sir George Cave, Douglas Straight, Sir (Charles) Edward Troup
- Ministry of Munitions: Dr Christopher Addison, Frederick Kellaway, Umberto Wolff
- ‘Parliamentary Military Secretary No. 2 Section’ (‘PMS2’): Herbert Booth, Frederick de Valda, ‘Alex/Alec Gordon’ (William Rickard), Vernon Kell, Frank Anthony Labouchere, Arthur Lee, William Melville Lee

#### **Police** (page 20)

- Sir Edward Henry, Sir Basil Thomson

#### **Community organisations** (page 20)

- Women’s Social and Political Union (WSPU), Emmeline Pankhurst
- Workers’ Suffrage Federation (WSF), Sylvia Pankhurst
- No-Conscription Fellowship (N-CF)

#### **Defendants’ descendants** (page 21)

- Peter Mason, Chloë Mason, Deirdre Mason, Paul Mason, Orlando Mason

#### **Expert historian** (page 21)

- Nicholas Hiley

*At trial*

Before the **Honourable Mr Justice Low** sitting alone.

*For the prosecution*

The Attorney General, F.E. Smith, announced his intention to prosecute the case personally, instructed by Sir Charles Mathews KCB, Director of Public Prosecutions.



**Figure 1-1. F.E. Smith, 1919**

From National Portrait Gallery, photographed by Walter Stoneman

**Sir Frederick Edwin (F.E.) Smith, KC:** As Attorney-General, Smith was then the first Crown law officer, member of the legislature with a seat in Lloyd George's Cabinet. He was formerly head of the War Office Press Bureau with responsibility for newspaper censorship. He was publicly known for successfully defending Dr Crippen's mistress, Ethel Le Neve (accomplice after the fact to murder by poison), in 1910, by refusing to put her in the witness box, as well as for successfully prosecuting Sir Roger Casement in 1916.

Smith was also an author, including of an illustrated article in the 1920s in *The London Magazine*, 'A plot to murder Lloyd George. One of my famous trials', reproduced in 1926 in his book, *Famous Trials of History*.<sup>2</sup>

**Sir Alexander Bodkin, KC:** *Senior Treasury Counsel*. In addition to the Old Bailey trial, he opposed the application for appeal for which he had a watching brief.

Before the war, Bodkin had acted for the DPP in prosecuting six leading members of the Women's Social and Political Union (WSPU) for conspiracy, and advocated the suppression of their newspaper, *Suffragette*.<sup>3</sup> In May 1916, Bodkin had prosecuted the No-Conscription Fellowship (N-CF). Later that year he prosecuted a member of the N-CF for being in possession of posters quoting an extract of his May address: 'War would become impossible if all men were to have the view that war is wrong.'<sup>4</sup>

**Mr Hugo Young, KC:** *Counsel Assisting*. He did a lot of work in Derby, and was Recorder of Lincoln.

**Mr Hugo Maddocks:** *Counsel Assisting*. Called to the Inner Temple in 1904.

**Sir Charles Mathews:** *Director of Public Prosecutions*.<sup>5</sup>

**Seward Pearce:** *Solicitor assisting the DPP*.

<sup>2</sup> The RT Hon The Earl of Birkenhead, *The London Magazine*, 1926, pp. 127-132. [Held: Newspapers];

The Earl of Birkenhead (1926), *Famous Trials of History*, New York: Garden City Publishing pp. 223231 reprinted without photographs by Kessinger Publishing's Rare Reprints: [www.kessinger.net](http://www.kessinger.net)

<sup>3</sup> *The Times* 1 May 1913 'Seizure of Suffragist Headquarters. Six women arrested. A warning to the public'. [Held: Newspapers].

Copy held in Home Office files HO 45/10800/236973:

<http://www.nationalarchives.gov.uk/documents/education/suffragettes.pdf>

<sup>4</sup> *Manchester Guardian* 18 December 1916 'Prisoner under the Defence of the Realm Act to be released. Poster quoting Mr Bodkin.' [Held: Newspapers].

<sup>5</sup> <http://discovery.nationalarchives.gov.uk/details/record?catid=8105879&catln=6>

For the defence

**Sayed H. Riza:** *Defence Counsel* at Old Bailey trial and application for appeal.

Riza was born in Delhi,<sup>6</sup> trained in London, entering the Inns of Court in June 1910.<sup>7</sup> In June 1914 Riza was called to the Bar and a year later filed for bankruptcy. In late 1916 he acted unsuccessfully in a number of cases, including for Irish republican Laurence Gimmell MP in his appeal under Defence of the Realm Act and for Irish Muslim peer Lord Headley. By February 1917, Riza, then aged thirty-two, was due to be discharged from bankruptcy.<sup>8</sup>

Riza acted for all four Defendants, briefed by solicitor Jacob Prag, at trial and on appeal.

Riza's appearance at the Old Bailey for the Wheeldon Defendants was described as: '...probably the first time that a barrister of colour and a Mahommedan has been counsel appearing at the Old Bailey'.<sup>9</sup>

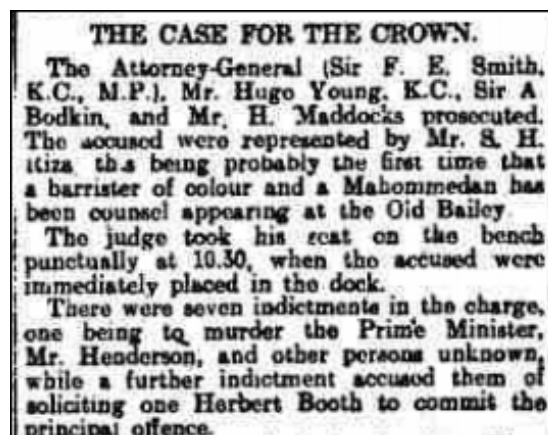
*Figure 1-2. Sayed H. Riza*

Photo supplied by Museum of the History of Science, Oxford University<sup>10</sup>

**Jacob Prag:** *Instructing Solicitor:* Prag was a London solicitor, admitted in 1911, and instructed Mr Riza in the Old Bailey trial for all four Defendants. He was engaged from 27 February 1917.

**R. Sutton Clifford:** Solicitor from Cliffords Solicitors, Derby, initially acted for the Defendants until 26 February 1917.<sup>11</sup>

<sup>6</sup> 1911 census entry for 11, Walton Well Road, Oxford; *Islamic Review and Muslim India*, January 1919, p.2 "Notes".

<sup>7</sup> Herbert Sturgess (1949) (ed.) *Register of Admissions to the Honourable Society of the Middle Temple: Volume III* (London: Butterworth & Co.), p.789.

<sup>8</sup> Petition 343, Saiyid Haidar Riza. The order was not rescinded until 1 March 1917. TNA -B 12/15, ff.137(r)-138 [Not held].

<sup>9</sup> *Liverpool Post*, Poison Plot Trial, 7 March 1917, p. 7, cols 6-7. [Held: Newspapers].

<sup>10</sup> Archivist Tony Simcock [tony.simcock@mhs.ox.ac.uk] who accepted the deposit of the photograph from Anthony Peter Riza, Riza's son, and in December 2014 confirmed the identification in an interview with Dr Nicholas Hiley.

<sup>11</sup> Letter from R.Sutton Clifford to Seward Pearce (Office of the DPP), 27 February 1917. [Held: TNA > DPP 1-50 - Correspondence].

*Defendants (for full profiles, see page 22)*

**Alice Wheeldon (principal Defendant)** (1866-1919): business woman and trader in secondhand clothes; main income earner for the household; funded the education of her children.

**Harriet Wheeldon** (acquitted) (1891-1920): elementary school teacher. Generally known as Hettie (also spelt Hetty).

**Winnie Mason** (née Wheeldon) (1893-1953): elementary school teacher.

**Alfred (Alf) Mason** (1892-1963): chemist and lecturer in pharmacology; married to Winnie.

*People mentioned in trial and relevant to new material (alphabetical order by surname)*

**Cassidy, Neil**, of Coventry, and a friend of Arthur McManus. Cassidy was a delegate to a Birmingham ‘rank and file’ conference where on 4 March 1917 the Wheeldon case was very fully discussed’.<sup>12</sup>

**Hill, Walter**, of Sheffield, was a labour organiser for the Amalgamated Society of Engineers, and a close subject of surveillance by ‘Gordon’ in early December 1916. William Anderson MP had pressed him to give evidence about ‘Gordon’ in the Wheeldon case but without assurance from the Attorney-General that cross-examination would be confined, he had refused owing to fear of exposure about his personal life.<sup>13</sup> (‘Gordon’ had also reported that Hill was part of the ‘homogenic brigade’ and as such a threat to recruitment, conscription and a supporter of the No-Conscription Fellowship.)<sup>14</sup>

**Kehrhahn, Ferdinand Louis** was a British national internee who escaped from internment at the Islington Camp, London. Kehrhahn managed to board a ship for America but was identified as an escapee by the ship’s captain in New York harbour, arrested and returned to England. Before the War he was a well-known photographer, postcard publisher, and speaker for the British Socialist Party.

**Land, Ellen**, a sister of Alice Wheeldon, living in Derby. Also known as Aunt Nell or Nell, distinguished from Nellie Wheeldon. Her son (also called Will), was also a CO. During the Defendants’ trial and appeal, she managed funds and appointments, especially with the family solicitor R. Sutton Clifford.

**Macdonald, Alexander Main**, a friend of the Wheeldon family, also a CO. Listed in the Scottish 1901 Census as a law clerk, in Derby he had jobs with Offilers Brewery and the Planet Assurance Company. At the time of visits by ‘Gordon’ and Booth, he was living in the Wheeldon household.<sup>15</sup> He had also met ‘Gordon’ in Derby before ‘Gordon’ first arrived at the Wheeldon household. With a letter of introduction from ‘Gordon’, Macdonald went to meet Arthur McManus in Liverpool to investigate the emigration scheme for political detainees and conscientious objectors, and then returned to Derby where his discussions with ‘Gordon’ were reported to PMS2. Potential defence witness.

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<sup>12</sup> Booth reported on two meetings, referring to David Ramsay of Leicester, December 1916. [Held: Milner Papers > 03].

<sup>13</sup> Report by agent, 10 March 1917. [Held: Milner Papers > 06].

<sup>14</sup> Report by ‘Gordon’ on his overnight stay with Hill claiming Hill said ‘Lloyd George would probably be shot at the first opportunity’. Early December 1916 [Held: Milner Papers > 09].

Special Branch note on Hill, 30 December 1916. [Held: TNA > MEPO 9356-01-06 Sheet 9].

<sup>15</sup> Entry for McDonald (actually Macdonald) [Held: Pearce Register of COs].

**MacDonald, J. Ramsay MP for Leicester** in 1916-1917. As a Labour member during the trial, he raised the Wheeldon case in the House of Commons in relation to the identity of 'Gordon' as the undisclosed agent who was believed to be living in Leicester. With the Home Secretary, he provided information as well as contacts to assist in the search for and in identifying 'Gordon'. His peace activities were through the Union of Democratic Control (UDC), founded by Liberals.<sup>16</sup> The UDC campaigned for parliamentary control over foreign affairs, an end to secret diplomacy (regarded as one of the chief causes of the war), and a negotiated peace. He wrote of 'Gordon' in the *Labour Leader*, the publication of the Independent Labour Party. He had some support from Arthur Henderson. In 1924 he became Prime Minister.

**McManus, Arthur** was a member of the Amalgamated Society of Engineers (ASE) and the Clyde Workers Committee in Glasgow, from where he was deported to Liverpool. He was a member of the Socialist Labour Party and a war resister. He was a friend of Willie Paul, another war resister and merchant living in Derby. They were sometime editors of *The Socialist*, the paper of the Socialist Labour Party. By the time 'Gordon' was sent to Derby, probably to look for Willie Paul, 'Gordon' had already met McManus in Liverpool where he was working for the Cunard Line. McManus was a person of interest to PMS2 because of his involvement with a scheme to get conscientious objectors (and other war resisters) across to the United States via Liverpool.<sup>17</sup> He married Hettie Wheeldon in 1920.

**Paul, Willie** was a successful merchant, living in Derby,<sup>18</sup> who ran stalls at markets across the midlands, and was an organiser for the Socialist Labour Party. He was opposed to the war and a CO, with exemption at the time of the Wheeldon investigation and trial.

**Ramsay, David** was an engineer from Leicester, working at Leicester machine-tool makers Wadkin & Co. He was a member of the Amalgamated Society of Engineers (ASE), Leicester No. 2 Branch; and as one of the delegates to the ASE Birmingham conference, he helped identify 'Vivian' (another 'Alex Gordon' alias) as the absent government agent in the Wheeldon trial.<sup>19</sup>

**Rimington, Francis Leonard (also spelt Rimmington)** of Leicester. As secretary of the local branch of the Socialist Labour Party in 1919, he was approached by a man called 'Francis Vivian' who was attempting to sell his story as 'Alex Gordon'. Documents from a meeting with 'Vivian'/'Gordon' in Rimington's house contain key evidence for establishing 'Gordon's' identity as William Rickard. These documents – the 'Rimington papers'<sup>20</sup> – were handed down to the son of Winnie and Alf Mason, Peter Mason, who shared them just before his death with his children, including the Applicant.

**Robinson, Lydia, and daughter, Dorothy:** Friends of the Wheeldon family, who accommodated 'Gordon' overnight, after he had been referred to them by Hettie Wheeldon. 'Gordon' described his conversations with Dorothy, later recollected in interview. As proprietor of a health food shop, Dorothy supplied food supplements to Alf Mason, a vegetarian, in Brixton prison. The Robinsons housed Nellie when her family was arrested. They also cared for Hettie, and then Alice, as an invalid on release from prison. Their family retained letters and records.

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<sup>16</sup> Morgan Kevin (2006), *MacDonald*. In the series 'The 20 British Prime Ministers of the 20th century'. London: Haus Publishing.

<sup>17</sup> *The Gloucestershire Chronicle*, 20 April 1920, 'The Red Peril' by Alex Gordon.

<sup>18</sup> Melville Lee *Short Resume of the Wheeldon Story*, 5 January 1917, p.1. [Held: TNA > HO 144-13338-331997].

<sup>19</sup> Booth reported on two meetings, referring to David Ramsay of Leicester, December 1916. [Held: Milner Papers - 03].

<sup>20</sup> [Held: Mason Family Papers > Rimington Papers].



**Wheeldon, Nellie (1889-?)**: Alice Wheeldon's eldest daughter, living in the Wheeldon household, worked in Dorothy Robinson's health food shop, and later in the Derby Co-operative Society shop. She became an educator for the cooperative movement. She talked with 'Gordon' and then two days later Booth when he arrived in Derby in December 1916. After the war she was living in a large communal household with her brother, sister Winnie and other friends before she first moved to the Soviet Union and then the USA, where she became an organizer for a women's trade union of laundresses.

**Wheeldon, William Augustus (1852-1936)**: Husband of Alice, living in the household. He was proud of Alice's 'determination to give her children the best education she could'.<sup>21</sup>

**Wheeldon, William Marshall (Will) (1892-1937)**: Alice Wheeldon's son, a school teacher trained at Nottingham University, taught at Traffic Street Council School, Derby. He was a conscientious objector (CO). By December 1916, when 'Gordon' approached the Wheeldon household, Will had already spent three months in prison and was in hiding, working on a smallholding near his sister Winnie Mason in Southampton. As a CO, he was court-martialled just before the Wheeldon trial and sentenced to 18 months hard labour.<sup>22</sup> He encouraged his mother to seek outside support, to see the prison doctor about her pre-existing heart condition, and to request visits by the Quaker chaplain, Herbert Corder.<sup>23</sup>

He was excluded from teaching in England when in 1919 he was released from Durham Prison. In late 1919, he went to Leicester at Rimington's request to assist in the identification of 'Gordon'. He joined a Quaker famine relief mission, the Friends Emergency War Victims Relief to Buzuluk, Soviet Union. He stayed on, became a translator for the Comintern, married and corresponded with his nephew, Peter Mason. He was executed by firing squad in Lubyanka Prison Moscow on 25 December 1937.

## **POLITICIANS AND OFFICIALS**

### War cabinet

**David Lloyd George**: Prime Minister from 7 December 1916, when he established his 'war cabinet' of five, comprising Lords Curzon and Milner, and Messrs Bonar Law and Arthur Henderson.<sup>24</sup> Previously Minister for Munitions 1915, Secretary of State for War 1916.

**Arthur Henderson**: Leader of the Parliamentary Labour Party. Member of Asquith's Coalition Cabinet from May 1915. Member of Lloyd George's Cabinet until August 1917 when Henderson resigned after his proposal for an international conference on the war was rejected by the rest of the Cabinet.<sup>25</sup>

**Lord Milner**: Member of Lloyd George's Cabinet<sup>26</sup> until April 1918.

<sup>21</sup> *Aberdeen Journal*, 2 February 1917 'Plot to murder Lloyd George. Another teacher arrested.'

<sup>22</sup> Entry [Held: Pearce Register of COs].

<sup>23</sup> William Marshall Wheeldon letter to Alice Wheeldon, 26 February 1917: '... as you have thousands working night and day to get you right.' [Held: TNA > MEPO 9356 > MEPO 9356 - Family Letters - 01].

<sup>24</sup> Schulyer R. (1918), 'The British War Cabinet', *Political Science Quarterly*, Vol. 33, No. 3 (Sep., 1918), pp. 378-395 at p. 383. [www.jstor.org/stable/2141903](http://www.jstor.org/stable/2141903)

<sup>25</sup> Eric Hopkins (1979), *A Social History of the English Working Classes, 1815-1945*, (Hodder & Stoughton, ISBN 0713103167, p. 219.

<sup>26</sup> Lockwood P.A. (1964), 'Milner's entry into the War Cabinet, December 1916', *The Historical Journal*, 7:1, March, pp. 120-134. [Held: Articles].

Home Office

**Sir Ernley Blackwell:** Legal Assistant Under Secretary of State at the Home Office, principal legal adviser to Cabinet. Advised on the legality of interning Hettie Wheeldon following her acquittal in March 1917, and on Alice Wheeldon's release on licence, December 1917.

**Sir George Cave:** Home Secretary. Appointed by Lloyd George in 1916. Conservative MP. Barrister. He replaced Reginald McKenna, Liberal MP, in Asquith's Cabinet. Corresponded with Ramsay MacDonald MP about the identity of 'Alex Gordon'.

**Douglas Straight:** Officer-in-Charge of PMS2's undercover work. Straight was the only other PMS2 officer who met 'Gordon' by introduction from Booth. Straight read many of 'Gordon's' reports. He is not to be confused with his father, Sir Douglas Straight, a criminal barrister at the London bar, who had worked with Purcell, Booth's employer prior to PMS2.

**Sir (Charles) Edward Troup:** Permanent Under-Secretary at the Home Office.<sup>27</sup> Barrister, Middle Temple, 1888. In 1880 entered Home Office and in 1893, Chairman of Committee on Identification of Habitual Criminals. In 1916, administered regulations on dissemination of literature and ideas under the *Defence of the Realm Act*, through MI5 headed by Colonel Kell.

Ministry of Munitions

**Ministry of Munitions** created its own labour intelligence branch, Ministry of Munitions Labour Intelligence Division (MMLI). It was administratively headed by Colonel Arthur Lee, MP, and in practice operated as a branch of MI5.<sup>28</sup> It developed the 'Parliamentary Military Secretary No. 2 Section' ('PMS2').

**Addison, Dr Christopher:** Minister for Munitions elevated from Parliamentary Secretary from May 1915.

**Kellaway, Frederick:** Joint Parliamentary Secretary to the Minister for Munitions, Addison.

**Wolff, Umberto:** During the war, he became successively Secretary to the Munitions of War Committee and Controller of Regulations in the Ministry of Munitions under Lloyd George as Minister,<sup>29</sup> and Head, Labour Department Ministry of Munitions.

'Parliamentary Military Secretary No. 2 Section' ('PMS2')

'**Parliamentary Military Secretary No. 2 Section**' ('PMS2') was created as an intelligence unit within the Ministry of Munitions in February 1916, when it was approved by Lloyd George, then Minister for Munitions. Initially its role was to protect munitions factories from espionage and sabotage, and to scrutinize 'aliens' seeking munitions work.

In October 1916, PMS2 employed Herbert Booth as an officer, who, in turn, recruited 'Gordon' as his sole agent. From February 1917, publicity of the Wheeldon trial exposed PMS2 and the conduct of 'Gordon' and Booth; this resulted in PMS2's closure in April 1917.<sup>30</sup>

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<sup>27</sup> Oxford Dictionary National Biography, entry written by Walter Stoneman.

<sup>28</sup> TNA KV 1/13, 'History of A Branch of MI5'. Cited by Hiley. [Not held].

<sup>29</sup> Rubenstein W. & Jolles M.A. (eds) (2011), *The Palgrave Dictionary of Anglo-Jewish History*: <https://www.palgrave.com/gp/book/9781403939104>

<sup>30</sup> Eirug A. (2017) 'The Security Services in South Wales during the First World War', *Welsh History Review*, 28/2, pp. 763-771 at p. 755 [Held: Articles].

The historian Eirug states that during 1916, the pressure for more war matériel had an impact on intelligence units across government departments, the police and Special Branch. Over the year, its commanding officer Labouchere extended its role to handle intelligence on labour unrest by recruiting ‘a host of private agents,’ which brought it into conflict with the Metropolitan Police Special Branch and MI5. Some records of PMS2 were absorbed by MI5.<sup>31</sup>

**Booth, Herbert:** Officer PMS2 known as ‘No. 4’. On being called up in 1916, Booth obtained a conditional transfer to PMS2 with the assistance of Major Melville Lee and an introduction to Douglas Straight at the Home Office from his employer of 18 years, Purcell a criminal barrister.<sup>32</sup> Booth assisted with recruiting an agent, ‘Francis Vivian’ (see ‘Gordon’ below), for undercover work. Booth lived at The Cock Inn, Headley, near Walton Heath and he arranged for ‘Gordon’ to write to him at his home address to conceal his PMS2 work address. Undercover, he went by the name of ‘Herbert Norton’ or ‘Comrade Bert’.

**de Valda, Lieutenant Frederick:** Senior Officer appointed to PMS2 in November 1916. Responsible for the northern area Leeds and Sheffield.

**‘Gordon, Alex/Alec’:** Alias for PMS2 agent No. 5. He was hired by Herbert Booth in November 1916 under the name of ‘Francis Vivian’, ostensibly as a journalist on a ‘book project’ but in reality as his sole intelligence agent. As mentioned above, ‘Gordon’ reported the ‘plot to poison Lloyd George’ to Booth, which resulted in the prosecution of the Defendants. Not called at trial. New evidence shows that ‘Gordon’ and ‘Vivian’ were aliases for **William Rickard**. Key original documents that shed light on the character of Rickard/‘Gordon’ and his account of the events leading up to and subsequent to the trial are: Rickard’s May 1919 statement in support of his application to return to England from South Africa;<sup>33</sup> and two handwritten statements made by ‘Gordon’/‘Vivian’/Rickard to Francis Rimington in November 1919.<sup>34</sup>

**Kell, Lieutenant-Colonel Vernon:** Ministry of Munitions, head of the Security Service (MI5).<sup>35</sup> Responsibilities included head of the detective branch for investigating espionage and cases of suspected persons (MO5(g)A).<sup>36</sup> With the closure of PMS2, Kell transferred some staff to MI5 and terminated others (including Labouchere, Melville Lee, and Booth).

**Labouchere, Lieutenant-Colonel Frank Anthony:** Head of PMS2.<sup>37</sup> Labouchere was responsible for PMS2, extending its role during 1916. He directed Melville Lee’s work to counter unrest through the use of special agents including Booth and through him ‘Gordon’.

**Lee, Colonel Arthur,** Parliamentary Military Secretary. Formerly Parliamentary Secretary to Lloyd George as Minister for Munitions. Brother of William Melville Lee.

**Lee, Major William Melville:** Senior Officer PMS2 working in Straight’s section. Investigating officer for London District and the Midlands, with responsibilities to report on local unrest. Herbert Booth’s reporting officer. Author of *A History of the Police in England*. London: Methuen, 1901.

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<sup>31</sup> Listing of PMS2 Organisation and Personnel and extract of report by ‘Gordon’. [Held: TNA > KV 1-13 and KV 2-1653].

<sup>32</sup> *The Times*, 8 February 1921, p. 5, col 2 ‘Secret Service in the War. The Career of ‘Comrade Bert’. [Held: Newspapers].

<sup>33</sup> [Held: South African National Archive 1919].

<sup>34</sup> [Held: Mason Family Papers > Rimington Papers 1919 > 11 – Alexc Gordon Stories].

<sup>35</sup> <https://www.mi5.gov.uk/major-general-sir-vernon-kell>

<sup>36</sup> ‘Historical Sketch of the Directorate of Military Intelligence during the Great War, 1914-1919’, 1921, p.13. TNA WO 32/10776 [Held: TNA > WO 32].

<sup>37</sup> ‘MI5: Chronological List of Staff taken to 31 December, 1919’, p.7, F.A.Labouchere.’ TNA KV 1/59. Cited by Hiley. [Not held].

**POLICE**

**Henry, Sir Edward:** Commissioner of the Metropolitan Police.<sup>38</sup> He expressed ‘disquietude’ about the state of evidence, including ‘Gordon’’s statement, prior to trial.<sup>39</sup>

**Thomson, Sir Basil,** Assistant Commissioner of the Metropolitan Police, with responsibility for the Criminal Investigation Department, and Head of Special Branch, Metropolitan Police until 1921.<sup>40</sup> In charge of the Wheeldon investigation. He wrote prolifically, including published memoirs.<sup>41</sup>

**COMMUNITY ORGANISATIONS**

**Women’s Social and Political Union (WSPU)** was led by Mrs **Emmeline Pankhurst**. The Wheeldons were not members but were supportive of WSPU initiatives, selling copies of the WSPU’s *Suffragette*. In supporting issues such as universal suffrage, women’s (and workers’) emancipation, the Wheeldons were politically more closely aligned to socialist labour and their friends in the Union of Democratic Control. Once war was declared, the WSPU supported the war and conscription, even recruiting the ‘white feather girls’. This exacerbated a divergence of views between Emmeline Pankhurst (and Christabel) and her other daughters, Adela and (particularly) **Sylvia Pankhurst**, who opposed the war and conscription.<sup>42</sup>

On Saturday 10 March 1917, after sending down the prisoners and discharging the jury, the judge, as previously arranged, invited Emmeline Pankhurst to make a statement to him from the witness box, in front of the assembled newspapermen, in which she reprimanded Alice Wheeldon and her daughters.<sup>43</sup> On Sunday 11 March, however, at a public meeting in London, Sylvia Pankhurst’s **Workers’ Suffrage Federation (WSF)** passed a resolution condemning the verdict as based ‘on the supposed evidence of an unknown spy who was not put into the witness-box’.<sup>44</sup>

Helen Pankhurst, Sylvia’s granddaughter, wrote in 2017 in support of this application:<sup>45</sup>

‘The Wheeldon case seemed to symbolize the First World War’s intersecting debates about suffrage, working women and inequality, war and conscription and even the use of undercover agents. Emmeline and Sylvia stood on either side of the divide. Both Emmeline and Sylvia were directly associated with the Wheeldon women.’

**No-Conscription Fellowship (N-CF)** formed a national committee in 1915, with local branches. After passage of the *Military Services Act No.2* 1916 requiring conscription and the application of exemptions (including the category ‘conscientious objection’),<sup>46</sup> members of the national committee issued a pamphlet ‘Repeal the Act’. Eight members were fined, including J.P. Fletcher, a Quaker. Fletcher contributed a significant loan to the Derby Defence Fund toward the Wheeldons’ legal costs.

<sup>38</sup> Browne D. G. & Brock A. (1953) *Fingerprints. Fifty years of scientific crime detection*. London: George C. Harrap & Co. Ltd.

<sup>39</sup> Sir Edward Henry, the Commissioner of Metropolitan Police, 27 January 1917. [Held: TNA> MEPO> MEPO 9356 > MEPO 9356-6].

<sup>40</sup> *Daily Herald*, 31 October 1921, p.1 col.5, ‘Basil Losing His Job./ Special Branch Chief Leaves Tomorrow.’ [Held: Newspapers]

<sup>41</sup> Mentioned in *The Times*, 3 November 1924. [Held: Newspapers]. (1933) *La Chasse Aux Espions. Mes souvenirs de Scotland Yard (1914-1919)*; (1935) *The Story of Scotland Yard* (London), p.239. Extracts. [Held: Articles > Thomson].

<sup>42</sup> In 1914, after being expelled from the WSPU by Emmeline (and Christabel) Pankhurst, Sylvia Pankhurst founded a newspaper, *The Workers Dreadnought*.

<sup>43</sup> Low J in *Record* pp. 555-556 [Held: Proceedings].

<sup>44</sup> *Labour Leader*, 15 March 1917, p.10 col.4 [letter from Sylvia Pankhurst representing Workers’ Suffrage Federation. [Held: Newspapers].

<sup>45</sup> Helen Pankhurst, 2017, Statement in support of the application. [Held: Statements from Third Parties > Helen Pankhurst].

<sup>46</sup> *Southern Daily Echo* 21 July 1916 ‘Compulsory Military Service. Text of the Bill. The Conscientious Objector’, [Held: Newspapers].

**DEFENDANTS' DESCENDANTS** (see also Figure 2-1. *The Wheeldon–Mason family tree*)

**Peter Mason:** only child of Winnie and Alfred Mason, and grandson of Alice Wheeldon. Winnie entrusted documentation relating to the case to him. He kept this material to himself for most of his life, sharing it with the Applicant and her sister just before his death in 1987.

In 1962 Peter took his family to Australia on a CSIRO Fellowship and subsequently was appointed Foundation Professor of Physics at Macquarie University, Sydney. Peter had a public profile:<sup>47</sup> the Encyclopedia of Australian Science describes him as an activist, educator, physicist and science broadcaster.<sup>48</sup> He and ABC science producer Robyn Williams were awarded a joint gold citation in the UN Media Peace Prize in 1985.

He was active in Social Responsibility in Science and Scientists against Nuclear Arms. With his wife Sheila (deceased 2010), Peter opposed the Vietnam war and conscription in the 1960s and '70. Peter visited COs in prison and became a candidate for the Australian Senate in the early 1970s on a ticket opposing the war and conscription.

**Chloë Mason** (Applicant): daughter of Peter Mason; great granddaughter of Alice Wheeldon.

**Deirdre Mason:** daughter of Peter Mason; great granddaughter of Alice Wheeldon; worked on the submission to the CCRC with Chloë as joint applicant until her death in October 2017.

**Paul Marshall Mason:** son of Peter Mason, great grandson of Alice Wheeldon. Supported research in developing this application until his sudden death in late 2018. Paul had been given the middle name 'Marshall' to reflect the family's connection to Alice Wheeldon, whose maiden name it was.

**Orlando Mason:** Paul's son, great great grandson of Alice Wheeldon.

**EXPERT HISTORIAN**

**Nicholas Hiley** PhD, former affiliate to the Centre for Study of War, Propaganda and Society at the University of Kent (an Arts and Heritage Council Engagement Centre for the Centenary of the First World War). In the late 1970s, Hiley discovered government-archived papers relating to the Wheeldon trial while researching domestic surveillance during the First World War. He tracked down the only full copy of the trial proceedings held in private hands and arranged for a microfiche to be lodged in the Cambridge University Library. Since then, as a skilled archival researcher, Dr Hiley has continued to follow leads about the Wheeldon case, discovering numerous contemporaneous primary sources used in this application.

Hiley was historical adviser in the 1980s for the BBC documentary drama *The Plot to Kill Lloyd George*, as a result of which he met and interviewed Mavis Jones, daughter of William Rickard ('Alex Gordon'). With Mavis Jones's authorisation, he was able to obtain a copy of Rickard's 1929 patient record from Wiltshire County Mental Hospital – a major source of evidence for identifying 'Alex Gordon' and his antecedents.

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<sup>47</sup> Anna-Eugenia Binnie, 'Mason, Peter (1922–1987)', Australian Dictionary of Biography, National Centre of Biography, Australian National University, <http://adb.anu.edu.au/biography/mason-peter-14943/text26132>, published first in hardcopy 2012, accessed online 29 May 2016. Here, Peter's parents are described as 'both committed pacifists'.

<sup>48</sup> Encyclopedia of Australian Science <http://www.eoas.info/biogs/P000624b.htm>

## *Profiles of the Defendants*

*Figure 1-3. (Left to right) Hettie Wheeldon, Winnie Mason, Alice Wheeldon*



### *Alice Wheeldon (principal Defendant)*

A business woman and trader in secondhand clothes, Alice was the main income earner for the household, and funded the education of her children, including swimming and first aid. She had raised a close-knit family of which she said 'We each have a separate individuality at my house'.<sup>49</sup>

She was extremely anxious about the safety of her son, Will Wheeldon, a conscientious objector, and the uncertain outcome of his court martial, which was decided while she was in custody, on 26 February 1917.

By December 1917, Alice Wheeldon, convicted and imprisoned, was angry and 'inveighing against her 10 years sentence' by 'self-starvation'. Dr Paton, the examining prison medical officer, reported:

'She says she has a clear conscience and that her trial was atrocious faked evidence. She says she is determined to get out of prison "in a box or otherwise". She swears she will never again put on prison clothes "By God! I won't".'<sup>50</sup>

With failing health, she was released from prison on licence in December 1917, and died in 1919.

<sup>49</sup> Second Day, Alice Wheeldon XX L 2713 in *Record* p.358. [Held: Proceedings].

<sup>50</sup> Dr Paton feels certain that the message has no effect [of reduced sentence] and that she will not take food.": HO 144/13338/331997, Home Office, 29 December 1917 1pm. [Held: HO 144].

Memorandum from Dr Paton to the Prison Commissioners, 31 December 1917, advising of release on licence into the care of her two daughters [Hettie and Nellie] to her home in Derby: Home Office files. [Held: TNA > HO 144- HO 144/13338/331997 - File 37352/59].

*Harriet (Hettie) Wheeldon (acquitted)*

Hettie was an elementary school teacher in Ilkeston, Derbyshire at Bennerley Avenue Boys' School. She was engaged to a Derby toolmaker, Walter Goodman, who held occupational exemption from conscription.

During the early years of the war, Hettie was secretary of the Derby Clarion Club and, for a short period, secretary of the Derby branch of the No-Conscription Fellowship (N-CF). She was outraged at being arrested and prosecuted for conspiracy to murder. Such feeling is indicated in her reply, while in custody, to Mrs Bolton the mother of a CO in Wakefield Prison:

'For myself I do not mind this persecution. I must say I expected it and have expected being arrested for months now with regard to aiding and abetting COs, but the monstrousness of this charge is its own failure. No one who knows us, believes it...'<sup>51</sup>

She was hurt and humiliated when a Derby newspaper reported in detail a church sermon in which the Defendants, especially the two school teachers, were condemned as 'subtle tempters' leading children astray. She wrote to the minister at the church requesting a retraction, and appealed to the DPP to take action.<sup>52</sup>

At trial, she testified how she had been contemptuous of 'Gordon's' suggestion to her to assassinate political leaders.<sup>53</sup> She took notes and later produced a critical analysis of the trial in a 60-page report that constituted a passionate, reasoned and comprehensive (at that time) condemnation of the trial.<sup>54</sup> She argued, for example, that 'it is highly unjust not to call an important witness'. In her report, she quoted material from the Parliamentary Papers and debates about case law in an intellectual weekly magazine, *New Witness*.<sup>55</sup>

On acquittal, Hettie sought care for her ill mother throughout 1917 until Alice was released on licence at the end of December. With her sister Nellie, Hettie then accompanied Alice back to Derby.<sup>56</sup>

She also issued a pamphlet, 'Victims of Alex Gordon' for the campaign to gain release of both Winnie and Alf Mason, with support of the Derby MP J.H. Thomas.<sup>57</sup> The War Office instructed the leaflet was not to be sent beyond the UK.<sup>58</sup>

In June 1918, concerned by the fact that Winnie was ill and in the prison hospital, Hettie organised a prison visitor for her. This was arranged through the Berrymondsey (London)

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<sup>51</sup> Letter R474 Hettie Wheeldon reply to Mrs Bolton, 4 March 1917, MEPO 9356-46-04; Mrs Bolton to Hettie Wheeldon, February 1917 Special Branch MEPO MEPO 9356-44-02. [Held: TNA > MEPO > MEPO 9356 – Family Letters - 02].

<sup>52</sup> Letter R452 Hettie Wheeldon to Rev W.A. Knight, St Augustine's, Derby, 25 February 1917, describing the sermon as unjust and uncharitable in its reference to the Wheeldon case and teachers, reported in *Derby Daily Express*, 19 February 1917. Special Branch, MEPO 9356-44-1L1.

Letter R454 Hettie Wheeldon to DPP, 28 February 1917 request for advice about action on prejudicial sermon by vicar reported by the *Derby Daily Express*: Special Branch MEPO 9356-44-1L3. [Held: TNA > MEPO 9356 > MEPO 9356 – Family Letters - 03].

<sup>53</sup> Fourth Day, Hettie Wheeldon XX, L4637-L4642 in *Record* at p. 459.[Held: Proceedings].

<sup>54</sup> [Held: Mason Family Papers > 03 Hettie's Report].

<sup>55</sup> *New Witness* editor G.K.Chesterton, 1917; editorials: 'Vanishing Spy' (15 March) whose editorials on the case attracted correspondence from lawyers and literary figures (e.g Hilaire Belloc) 'The Gordon Scandal' (29 March), 'I Spy!' (31 March); letters: 'Conspiracy Case (22 March), 'Two decisions' from Hilaire Belloc ((3 May); 'A dangerous precedent' from D.H. Prynne, counsel (31 May). [Held: Newspapers].

<sup>56</sup> Letter Governor Holloway Prison to Secretary of State, 31 December 1917. [Held: TNA > HO 144-13338-331997].

<sup>57</sup> Hettie Wheeldon's leaflet 'The Victims of Alex Gordon', 29 June 1918 [Held: Mason Family Papers].

<sup>58</sup> Letter from War Office to Thomson (Special Branch), 18 March 1918 [Held; TNA > MEPO 9356 > MEPO 9356-77].

Board of Guardians,<sup>59</sup> even though Winnie was in HM Prison Liverpool. Hettie also sought the Prison Governor's consideration of releasing her, for which she gave five reasons (see Figure 1-4).<sup>60</sup>

Hettie was painfully aware of her impoverishment resulting from the trial. She later claimed reimbursement for the costs of her travel to London and enquired about compensation for damages from the government.<sup>61</sup>

On Blackwell's advice, the government dropped a proposal for her internment; nonetheless she was barred from teaching,<sup>62</sup> like her brother Will.

She married Arthur McManus in 1920, and died the same year.

*Figure 1-4 Hettie Wheeldon's petition to Sir George Cave, Home Secretary, October 1918*

Hettie's letter requests clemency for Alf and Winnie Mason.<sup>63</sup>

Memorial [sic] on behalf of Alfred Mason and Winnie Mason, of Southampton, sentenced March 10<sup>th</sup> 1917, to seven years and five years penal servitude respectively for conspiracy to murder Mr Lloyd George, Mr Arthur Henderson and others.

To Sir George Cave, Home Secretary.

We desire to bring before you the following reasons why you should exercise your clemency in this case:

- (1) The only evidence on which the prisoners were condemned was the dispatch of the poisons from Southampton to Derby and the written instructions for its use. Both prisoners admitted the dispatch of the box and Alfred Mason admitted writing the instructions. They altogether deny that the poisons were dispatched for the purpose alleged.
- (2) In support of the contention of the prosecution no evidence of cognizance was produced.
- (3) The evidence of the conspiracy rested on the word of a Government agent, Herbert J. Walsh Booth, who had been called into the case by another Government agent, 'Alec. Gordon'. Alec. Gordon had secured the dispatch of the poison and was the only witness besides the accused who could have given first-hand evidence as to its object. Alec. Gordon was never produced by the prosecution. As the Government some months later stated that they had ceased to employ him after this date, the reason for his non-production appears to have been his unsatisfactory character.
- (4) With regard to the written instructions, the prosecution urged that the amount of poison specified was sufficient to kill a human being. To use an excessive quantity of material to accomplish a purpose is not in itself proof that such was not the intended purpose. On the other hand the instructions definitely allude to a dog.
- (5) Of the sentences passed on such slight evidence the prisoners have now served 19 months. Both are young (aged 24 and 23 at the time of the arrest) and hold excellent references as to character. The strain of prison life is particularly affecting the health of Winnie Mason who has never been robust and is now suffering from nervous breakdown.

We trust that you will give these considerations the weight they deserve, and that you will see your way to petition the King for the release of these prisoners.

*By November 1919, Hettie had been told of 'Gordon's identity as William Rickard, but there was no legal avenue at that time to use this knowledge to clear her family's name.'*<sup>64</sup>

<sup>59</sup> MEPO 9356-79. [Held: TNA > MEPO > MEPO 9356 – Family Letters - 04].

<sup>60</sup> Hettie Wheeldon to Prison Governor, 17 October 1918 regarding ill-health of sister Winnie Mason; and Hettie Wheeldon to Home Secretary 31 October 1918 reasons for release. Special Branch MEPO-9356-80. [Held: TNA > MEPO > MEPO 9356 – Family Letters - 05].

<sup>61</sup> Memo 25 June 1917 outlined claim and enquiry for compensation, '(a) loss of employment, (b) wrongful imprisonment, (c) criminal libel which prevents her from obtaining a post in her profession in this town or any other': Special Branch MEPO 9356-68. [Held: TNA > MEPO > MEPO 9356 – Family Letters - 06].

<sup>62</sup> Letter in reply from Derby Police to Metropolitan Police, 7 October 1919 advising that Hettie Wheeldon is 'totally unfitted to resume her profession as school teacher'. [Held: TNA > MEPO 9356 > MEPO 9356-82].

<sup>63</sup> [Held: TNA > MEPO > MEPO 9356 – Family Letters - 05].

<sup>64</sup> Hettie Wheeldon received a letter from Arthur McManus (then her husband) confirming the identification of 'Alex Gordon' in Leicester [Held: Mason Family Papers > Rimington Papers].



*Winnie Mason (née Wheeldon)*

Winnie was an elementary school teacher,<sup>65</sup> in Southampton, Hampshire, at Foundry Lane Boys' School. She had matriculated with a certificate in chemistry and at the time of arrest was enrolled in a Bachelor of Arts (Honours) at London University. Like her elder sister, Hettie, Winnie trained as a teacher at the British and Foreign School Society's Training College for Mistresses, in Stockwell, London.<sup>66</sup>

Winnie was arrested in front of her class. Her reaction was of surprise: 'What is it all about? I don't understand it.'<sup>67</sup> Responding to the Clerk's query at being held on remand, she said: 'I think it is an infamous concoction against my family and my husband.'<sup>68</sup>

On the eve of the Old Bailey trial to her close friend and undergraduate classmate, she appeared stoical, placing her faith in justice.<sup>69</sup>

In custody and after conviction, Winnie felt powerless and was pained by her inability to intercede for her ill mother.<sup>70</sup>

Winnie's health continued to deteriorated in HM Prison Liverpool and she spent 12 weeks in the prison hospital. Friends provided support with one friend writing to say she had collected 150 signatures petitioning for Winnie and Alf Mason's release.<sup>71</sup>

At the end of war in 1919, Winnie, her husband (and also brother Will) were released from prison. They joined sister Nellie, and friends in Croydon, London, where they worked for a short period in the family dairy business.

Throughout her life, Winnie continued to be active in left-wing movements. She spoke out publicly against fascism in the 1930s, for example, at Boscombe, near Bournemouth.

Letters from Winnie Mason indicate that she was searching for both Nellie Wheeldon and Will Wheeldon<sup>72</sup> until her death in 1953.

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<sup>65</sup> Certified Teacher for Public Elementary School having passed Board of Education's final examinations in teaching and music. She was later enrolled in the Faculty of Arts, Kings College, University of London.

<sup>66</sup> 1911 census entry for the Stockwell Training College: Brunel University Archives, Uxbridge, British and Foreign School Society archives, BFSS/3/2, "Stockwell Training College List of Students 1861-1924".

<sup>67</sup> John McCormac, 3 February 1917, Deposition, in *Record* at p. 41. [Held: Proceedings].

<sup>68</sup> *Derby Mercury*, 2 February 1917, p.3 col.7, 'Alleged Conspiracy.' [Held: Newspapers].

<sup>69</sup> Letter R479 Winnie Mason to Mabel, 5 March 1917, 'Dear Mabel, Der Tag is very near now – to my utter forgetfulness as you can guess even though dieu seul sait le résultat. However as I've still a lingering belief in justice, I'm quite hopeful!'. MEPO 9356-46-04. [Held: TNA > MEPO > MEPO 9356 – Family Letters - 07].

<sup>70</sup> Correspondence 29-30 December 1917, from Dr Paton and Governor Fox at Aylesbury Prison to Prison Commissioners describing Alice's angry behaviour. Winnie was frightened about her mother's disappearance for a fortnight; reports on the Governor's interview with Winnie telling her of removal to Holloway; Winnie's 'special' letters to Hettie and to Alice, expressing her concern that Alice had been sent to Broadmoor and relief that she was in the hospital at Holloway, 30 December 1917. [Held: TNA > HO 144-13338- 331997 – Win Mason December 1917].

<sup>71</sup> Letter Mabs to Winnie Mason, 27 November 1917. MEPO 9356-44-1L2. [Held; TNA > MEPO > MEPO 9356 – Family Letters - 09]. Hettie arranged for a visitor from Bermondsey Board of Guardians to visit Winnie Mason, 7 January 1918, a Special Branch memo copied a postcard from Irene Corfield on support and a public petition for Winnie & Alf Mason. MEPO 9356/79. [Held: TNA > MEPO 9356 > MEPO 9356 – Family Letters - 04].

<sup>72</sup> Letter Foreign Office to Home Office 1928 [Held: TNA > HO-144- 13338-311997]. Letter from Society of Friends Peace Committee to Winnie Mason, 9 May 1952; Letter from Friends Service Council to Winnie Mason, 25 July 1951. [Held: Mason Family Papers].

*Alfred (Alf) Mason*

Alf Mason was a chemist and lecturer in pharmacology at Hartley College, Southampton. He married Winnie Wheeldon in 1915.

While awaiting trial in Brixton Prison, Alf Mason was separated from his wife, and isolated from Hettie, who was organising the defence, as well as from Alice. Alf demonstrated a strong sense of responsibility for his wife's family, doing his best to obtain funds from his own (wealthier) family and find friends who would come to the trial as defence witnesses.

In custody, Alf became ill and took a long time to recover physically after his release. Eventually, he and Winnie moved back to Hampshire, to Bournemouth, where Peter was born and went to school.

Alf led an unsettled, rootless life on release, with long periods away from his wife and child. His granddaughters Chloë and Deirdre Mason recall visiting the pharmacy in Holborn where he was working, and his sudden visits to the Mason home where Winnie was living. They knew Winnie, their grandmother, had been in prison, but presumed this was as a suffragette. They were not told of Alf's equivalent prison experience until 1986.

He died in 1963.

### *Evidence of the Defendants' difficulties in funding and securing legal representation*

- 1.23. The Defendants experienced major difficulties in securing legal representation, and ultimately, when the trial commenced on 6 March 1917, all four were represented by one counsel, Mr S. Riza, and a (London) solicitor, Mr J. Prag, who had had only five days to prepare the defence case.
- 1.24. The Defendants' correspondence, copied to Special Branch and the DPP, discussed their efforts to obtain counsel, their inability to fund their defence, and their efforts in preparing their case (with possible witnesses and information about 'Gordon'). This material first became available to the Applicant in 2012.

### *Difficulties in raising funds for their defence*

- 1.25. The Defendants may have been eligible for support, such as for representation by Crown counsel, under the *Poor Prisoners Defence Act (1903)*.<sup>73</sup> However, they believed they had unwittingly forfeited this benefit by reserving their defence before the trial,

<sup>73</sup> Circular to Justices' Clerks of Petty Sessions Divisions, Home Office, 31 August 1904, *The Times*, 6 September 1904, p.2 col 3, 'Notice of guidance for Magistrates. [Held: Newspapers > The Times].

at their appearance at the Derby Assizes, on the advice of their family solicitor, H. Sutton Clifford. Winnie Mason, wrote to her husband, Alf Mason, on 24 February 1917:

‘There is such thing as applying for Crown counsel for free but the very fact that we ‘reserved our defence’ prevents us from having that.’<sup>74</sup>

1.26. A Treasury Grant was made for incidental expenses incurred by the move from Derby to London, but not to cover legal costs.<sup>75</sup>

1.27. A fund was started, managed by Alice Wheeldon’s sister, Ellen Land. This Derby Defence Fund covered Clifford’s cost up until the trial.<sup>76</sup> The Defendants saw these funds as loans, however, and were unwilling to incur further debt, as they believed they were ‘professionally ruined’ and would be unable to repay it.

In her 24 February letter to her husband, Winnie Mason wrote:

‘there’s no more money ‘cept what we borrow & will have to slave to repay (because you have this to reckon with – the whole lot of us are ruined financially & irretrievably as far as our professions go – so the prospects of repaying are very gloomy.)’<sup>77</sup>

1.28. Alf Mason’s parents in Southampton, having consulted their own solicitor, Mr Gulliford, wrote to tell Alf in early February that they hoped ‘to have counsel to defend your innocence apart from the others’ [i.e. the other three Defendants].<sup>78</sup>

1.29. Clifford had suggested to Alf’s father, George Mason, that there was a Birmingham barrister interested in Alf’s case, and he was looking for a KC to defend the other three. Alf accepted gratefully his father’s generous offer to pay for separate counsel for him.<sup>79</sup>

1.30. George Mason had to withdraw his offer once he learned the full extent of legal costs.<sup>80</sup> Instead, he could only pass on his own solicitor’s recommendation that Alf instruct a London solicitor to save costs, given that the trial was to occur in London.<sup>81</sup>

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<sup>74</sup> Letter R422 Winnie Mason to Alf Mason, 24 February 1917, page 2. MEPO 9356/41/6. [Held: TNA > MEPO 9356 > MEPO 9356 – Family letters – 10].

The fact that they reserved their defence is supported by:

- prosecution counsel Bodkin’s statement in the 1st Trial, L1889 in *Record* p.324 [Held: Proceedings].
- Court record, p.50. [Held: TNA > CRIM 1-166 - Reserved Defence 6 February 1917].

<sup>75</sup> Letter R414 Winnie Mason to Susie Mason, 23 February 1917. MEPO 9356 -41-8. [Held: TNA > MEPO 9356 > MEPO 9356 – Family letters – 11].

Reference to George Mason’s faulty expectation of a Treasury Grant to Clifford: Letter George Mason (father) to Alf Mason, 22 February 1917. MEPO 9356/41/6. [Held: TNA > MEPO 9356 > MEPO 9356 – Family letters – 12].

<sup>76</sup> ‘Contributors to the ‘Derby Defence Fund’ to pay for legal representation and payments made. [Held: Mason Family Papers].

Typescript of Bills of Costs from Cliffords Solicitors, Derby, 29 March 1917 for 3-6 February Derby Borough Justices to Ellen Land (Alice’s sister). [Held: Keeling Family Papers].

<sup>77</sup> Letter R422 Winnie Mason to Alf Mason, 24 February 1917, page 3. MEPO 9356-41-6. [Held: TNA > MEPO 9356 > MEPO 9356 – Family letters – 10].

<sup>78</sup> Letter from Mrs George Mason to Alf Mason, 8 February 1917. MEPO 33-03. [Held: TNA > MEPO 9356 – Family Letters – 13].

<sup>79</sup> Letter R340 Alf Mason to George Mason, 9 February 1917. MEPO 9365/33/03. [Held: TNA > MEPO > MEPO 9356 -Family Letters -14].

<sup>80</sup> Letter George Mason to Alf Mason, 11 February 1917. MEPO 9356-33-01. [Held: TNA > MEPO > MEPO 9356 -Family Letters - 15].

<sup>81</sup> Letters Susie Mason to Alf Mason, and George Mason to Alf Mason , respectively 16 and 18 February 1917. MEPO 9356-37-04.

*Difficulties in securing representation*

- 1.31. In the short time between the arrest (31 January) and trial's scheduled date (27 February), much effort was expended on finding appropriate legal representation. This effort was led by Hettie Wheeldon.<sup>82</sup>
- 1.32. On 26 February, Hettie referred to having cancelled H. Sutton Clifford as too expensive, and having engaged another, Jacob Prag, a London solicitor, and a barrister, Sayed Riza.<sup>83</sup>
- 1.33. Meanwhile, the Crown had applied for an adjournment.
- 1.34. On 27 February 1917, Clifford thanked the DPP for notifying him that this application for adjournment would be heard the following day, and advised that he had ceased to act for the Defendants on account of their failure to provide funds for their defence.<sup>84</sup>
- 1.35. On the morning of 28 February, the Crown was granted an adjournment (for Tuesday 5 March). The Defendants were unrepresented at that hearing and raised no objection. Later that day Hettie Wheeldon received a copy of the DPP's Depositions and Exhibits and in the evening their solicitor, Prag, arrived. She gave him her only copy of the DPP's evidence. Also on 28 February Prag informed the DPP that he was acting for the Defendants, and intended to apply for a further adjournment on 2 March 1917.<sup>85</sup>
- 1.36. As she anticipated,<sup>86</sup> Prag's application for adjournment was rejected.
- 1.37. The trial commenced on 6 March just five days after the appointment of Prag as their solicitor, and with Mr Riza acting for all four Defendants.

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Telegram George Mason to Alf Mason, undated [estimated 17 February 1917. MEPO 9356-39-02. [Held: TNA > MEPO > MEPO 9356-39-02. [Held: TNA > MEPO > MEPO 9356-Family Letters - 16].

<sup>82</sup> 'I have left everything for our Hettie to arrange about the lawyers and all that business.': Letter R436, Alice Wheeldon to sister Ellen Land, 26 February 1917. MEPO 9356-41-1.[Held: TNA > MEPO 9356 > MEPO 9356-Family Letters -17].

<sup>83</sup> Letter R434 Hettie Wheeldon to Will Wheeldon, 26 February 1917. MEPO 9356-41-02. [Held: TNA > MEPO 9356 > MEPO 9356-Family Letters - 19].

<sup>84</sup> Letter from Clifford to Seward Pearce (DPP), 27 February 1917 [Held: DPP 1-50 - Letters Clifford & HW to DPP].

<sup>85</sup> Letter from J. Prag to DPP, 28 February 1917. [Held: TNA > DPP 1-50 - CORRESPONDENCE].

<sup>86</sup> Letter R480 Hettie Wheeldon to Wat Goodman (fiancé), 5 March 1917 - typed transcription. MEPO 9356-46-02. [Held: TNA > MEPO 9356 > MEPO 9356 - Family Letters -21].

*Personal statements from the Applicant and former Joint Applicant*

**1.38. Chloë Mason is the Applicant, and worked on the case jointly with her sister, Deirdre Mason, prior to the latter's untimely death in 2017. They were supported by her brother Paul, who died suddenly in 2018. Chloë continues to be supported by Paul's son, Orlando, born 1992.**

**1.39. Chloë Mason – 9 March 2017**

1.39.1. I, Chloë Mason of 89 Reservoir Street, Surry Hills, NSW Australia, am the Applicant to the CCRC for review of R v Wheeldon & Ors (1917). I consider that a review by the State, through the CCRC, and a decision by the Court, enables a wrong to be made right, for me, and especially for the next generation, including Orlando Mason, Winnie's great grandson, the son of my brother, Paul. In addition to this personal acknowledgement, I consider there is significant public benefit and interest for the Commission to review this historic, exceptionally high-profile case.

1.39.2. I make this statement in the knowledge that the charging, trial, conviction and imprisonment of the Defendants had a terrible, lasting impact on their lives and their families and friends. I believe that this suffering was grounded in their belief that they had been wrongfully convicted in an unfair trial.

1.39.3. In 2015, with the assistance of Dr Nicholas Hiley, I discovered that by the end of 1919, the family and friends had identified 'Alex Gordon' and learnt of his criminal history. But by then the Defendants had no appeal or recourse to review and it was to be over a half a century before evidence of the extent of the prosecution's wrongdoing would start becoming available.

1.39.4. From 1917 onwards these wrongful convictions have caused pain and humiliation to our family. The case and its damaging consequences affect me both personally and publicly. I have an immense commitment to achieve what my family could not do in their life-time.

1.39.5. My father, Peter, son of Winnie and grandson of Alice, moved to Australia in 1962, taking up an appointment at Macquarie University, Sydney, as the Foundation Professor of Physics. My sister and I were brought up to see issues from moral and intellectual perspectives. Until shortly before my father died, he withheld knowledge of these criminal convictions from his children. Since his, and then my mother's death, I have felt a deep moral obligation to make use of the records handed on to us by my mother or obtained through access to public records to clear our family name and prevent another generation's suffering and to see justice done.

1.39.6. This past affected my own family life. For example, my mother would say to my father, as a reprimand to me, 'she's just like your mother', resulting in parental rows that I could not understand. I recall specifically in the early 1980s upon my divorce telling my parents that I intended to change my

married name of Refshauge, but not simply back to Mason, but to Wheeldon. Ignorant of the trial and its aftermath, I wanted to identify with Alice Wheeldon's daughters, who I regarded as independent and principled. My parents were so antagonistic to this plan that I desisted rather than upset them further.

- 1.39.7. In 1948, my Grandma Winnie Mason (1893–1953) passed on to her son and my father, Peter, documents about the case. Her covering note described these documents as 'apparently conclusive evidence' that she had hoped to 'finish the whole horror of the incident', and yet she and Alf had struggled 'to make good their shattered lives'. To Peter, who by then was married and father to Deirdre, aged two, Winnie had implored him: 'Don't let this cloud your life at all.' Peter stored the papers in his private trunk but died without revealing them to me, or any of his children.
- 1.39.8. These documents were eventually passed on to me and my sister by our mother. Among them was a scruffy package containing contemporaneous (1919) papers, the 'Rimington papers'. These papers would turn out to be vital in helping to establish 'Gordon's identity as William Rickard, his criminal antecedents, and the extensive engagement by the government in his concealment.
- 1.39.9. For me, these generations of personal wreckage cling deeply. As a non-practising lawyer, I regret not being able to help sooner. The details of the tragic consequences cut deep. My nephew Orlando risks following in the footsteps creating yet another generation affected by these past injustices.
- 1.39.10. I have been immensely troubled by the English justice system's connivance to keep the wrongs of 'Alex Gordon' concealed. If it cannot acknowledge upon such strong proof that it facilitated then hid a miscarriage of justice, where is the basis for learning from the past to avoid its repetition?
- 1.39.11. At the personal level I see a continuity between myself (my sister and mother) and the Wheeldon women in my concern for social justice, my pacifist stance to war, and my family's support for conscientious objectors during the Vietnam war. And I feel a betrayal that my father, as well as my mother, kept quiet about these resemblances to the Wheeldon women. It is distressing to have been excluded from our heritage, deprived of having more open and honest family relationships which we all expected given our open, liberal upbringing.
- 1.39.12. Our parents' motivation, I now believe, was to protect my siblings and me from the risk of prejudice and stigma and to bury their own painful memories. As our awareness grew, Deirdre and I have made concerted efforts to learn what had happened; this has intensified as we become aware of the public interest.
- 1.39.13. In 2012 Deirdre began corresponding with the Metropolitan Police Service to obtain copies of the Wheeldon Papers (designated MEPO 9356 and MEPO

345) since they had not been transferred to The National Archives. These papers include intercepted family correspondence that we had not previously seen. I found it shocking and still distressing to realise that in 1919, on release from prison, Winnie Mason's losses were incalculable. She was too ill to attend her mother's funeral, her sister Hettie's fiancé had left her and sister and brother Nellie Wheeldon and Will Wheeldon had left the country, unable to work as teachers and seeking to avoid the persecution, public humiliation, stigma and continuing distress.

- 1.39.14. My sister Deirdre and myself have re-visited our childhood and adolescent memories, feeling able at last to identify a cause of tension between our parents. While reading and re-reading the MEPO letters, we both feel much anguish and anxiety. We struggle to assimilate new information and insights into our memories and our own identities. While I am relieved these MEPO papers have been retained as 'of historical interest', I am still disturbed that these papers have still not been transferred to The National Archives.
- 1.39.15. The following account outlines facts that demonstrate how I became aware of the case, its impact on me and my subsequent actions.
- 1.39.16. My sister and I learned about the trial and its consequences in 1986 when I was 37 and Deirdre 41, when our dying father, Peter, then aged 64, decided to tell us both – an episode etched in my mind and soul. He was terminally ill with brain cancer and had largely lost his power of speech. He had obtained a copy of the BBC-TV drama documentary, *The Plot to kill Lloyd George*,<sup>87</sup> that he insisted on showing us. For several hours, our father temporarily recovered his power of speech and interrupted the screening to explain what had happened or point out errors in the documentary and describe the tragic results for his whole family. The screening was obviously very distressing; he was crying. At times viewing of the documentary had to stop for the tears. He spoke of the family fears about the trial, the unjust treatment, the persecution resulting in immense suffering and the trauma for his whole family. I have no doubt that if our father had been alive when the CCRC was established he would have been an applicant.
- 1.39.17. I was shocked by his revelation and his urgent need to tell us about what really had happened and how it had damaged his and his parents' lives. Some things started to make sense to me. Past experience and memories started to take on new meaning and make sense. For instance, I now understood the significance of Peter's correspondence until 1937 with his uncle, Will Wheeldon. Most vividly, I recalled my father telling me stories of

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<sup>87</sup> An episode in the BBC-TV series *Miscarriage of Justice/Rough Justice* (?). Other episodes were on the Birmingham Six, the Guildford Four whose 'pictures were published in the newspapers and they became the most hated people in the country': John Weeden (2013) 'The Criminal Cases Review Commission (CCRC) of England, Wales, and Northern Ireland' *University of Cincinnati Law Review* Volume 80 | Issue 4 Article 17. <http://netk.net.au/CCRC/Weeden.pdf>

his childhood – his parents having to move house very frequently once people found out about them, that on going home from school he had gone to the wrong house because he could not remember where he lived. His obsession with our personal security affected me as he worried about every step we took in the world of politics as we headed into our adult lives.

- 1.39.18. Not long after my father's death, my mother Sheila handed me a letter from Nicholas Hiley, the English historian who had traced my father Peter Mason as a Wheeldon descendant, to Australia. Until her death in 2010, Sheila acted as a guardian of his family's legacy and carefully passed on his papers, distributing them to me, Deirdre and Paul. Deirdre and I, both very close to our father, took very seriously the implicit expectation that we would share responsibility for them.
- 1.39.19. The Wheeldon case has strongly influenced my later life, particularly since 2011 when the campaign to clear the Defendants' names was launched in Derby and since I have participated in events commemorating the First World War.
- 1.39.20. In 2011 Deirdre and I started investigating the availability of legal remedies in English law to the allegation of a miscarriage of justice and collating our material. In 2012 we received a reply from the CCRC to our queries about standing and the operation of s17 to obtain copies of embargoed material, and their recommendation to take legal advice. As a result, I instructed counsel and assisted in the preparation of this application; furthermore, my application is appending official documents in order to assist the Commission. These add considerable power to this historical case.
- 1.39.21. In 2013, the experience of being interviewed, by Jeremy Paxman's BBC team at the Old Bailey, in the antechamber to the Court where the family was convicted, was quite overwhelming and consumed me emotionally for days before and afterwards.
- 1.39.22. I regularly accept invitations to speak about the miscarriage of justice suffered by the Wheeltons, to ensure that it is not 'hidden from history'. Consequently, over these last years, I have travelled to England usually twice a year, foregone paid employment and lived more frugally to research this application, albeit with generosity and support from many people.
- 1.39.23. The Wheeldon trial is not merely part of history, a thing of the past. When talking about this case and our allegation of a miscarriage of justice, as an experienced social justice advocate,<sup>88</sup> I acknowledge the great value of an organisation like the CCRC in improving the integrity of criminal justice. Undercover policing of social and political movements is a current theme in

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<sup>88</sup> For women and people from non-English speaking backgrounds, particularly; research consultant to President NSW Anti-Discrimination Board; Australian Commonwealth Sex Discrimination Commissioner; expert witness in *Nadjovska v AI&S* for Public Interest Advocacy Centre; volunteer solicitor Marrickville Legal Centre.



law, expressed in the terms of the Undercover Policing Inquiry and the investigatory powers bill.<sup>89</sup> These themes are central to the investigation and trial in Wheeldon, and to the accountability failings through suppressions and non-disclosures by the prosecution, and then the lengthy embargoes on public records.

- 1.39.24. Beyond being about an alleged plot to assassinate the Prime Minister and Arthur Henderson (Labour leader) this case of serious convictions in a single family, in time of war, deserves recognition as a cost of a nation at war.
- 1.39.25. It is this synthesis of personal and public interests that I believe justifies this application to the CCRC to review this case and refer it back to the Court of Appeal. Notwithstanding that it is 100 years since the convictions, its modern day resonance and satisfaction of factors stipulated by the Commission, make it suitable for referral.
- 1.39.26. A Court of Appeal decision to right this wrong will enable my family to reclaim our past, bring an end to corrosive inter-generational distress and through this validation allow future generations to move on. More importantly, it would also inform a wide (and widening) public interest; it would inspire confidence in the integrity of the British criminal justice system.

#### **1.40. Deirdre Mason – 9 March 2017**

- 1.40.1. I, Deirdre Mason of 501 Glebe Point Road, Glebe, NSW Australia, am a joint applicant to the CCRC for review of Wheeldons & Masons (1917).
- 1.40.2. My statement illustrates how this case has affected me and accounts for my interest in making this application particularly given the time lapse of the case and recognising that the Defendants are deceased.
- 1.40.3. As I learn about our family's history, I understand the strong moral compass of our upbringing that was passed down from Alice Wheeldon to her daughter Winnie and then from Winnie to her son Peter. I was brought up to believe in justice, social justice and the courage to stand up for what is right. This conviction challenges the basic tenets of our upbringing, by eroding our family's reputation.
- 1.40.4. My grandmother, Winnie, was always a loving presence in my life and never ceased in her fight for social justice. Her stance against the rise of fascism prior to the Second World War is documented. Her conviction thwarted her personal and professional life as she was banned from ever teaching again. She was an excellent teacher; indeed assessed by her school

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<sup>89</sup> <https://www.ucpi.org.uk/>;  
<https://www.ucpi.org.uk/wp-content/uploads/2017/07/20170725-press-release-change-of-chairman.pdf>;  
Owen Bowcott, 'Investigatory powers bill not fit for purpose say 200 senior lawyers', *Guardian*, 15 March 2016:  
<https://www.theguardian.com/world/2016/mar/14/investigatory-powers-bill-not-fit-for-purpose-say-200-senior-lawyers>

principal as an accomplished teacher – and she taught me so much when caring for me as a child. This was the nation’s loss as well. At a later stage, she was refused a passport when she wished to travel to India, indicating continuing stigma at an official level. All my life I have been proud of her stand on women’s rights and against fascism but I have been prevented all my life from celebrating my inheritance from this fine woman.

- 1.40.5. As an adult I remain troubled by my own lack of understanding as to how our grandfather suffered. I failed to treat him with the sympathy and respect that was his due. Although he worked from time to time in pharmacies and retained his membership of the Royal Pharmaceutical Society for a while he never rebuilt his professional career following his conviction and imprisonment. He remained a drifter, a traveller, and a sometime inventor. He made extraordinary toys for us. In 2014, I found an undated letter from him to my father stating ‘... I’ve had to re-arrange my life differently from most in order to be able to ‘cover up’ and start afresh’. That was distressing to read.
- 1.40.6. My father was emotionally scarred by his family’s experience and his frequent outbursts of anger and deep emotion impacted on us as we grew up. As children we could not understand why this was happening.
- 1.40.7. As we began to understand what had happened, we realised that our father must have decided not to inform his children of the past and so he experienced a lifetime of frustration at bearing this burden alone. And because he observed this practice of silence, he was denied the opportunity to clear the family name during his parents’ lifetime. Our grandparents and our father were dead when the transcript of the trial first became publicly available in 1992. The Metropolitan Police files were only released to the family in 2012. It has been deeply painful to learn so late in my own life about their lives and the repercussions upon us.
- 1.40.8. When we came to Australia for my father to take up a scientific posting, the ignominy followed him with some accounts being published in Australia and England that suggested that he had fled from his family’s past. Even sympathetic sources believed this. We had no inkling of this. For us, his academic and scientific success in Australia, as well as his media role, repudiated the concept of a fugitive from publicity.

**Table 1-1. Statements from third parties in support of the CCRC's referral**

Statements in support have been received from the following people.  
The full text of these statements is available in the Documents folder (*alphabetical order*):<sup>90</sup>

- **Pat Barker**, Booker Prize-winning author of 'The Regeneration Trilogy'.
- **Professor Lois Bibbings**, Research Fellow, Bristol Law School
- **Dr Ann Ferguson**, former anaesthetist, medical historian
- **Adam Hochschild**, Lecturer, Graduate School of Journalism, University of California UCLA
- **Betty Keeling**, great-niece of Lydia Robinson, family friend of the Wheeldons in Derby, and her daughter **Liz James**
- **Professor Sarah Lloyd**, Professor of History, University of Hertfordshire; Director of Everyday Lives in War, one of five First World War Engagement Centres
- **Dr Robert Moles**, legal researcher, Networked Knowledge
- **Helen Pankhurst**, Senior Adviser to CARE International in Ethiopia, and writer. Granddaughter of Emmeline Pankhurst.
- **Cyril Pearce**, University of Huddersfield, social historian, author; research network contributor for Gateways to the First World War, one of five First World War Engagement Centres
- **Emeritus Professor Bernard Porter**, University of Hull, historian, author
- **Sheila Rowbotham**, author, formerly Professor of Gender and Labour Studies and Simon Research Professor, University of Manchester
- **Dr Ingrid Sharp**, Director of Graduate Studies, School of Languages, Cultures and Societies, University of Leeds; research network contributor for Gateways to the First World War, one of five First World War Engagement Centres
- **Keith Venables**, Chair, Derby People's History Group
- **Gertie Whitfield**, School education resource provider, Derbyshire.

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<sup>90</sup> Held: Statements from third parties.

**Table 1-2. Contextual chronology**

Names underlined are referenced in the 'Dramatis personae', page 12.

KEY EVENTS		CONTEMPORANEOUS ACTIVITY
<b>Pre-war</b>		
1911–1914	<p>William Rickard is convicted of blackmail in 1910, and transferred from prison to Broadmoor Criminal Lunatic Asylum for one year. He is listed on the Habitual Criminals Register maintained by Scotland Yard. [William Rickard will take the name '<u>Alex Gordon</u>' in 1916 when working for <u>PMS2</u>.]</p> <p><u>Alice Wheeldon</u>, is living in Derby with her husband and four adult children. Alice is a politically active socialist, feminist and pacifist, and a member of the Women's Co-operative Guild. Her eldest daughter, <u>Nellie Wheeldon</u>, is working for the Derby Co-operative Society; <u>Hettie Wheeldon</u>, <u>Winnie Wheeldon</u> and son <u>Will Wheeldon</u> are teachers.</p>	<p>Frustrated by the government's opposition to extending the franchise to women, Emmeline Pankhurst's <u>Women's Social and Political Union (WSPU)</u> is conducting a campaign of violent direct action, including arson and bombings. Such 'suffragette outrages' are widely reported.<sup>91</sup></p> <p>In February 1913, the WSPU takes credit for the bombing of a house being built for <u>David Lloyd George</u> near Walton Heath Golf Links. [Walton Heath will also be the site for the Wheeldon's alleged plot to murder Lloyd George.]</p> <p>In June, WSPU offices are raided by <u>Sir Edward Henry</u>, Chief Commissioner of Police; charges of conspiracy are prosecuted by <u>Sir Alexander Bodkin</u> for the DPP [who will later help prosecute the Wheeldon case].</p> <p>In early 1914 <u>Sylvia Pankhurst</u> founds a newspaper, after being expelled from the WSPU. With declaration of war in August, the WSPU suspends suffrage actions and campaigns for the war and conscription.</p> <p>[At trial, the prosecution will allege, without foundation, Alice Wheeldon's involvement in a WSPU threat to Home Secretary McKenna, and an arson attack on Breadsall Church, near Derby.]</p>
<b>Britain enters the First World War August 1914</b>		
1915	<p>Alice and her four children support the anti-war No-Conscription Fellowship (N-CF).</p> <p>Hettie Wheeldon becomes branch secretary N-CF Derby.</p> <p>Winnie Wheeldon marries <u>Alf Mason</u>, pharmacist and lecturer, and moves to Southampton, where she continues to work as a teacher.</p>	<p>Emmeline Pankhurst's <u>Women's Social and Political Union (WSPU)</u> supports the war and conscription. Anti-war suffrage leaders help form <u>No-Conscription Fellowship (N-CF)</u>.</p> <p><u>Defence of the Realm Act 1914 ('DORA')</u>, introduced with the objectives of controlling communications and subjecting civilians to the rule of military courts, is widened by regulation to include censoring the press, banning meetings, and curtailing critical opinion about the war.<sup>92</sup></p> <p>With increased policing, monitoring and action, intelligence agencies grow in size. MI5, which already has an international network for gathering and exchanging intelligence, supervises the creation of military security units throughout the British Empire, and develops counter-subversive activity. Metropolitan Police Special Branch grows from 112 to 700, under the direction of <u>Basil Thomson</u>; it carries out frontline investigations and retains the power of arrest.</p> <p><u>David Lloyd George</u> is appointed Minister of Munitions in PM Asquith's war cabinet. Under his Ministry, the <u>Munitions of War Act</u> gives power to munitions factories as controlled establishments, restricting the freedom of workers to leave.</p> <p><u>Lord Milner</u> spearheads a 'ginger group' ('Milnerites') to undermine the Asquith coalition and dissenters who question the war's prolongation (beyond the 1916 food harvest) and oppose industrial and military conscription. He advocates military conscription for all men of military age, excepting only those the authorities decide are engaged upon some war industry.<sup>93</sup></p>

<sup>91</sup> *Derby Daily Express*, 13 June 1914, 'Suffragettes hustled. Derby meeting broken up'; *Derby Daily Express* 1919 cartoon Fern Riddell (2018) 'Suffragettes, violence, and militancy', British Library, 6 February 2018: <https://www.bl.uk/votes-for-women/articles/suffragettes-violence-and-militancy>.

<sup>92</sup> *Manchester Guardian*, 18 December 1916, p.2 'Prisoner under Defence Act to be released' and page 9, 'Northern Education League Rights of Conscience'. [Held: Newspapers].

<sup>93</sup> *The Times*, 18 June 1915, p. 9 cols 2&3, 'Lord Milner on National Service'. [Held: Newspapers].

	KEY EVENTS	CONTEMPORANEOUS ACTIVITY
1916	<p><u>William Rickard</u> (using his preferred alias 'Francis Vivian') is living with his wife Lily in Leicester. He is investigating 'fake' seances and publishing articles as a journalist in Leicester papers.</p> <p>In September 1916, <u>Herbert Booth</u> is called up from his job as barrister's clerk and subsequently employed as an officer of PMS2. His senior officers arrange for him to hire the man known as 'Francis Vivian', who then takes the alias 'Alex/Alec Gordon' (and who is in fact William Rickard).</p> <p>Early assignments for Booth and 'Gordon' in London relate to 'aliens' (Russian Jews), political meetings, escapes from internment camps, the 'emigration scheme' out of Liverpool to the USA, and industrial action in the Midlands, e.g. Liverpool, Salford and Sheffield.<sup>94</sup></p> <p><u>Melville Lee</u> instructs Booth to send his agent, 'Alex Gordon', to Derby 'to get in touch with revolutionaries and people likely to commit sabotage'.<sup>95</sup> Booth acknowledges later<sup>96</sup> that when they started work in a new town, they would be given secret information about the meeting places of war resisters.</p> <p>Alice Wheeldon's son, <u>William Marshall (Will) Wheeldon</u>, is refused exemption as a CO by Derby Local Tribunal and imprisoned in 1916.</p> <p>Alice's son-in-law, <u>Alfred (Alf) Mason</u>, is also a CO but exempted on occupational grounds as a pharmacist in Southampton.</p>	<p>The <i>Military Service Act</i> in January and the <i>Amendments (No.2) Act</i> in May introduce compulsory military service for all men aged between 18 and 41. Powers of exemption are amended although 'conscientious objection' is retained as a ground for exemption.</p> <p>Intelligence units proliferate across government departments and private companies. As military recruitment flags (and the German threat from espionage recedes), the intelligence agencies re-direct their attention to 'aliens', to labour organisers opposing industrial conscription, to the anti-war movement, and to frustrating pacifist and socialist anti-war protest.</p> <p>In February 1916 Lloyd George, as Minister of Munitions, approves the creation of his departmental labour intelligence agency, known the <u>Parliamentary Military Secretary Department, no 2 section ('PMS2')</u>. Its initial role is to protect munitions factories from espionage and sabotage and to scrutinize aliens seeking munitions work.<sup>97</sup></p> <p>MI5's <u>Vernon Kell</u> provides the Ministry with a nucleus of MI5 officers under the command of <u>Lt Col Frank Labouchere</u>. Throughout 1916 Labouchere expands his 'aliens' unit into a national intelligence organisation, spending substantial funds on recruiting a host of private agents to report on local unrest.</p> <p>July to September sees failed attritional offensives on the French front, notably the Battle of the Somme, that incur massive deaths and injuries, as well as worsening conditions on home front (rent hikes, food strikes). There is dissension within government between 'negotiating a political settlement for peace' or a 'fighting to the bitter end'. With this hardening of war aims, by the second anniversary of the War, government repressed talk of peace as treason.<sup>98</sup></p> <p>Throughout 1916 intelligence activity increasingly attempts to combat what is seen as the influence of a subversive combination of pacifism, socialism and industrial militancy (including the shop stewards movement).</p> <p>In the community, educators (such as the four Wheeldon children) are among the first to 'challenge the mood of the moment'. For example, the Northern Counties Education League protests against penalizing teachers and scholarship holders who 'have claimed and secured recognition of their conscientious attitude in regard to war'.<sup>99</sup></p> <p>Asquith orders General Haig to prevent any CO being executed for disobedience, after parliament was informed of an arrangement to deport 34 COs to France for court-martial and execution.</p> <p>On 7 December 1916 Lloyd George becomes Prime Minister and appoints his five-man war cabinet.<sup>100</sup></p>

<sup>94</sup> For example, 'Gordon's report on Hill' in 'Notes on the Strike Movement', Appendix IX 'A.G. report, early December 1916. [Held: Milner Papers > 09].

<sup>95</sup> Melville Lee *Short Resume of the Wheeldon Story*, 5 January 1917, p.1. [Held: TNA > HO 144 13338-331997- Transcription of Reports].

<sup>96</sup> *World's Pictorial News*, 2 April 1921, p.10 col.4, 'Tempting Bribes Offered to British Women.' [Held: Newspapers].

<sup>97</sup> Description of its role and demise: *Hansard* House of Commons, vol 94, 12 June 1917, cols 752-3. [Held: Hansard] Leading to over 100,000 registrations of aliens, personal dossiers, and over 5,000 people investigated solely for their associations with pacifism or anti-militarism (Eirug A. (2017) 'The Security Services in South Wales during the First World War', *Welsh History Review*, 28/2, pp. 763-771 at p. 755 [Held: Articles].

<sup>98</sup> 'If the war is to end before August comes again, it must be because the people will have it so. To the Governments we shall look in vain. They express no thought of reconciliation the word 'peace' is treason in their ears.': from *Labour Leader* on the second anniversary by William Aylott Orton (1921), *Labour in transition; a survey of British industrial history since 1914*, London: Philip Allan & Co., p. 97.

Millman B. (2000), *Managing Domestic Dissent in First World War Britain*, Routledge.

<sup>99</sup> *Manchester Guardian*, 18 December 1916, p. 9 'Rights of Conscience. Conscientious Objectors'. [Held: Newspapers].

<sup>100</sup> Millman B. (2000) *Managing Domestic Dissent during First World War Britain*, Routledge; Wrigley C.J. (1990) *Arthur Henderson*. Political Portraits Series, Cardiff: GPC Books.

**'Gordon' and Booth visit Wheeldon household: 26 December 1916 to 4 January 1917**

1916

*For detailed analysis of these visits, see Table 5-1, page 87.*

'Gordon' arrives in Derby in early December,<sup>101</sup> from Liverpool and Sheffield where he had been undertaking surveillance of Arthur McManus and Walter Hill. At the Clarion Club, posing as a CO, he is referred to Cyril East, an engineer at Rolls Royce who is also a CO.<sup>102</sup> East refers 'Gordon' to the Wheeldon household for help in finding accommodation. Hettie Wheeldon was the secretary of the Clarion Club and had until recently also been the secretary of the Derby branch of the No-Conscription Fellowship.

According to Booth,<sup>103</sup> 'Gordon' had gone to Derby on 21 December at Booth's direction and posed as a CO. 'Gordon' writes to Booth that he had met Alexander Macdonald, an absentee and CO who was apparently involved in the International Workers of the World (the IWW in New York was assisting the 'emigration scheme'). But he had been unsuccessful in finding his target, Willie Paul, an anti-war activist and socialist.<sup>104</sup> 'Gordon' goes home to Leicester for Christmas.

On 26 December, 'Gordon' returns to Derby, still posing as a CO on the run, and visits the Wheeldon household for the first time. Alexander Macdonald, who is a friend of the Wheeldon family, is staying at the family home.

Over the next two days (27–28 December), 'Gordon' has extended conversations with the Wheeldons and Macdonald about the emigration scheme and the possibility of Alice's 'three boys' (Will Wheeldon, Macdonald and Alf Mason) using it. 'Gordon' gives Macdonald a letter of introduction to McManus in Liverpool.<sup>105</sup> Alice agrees to arrange to get poison, which, according to the defence case, 'Gordon' told her was for use on dogs guarding the internment camp where his friends are held.

Alice and Hettie arrange for Macdonald to go to Liverpool with the letter to investigate the emigration scheme.<sup>106</sup>

'Gordon' summons Booth, who arrives in Derby Thursday 28 December, and 'Gordon' gives him his account.

On 29 December, according to 'Gordon',<sup>107</sup> he is present (with Hettie Wheeldon) when Alice Wheeldon packs a parcel to her daughter Winnie Mason, and puts a note inside 'one of the mince pies ... She had previously shown me this note ... and I remember that it contained a definite request for the phial of poison to be sent at once, as a man had been found who would remove Lloyd George if at all possible'.

In the evening of 29 December, 'Gordon' takes Booth to meet Alice Wheeldon at her home. Both Booth and 'Gordon' visit the household over the next few days to check on the arrival of the poison.

On 3 January 1917 Macdonald returns to the household after his visit to Liverpool and reports that the emigration scheme is not an option at this time due to the capture of escaped political internee Kehrhahn in New York. (Macdonald also reports this outcome by letter to Will Wheeldon.<sup>108</sup>) Macdonald and 'Gordon' leave the house together. 'Gordon' subsequently reports his conversations with Macdonald to PMS2.<sup>109</sup>

On 4 January, Alice Wheeldon receives the poison and poisoning instructions from Alf Mason by post, and gives 'Gordon' this poison.

After leaving the household, 'Gordon' gives the poison to Booth, who hands it to Melville Lee. 'Gordon' and Booth then depart by train for London.

Investigation ensues, involving Metropolitan Police,<sup>110</sup> Special Branch, local Derby and Southampton Police, and PMS2 agents. Police statements are obtained from Booth and 'Gordon'.<sup>111</sup>

<sup>101</sup> Report PMS2 Agent 'No.6' to Melville Lee, 12 February, 1917 (second page). Home Office files. [Held: TNA > HO 144-13338-331997 – Transcription of reports].

<sup>102</sup> 'No.5 ['Gordon'] First Report on the Wheeldon Case', c.29 December 1916. undated typescript 'Reports, p.1, Home Office files [Held: TNA >HO 144- 13338-331997 – Transcription of reports].

<sup>103</sup> First Trial, 1st day, Booth EIC L22 in *Record* p. 231 [Held: Proceedings]; Melville Lee, *Short Resume of the Wheeldon Story*, 5 January 1917, p. 1. [Held: TNA > HO 144-13338-331997]. *Morning Post*, 8 February 1921, p. 4 col 4, 'Secret service. Disguised agent among revolutionists'. [Held: Newspapers].

<sup>104</sup> 1919 : 'No. 5 -Alex Gordon True Story p.16. [Held: Mason Family Papers > Rimington papers 1919 > 11 – Alex Gordon Stories > 13 – 1919 No. 5 True Story of Alex Gordon].

<sup>105</sup> 'No. 5 First Report on the Wheeldon Case', c.30 December 1916. undated typescript 'Reports' p.5, [Held: TNA> HO 144-13338/331997 > Transcription of reports].

<sup>106</sup> 1st Trial, Second Day, AW L 1995 in *Record* p .330; 2nd Trial, Fourth Day AW L4187 in *Record* p. 436. [Held: Proceedings].

<sup>107</sup> Gordon Statement, 18 January 1917 p. 5, Special Branch MEPO [Held: TNA > MEPO 9356 > MEPO 9356-05-04].

<sup>108</sup> Ex.52 Letter police transcription for 9 January 1917, addressed to 'W.M.W. [William Marshall Wheeldon] from 'A' [Alexander MacDonald]. [Held: Proceedings].

<sup>109</sup> 'No. 5 Third Report on Wheeldon Case': [Held: TNA > HO 144/13338/331997 > Transcription of reports].

<sup>110</sup> Letter Thomson to Troup, 14 January 1917. [Held: TNA > MEPO 9356 > MEPO 9356-01-01a Sheet 3].

KEY EVENTS		CONTEMPORANEOUS ACTIVITY
<b>Arrests, indictment and removal to London: 30 January – 8 February 1917</b>		
1917	<p>30 January: all 4 Defendants arrested – Alice Wheeldon and Alf Mason in Derby, Hettie Wheeldon in Ilkeston, and Winnie Mason in Southampton.</p> <p>31 January: Defendants appear before Magistrates Court held in Derby Guildhall (Court of Summary Jurisdiction).<sup>112</sup></p> <p>3 February: committal hearing</p> <p>7 February: indictments, before a Grand Jury, Derby County Assizes<sup>113</sup> and pleas of not guilty by all four defendants.<sup>114</sup></p> <p>8 February: before Kings Bench, Derby; agreed to remove from Derby to Central Criminal Court, Old Bailey, London.<sup>115</sup></p>	<p>By mid-February, a report by 'Gordon'/No. 5 comes to the attention of the Ministry of Labour, and recriminations begin about the use of such agents, given that their identity was 'bound to come out at trial in the course of evidence', and about PMS2 becoming 'a tainted source' of intelligence.<sup>116</sup></p> <p>Special Branch Metropolitan Police (MEPO) retains English and Welsh news clippings for February 1917.<sup>117</sup></p>
<b>Trials: March 1917</b>		
1917	<p>6–7 March: Defendants are tried before 12 jurors in No. 2 Court, Old Bailey ('1st Trial'). Enter pleas of not guilty.</p> <p>8 March: a juror reports ill, and the trial is terminated. 11 jurors are discharged but then re-empanelled together with a new juror. The 2nd Trial commences.</p> <p>9–10 March: 2nd Trial held.</p> <p>10 March: final day of hearings. Verdicts and sentencing:</p> <p>Alice Wheeldon – guilty of conspiracy to murder and guilty of soliciting and proposing.<sup>118</sup> 10 years, maximum penal servitude</p> <p>Alfred George Mason – guilty of conspiracy to murder. 7 years</p> <p>Winnie Mason – guilty of conspiracy to murder. 5 years.</p> <p>Harriet Ann Wheeldon – discharged.</p> <p>19 March: Defendants apply for leave to appeal</p> <p>2 April: Leave to appeal refused.</p>	<p>Intense publicity about the trial.<sup>119</sup></p> <p>Commissioner Edward Henry notes his 'inquietude' on reading 'Gordon' and Booth police statements for Wheeldon case.</p> <p>During the trial and at verdict, the Home Office receives letters and petitions from Leicester &amp; District Trades Council, and from Liverpool Suffrage Club, requesting that agents Booth and 'Gordon' be put in the witness box because 'fresh evidence will be forthcoming which will put a different complexion on the case'.<sup>120</sup></p> <p>From London, Sylvia Pankhurst, representing the <i>Workers' Suffrage Federation</i>, condemns the trial verdict in the <i>Labour Leader</i> for being based on the 'supposed evidence of an unknown spy who was not put in the witness box'.<sup>121</sup></p> <p>Hansard reports parliamentary debate on disclosing the identity of 'Gordon', the Crown's refusal to produce him, whether the trial was fair, and the propriety of using undercover agents.<sup>122</sup> The indefensibility of not producing 'Gordon' and fairness of the trial is analysed in <i>Law Journal</i> and political weekly <i>New Witness</i>.<sup>123</sup></p>

<sup>111</sup> Gordon Statement, 18 January 1917, Special Branch MEPO [Held: TNA > MEPO 9356 > MEPO 9356-05-04].

<sup>112</sup> Inspector Parker's instruction to Derby constables: [Held: TNA > CRIM 1-166 Parker].

<sup>113</sup> Indicted on nine counts in *Record* pp.124-127. [Held: Proceedings > Chapter 5 Indictments].

<sup>114</sup> First Trial, 1st day, 6 March 1917 in *Record* pp.229-230. [Held: Proceedings].

<sup>115</sup> In *Record* at p.128 [Held: Proceedings].

<sup>116</sup> By launching this prosecution, secret agents use and conduct were exposed. [Held: Addison Papers].

<sup>117</sup> [Held: TNA > MEPO 9356 > MEPO 9356-20 February 1917 news clips].

<sup>118</sup> In *Record* page 554 and page 125. [Held: Proceedings].

<sup>119</sup> Arrests and trial were extensively reported, nationally, for example by *The Times*, 5 February 1917, 'The Poison Plot Charge. Attorney-General's Statement. Secret Agent's Discoveries', p.4; 7 March 1917, 'The Poison Plot Charges. Trial at Old Bailey. Secret Agent's Evidence'; and internationally [Held: NEWSPAPERS > 1917 PUBLICITY EXAMPLES].

<sup>120</sup> [Held: TNA > HO 46-207]. [Held: TNA > HO 144-13338-331997-2-Leicester Groups].

<sup>121</sup> *Labour Leader*, 15 March 1917, p.10 col.4 [letter from Sylvia Pankhurst representing Workers' Suffrage Federation. [Held: Newspapers].

<sup>122</sup> 1917 House of Commons debates [Held: Hansard]. Efforts to identify 'Gordon' by Ramsay MacDonald MP for Leicester [Held: Ramsay MacDonald Papers].

<sup>123</sup> *Law Journal*, 17 March 1917; and *New Witness* [Held: Newspapers].

KEY EVENTS		CONTEMPORANEOUS ACTIVITY
<b>After the trials</b>		
1917	<p>After the trial, documents embargoed.</p> <p>Alice Wheeldon and Winnie Mason are held in Aylesbury Prison. Alf Mason is held in Brixton Prison.</p> <p>Already suffering from ill-health on imprisonment, Alice Wheeldon goes on hunger-strike and is force-fed.</p> <p>On account of her worsening health, Alice Wheeldon is transferred to Holloway Prison. She becomes very ill and is released on licence from 31 December 1917.<sup>124</sup></p> <p>Winnie's teaching certificate is cancelled in April 1917.<sup>125</sup> In October Hettie's certificate is suspended for two years, on the basis of an intercepted letter to Winnie in prison. It seems that her Socialist views had rendered her unfit to be a teacher.<sup>126</sup></p>	<p>Government sends 'Gordon' (William Rickard) and his wife to South Africa; they sail on 5 April 1917.</p> <p>After disclosures of the conduct of Booth and 'Gordon', PMS2 falls out-of-favour, its functions are transferred to Scotland Yard and MI5, and it closes on 23 April 1917.<sup>127</sup></p> <p>On 7 June 1917, the War Cabinet considers how to respond to a foreshadowed question in the House of Commons concerning 'Gordon's conduct as a PMS2 agent to be brought by Mr W.C. Anderson MP for Sheffield Attercliffe. Minister Addison explains to Cabinet that as this unit of the Ministry was 'not competent to discharge the duties allotted to it', he had given orders for its abolition.<sup>128</sup></p> <p>In June, with release of Irish political prisoners, the <i>Daily Herald</i> calls for 'an amnesty for all those in prison because of their opinions' (industrial prisoners and COs, especially absolutists), and for 'a new inquiry into the Wheeldon case' because 'Gordon' had been kept out of the trial.<sup>129</sup></p> <p>Lord Milner intercedes for release of 300 COs from prison on medical grounds.<sup>130</sup></p>
1919	<p>Alice Wheeldon dies in Derby. Publicised funeral, buried in unmarked grave for fear of vandalism.</p> <p>Prisoners Winnie and Alf Mason released 26 January 1919, after serving almost two years, coinciding with post-war amnesty for COs, including Will Wheeldon.</p> <p>They join sister Nellie, and friends in Croydon, London, where they work in the family dairy business.<sup>131</sup></p>	<p>In South Africa, Rickard/'Gordon' successfully petitions Office of Governor-General for financial support for his family (Lily and baby Mavis) to return to home to England.</p> <p>Back in Leicester, 'Gordon' (as 'Francis Vivian') attempts to sell his story to the Leicester Branch of the Socialist Labour Party. Through the secretary, <u>Francis Rimington</u>, in association with <u>Arthur McManus</u> and others, a meeting with 'Gordon' is held. Documents confirm his identity as 'Francis Vivian' (an alias), and his true name as William Rickard, married to Lily Rickard.<sup>132</sup></p> <p>Newspaper <i>Daily Herald</i> publishes photographs and interview with 'Alex Gordon'/'Francis Vivian' and subsequently publishes a book review, <i>The Skilled Labourer</i>,<sup>133</sup> suggesting Booth and 'Gordon' in the Wheeldon trial were provocateurs akin to 'Oliver, the Spy' who precipitated violence in the 1817 Pentrich/Derbyshire Rising.</p>

<sup>124</sup> Order of, and Notice of Release on Licence, 29 December 1917. [Held: TNA > HO 144-13338- 331997- Licence Release]

<sup>125</sup> Hansard, House of Commons, 17 May 1917, vol.93 col.[] [Herbert Fisher]. [Held: Hansard].

<sup>126</sup> [Special Branch] file 9356/82, Haywood to Thomson, 7 October 1919 [Not held].

<sup>127</sup> Hiley N. & Putkowski J. (1988), 'A postscript on PMS2', *Intelligence and National Security*, vol 3 issue 2, pp. 327-329; and Eirug A. (2017, p.759) 'The Security Services in South Wales during the First World War', *Welsh History Review*, 28/2, pp. 763-771 at p. 755 [Held: Articles]. Minutes of Addison & Kellaway [Held: Addison Papers > Sheet 03].

<sup>128</sup> War Cabinet Meeting 157, 7 June 1917, p.4, Minute 11, Question in the House of Commons regarding the man 'Gordon'. [Held: TNA > CAB 23-3-4].

<sup>129</sup> *Daily Herald*, 23 June 1917, p. 3, co. 1 'Wanted – amnesty in Britain' [Held: Newspapers].

<sup>130</sup> Hochschild Adam (2011). *To End All Wars – a story of loyalty and rebellion, 1914–1918*. Boston New York: Mariner Books Houghton Mifflin Harcourt. pp. 252, 254, 261–2, 352. ISBN 978-0-547-75031-6., cited by Eirug (2017) 'The Security Services in South Wales during the First World War', *Welsh History Review*, 28/2, pp. 763-771 at p. 755 [Held: Articles].

<sup>131</sup> Electoral Register 1925, Kensington and Chelsea: London, England, Electoral Registers 1847-1965 record for Winnie Mason: <http://search.ancestry.com>

<sup>132</sup> These documents – the 'Rimington papers' – were handed down to the son of Winnie and Alf Mason, Peter Mason, who suppressed them in 'protective silence' from his children until just before his death. [Held: Mason Family Papers > Rimington Papers].

<sup>133</sup> J.L.Hammond & B.B. Hammond (1919), *the Skilled Labourer, 1760-1832* reviewed by William Mellor, *Daily Herald*, 20 December 1919. [Held: Newspapers].



KEY EVENTS		CONTEMPORANEOUS ACTIVITY
1920	Hettie McManus (née Wheeldon) dies.	On 3 January 1920, in its editorial 'The Alex Gordon Scandal' <i>The Workers Dreadnought</i> refers to 'Gordon' having returned from South Africa four months ago.  In March, newspaper <i>Weston-super-Mare</i> publishes 'Gordon's' photograph and reports his visits to the newspaper's offices trying to sell his stories. In April, the <i>Gloucestershire Chronicle</i> publishes a piece under byline 'Alex Gordon'. <sup>134</sup>
1921	Will Wheeldon joins mission of Friends Emergency War Victims Relief to Buzuluk, Soviet Union.  Subsequently works as a translator at the Comintern and marries a Russian citizen.	Herbert Booth is awarded damages in action for criminal libel against the <i>Daily Herald's</i> publishers for suggesting he (and 'Gordon') had acted as provocateurs. This leads to further newspaper coverage and interviews with 'Gordon', Booth and their senior officers at PMS2. <sup>135</sup>
1937	Will Wheeldon executed on the order of Stalin.	Winnie Mason in Boscombe, Hampshire, public-speaking against the rise and dangers of fascism.
<b>Growth in interest in the Wheeldon and Masons trial</b>		
1947	30-year embargo lifts on Old Bailey (2nd) trial papers, marking the start of the episodic opening of records by The National Archives (formerly Public Record Office). See Table 3-1, page 67.	
1953	On <u>Winnie Mason's</u> death, family records of the case transferred to her son Peter Mason. Secreted in his private trunk until just before his death 1987.	
1963	<u>Alf Mason</u> dies.	
1979	Doctoral history student <u>Nicholas Hiley</u> begins researching the Wheeldon trial case while researching domestic surveillance during the First World War. As part of his research Hiley locates a private copy of the Proceedings, sold at auction, and arranges with the new owner, Graham Lyons, for the volume to be microfilmed by Cambridge University Library (eventually digitised by the Applicant in 2016 <sup>136</sup> ). Hiley also interviews Claude Lowe, former journalist colleague of 'Francis Vivian' at the <i>Leicester Mail</i> .  Hiley will turn out to be an invaluable source of specialist advice in developing an understanding of the history surrounding the trial and the interpretation of key records.	
1980s	Trial papers read by author Pat Barker in research for her <i>Regeneration</i> trilogy.  Historian Sheila Rowbotham accesses Lord Milner's papers <sup>137</sup> about PMS2 with reports by 'Gordon' in research for her play and book, <i>Friends of Alice Wheeldon</i> . <sup>138</sup>  Nicholas Hiley obtains many archival papers (e.g. DPP, Home Office).	
1983	BBC-TV drama-documentary <i>The Plot to Kill Lloyd George</i> broadcast in England, with Dr Hiley credited as historical consultant. Leads to contact with Mavis Rickard, daughter of 'Gordon'/William Rickard, and in 1987 authorisation of access to her father's records, including his patient record from Wiltshire Mental Hospital.	
1985	Between 1985 and 1988, Dr Hiley has four papers published relating to domestic surveillance during the war, including Ministerial correspondence about reports by 'Gordon'.	

<sup>134</sup> *The Workers' Dreadnought* was founded by Sylvia Pankhurst who visited Alice Wheeldon in Derby before she died. *Weston-super-Mare* 20 March 1920; *Gloucestershire Chronicle* 10 April 1920, page 6 col 3, 'The Red Peril. Socialism vs Patriotism. Specially written article by Alex Gordon' [Held: Newspapers].

<sup>135</sup> Transcript not located. Reports from 1921 in *Daily Herald*, *The Times*, *The Scotsman*, and *New York Times*. Reported in *The Daily Telegraph*, 8 February 1921, p.14, 'King's Bench'. [Held: Newspapers].

<sup>136</sup> [Held: Proceedings – Description of Document and Provenance].

<sup>137</sup> [Held: Milner Papers].

<sup>138</sup> *The Independent*, 17 April 2015 publicised the second edition of her *Friends of Alice Wheeldon* (2015).

<b>Applicant's awareness of the case and discovery of records</b>	
1986	In Australia, <u>Peter Mason</u> shows BBC video to his daughters, Chloë and Deirdre, with his commentary about the trial and their lives.
1987	Peter Mason dies, leaving legacy of family letters and package of papers, including the 'Rimington papers'. <sup>139</sup>
1988	Dr Hiley finds Sheila Mason, Peter's widow, living in Australia. <u>Chloë Mason</u> visits Dr Hiley, and reads the trial transcript. In Derby, Dr Hiley introduces her to the <u>Robinson</u> family, including an elderly woman who recalls 'Gordon' staying at her family home on 26 December 1917, and Robinson descendants Betty Keeling and Liz James. <sup>140</sup> They have kept memorabilia, and letters from prison from Alice Wheeldon.
1992–1993	British government notifies Sheila and Chloë Mason (in Australia) of its receipt of Russian files containing Stalin's authorisation of Will Wheeldon's execution in 1937. <sup>141</sup> British media report the news and interview Dr Hiley for background on Wheeldon trial. <sup>142</sup> <u>Deirdre Mason</u> and her partner, Jenni Neary, visit the Soviet Union seeking records of Will Wheeldon.
2004	Metropolitan Police permit researcher Julian Hendy to view Will Wheeldon files in relation to purges of British citizens in Stalinist Russia. <sup>143</sup> Hendy's discovery of Wheeldon files (MEPO 9356) is shared with Dr Hiley, and much later with Deirdre Mason.
2011	Play about the Wheeldon trial by Angela Truby performed in Derby. This re-ignites interest in Alice Wheeldon, resulting in a campaign by the Derby People's History Group (DPHG) to 'clear her name', and the playwright and Dr Hiley being interviewed together on BBC Women's Hour. <sup>144</sup>  Dr Hiley introduces Chloë Mason to Keith Venables, convenor Derby People's History Campaign, and the Mason family are invited to participate in the campaign. <sup>145</sup>  Chloë becomes aware of the possibility of applying for legal review of the convictions through the CCRC.
2012	August public forum convened by Derby History Society, supported by Local Studies Library of Derby City Council and DPHG, with speakers including Dr Hiley, Betty Keeling, and Chloë and Deirdre Mason. In London, Deirdre convenes a social afternoon with people who had already published and researched the Wheeldon case <sup>146</sup> before Deirdre and Chloë knew much about it.  Deirdre commissions archivist Philip Tomaselli to photograph copies of public records – the legal proceedings (DPP 1/50 and CRIM 1/166) and Home Office files.  Deirdre begins two-year process of obtaining scans of the Wheeldon archive held by the Metropolitan Police but not yet transferred to The National Archives (investigation, trial and Wheeldon-Mason correspondence 1917). <sup>147</sup>  Deirdre obtains copies of memoirs by prosecutors and PMS2 investigators, including F.E. Smith's (1926) <i>Famous Trials of History</i> . <sup>148</sup>  Chloë and Deirdre Mason write to CCRC with enquiries about a posthumous application; CCRC advise them to obtain counsel's opinion.

<sup>139</sup> Listed in the Document Description for the Mason Family Papers. [Held: Mason Family Papers].

<sup>140</sup> [Held: Statements from Third Parties].

<sup>141</sup> Letter from Foreign and Commonwealth Office to Sheila Mason, 15 September 1992. [Held: Mason Family Papers > 10 – F & CO 1992].

<sup>142</sup> *The Independent* 6 September 1992 [Held: Newspapers].

<sup>143</sup> [Held: TNA > MEPO Hendy correspondence].

<sup>144</sup> <http://www.bbc.co.uk/programmes/b018xy26>

<sup>145</sup> Statement by Keith Venables [Held: Statements from Third Parties].

<sup>146</sup> Dr Nick Hiley, Dr Ann Ferguson, Sheila Rowbotham, Pat Barker, Julian Hendy, and John Jackson.

<sup>147</sup> Archival file numbers allocated MEPO-9356 and MEPO-345, [Held: TNA > MEPO 9356 or MEPO 345].

<sup>148</sup> Smith F.E. 'A plot to murder Mr Lloyd George. One of my famous trials' in *The London Magazine* (undated), pp. 127-132, republished in 1926 as part of his *Famous Trials of History*, New York: Garden City Publishing, pp.223-230. [Held: Articles].

2013	<p>Chloë Mason develops her knowledge of contemporary law and practice relevant to the 1917 trial through classes with UNSW Professor Jill Hunter, an expert on the law of evidence and procedure relating to criminal trials.</p> <p>Professor Hunter arranges an introduction to David Crigman QC and Ben Williams at St Philips Chambers, Birmingham. Crigman advises on gaps in material facts that would need to be filled from primary and secondary sources by visiting archives, reading contemporaneous newspapers, obtaining expert assistance in interpretation of Mason family papers written in 1917, 1919, and 1948.</p> <p>Public ceremony by Derby City Council and Derby Historical Society to affix blue plaque to house in recognition of Alice Wheeldon.</p> <p>British government's commemoration of Centenary of the First World War involves support for education about the war, through five Engagement Centres funded by the Arts &amp; Humanities Research Council, 2014-2019. Wheeldon case included in several conferences and workshops by these centres.</p>
2014	<p>Intensive research by Chloë Mason in England.</p> <p>Expert interpretation of the 1919 'Rimington papers' (part of the Mason family papers) by Dr Hiley reveals further evidence of 'Gordon's' identity as William Rickard and the significance of a note by <u>Arthur McManus</u><sup>149</sup> listing a series of 1913 articles in <i>Ideas</i> magazine entitled 'Broadmoor', which McManus believed had been written by Rickard.</p>
2015	<p>Chloë Mason, together with librarian and cousin Judy McSorley, visit London to access the 'Broadmoor' articles, now held by the British Library.<sup>150</sup> Through these articles they track several court, hospital and workhouse records for Rickard, and many of his aliases.</p>
2016	<p>Dr Hiley discovers materials in the Office of the South African Archives from 1919 supporting the importance of 'Alex Gordon/William Rickard's role in the case, and his repatriation, with his family, to England.</p> <p>Chloë Mason and Dr Hiley present on the history of the trial in Leeds during a community day encouraging public engagement in history.<sup>151</sup></p> <p>Chloë contributes a poster presentation, 'The National Archives: the key to the hidden story of Alice Wheeldon', to the <i>Voices of the Home Fronts</i> conference convened by the National Archives.</p>
2017	<p>Memorial vigil held outside the Royal Courts of Justice, convened by the Women's International League of Peace &amp; Freedom. Chloë and Deirdre Mason (with her partner) confer with counsel, Ben Williams and Andrew Smith QC, about the CCRC application.</p>
2018	<p>Derby City Council institutes a street restoration project and invites nominations for a 'walk of fame'. By public acclamation, Alice Wheeldon is among the first eight people commemorated by a 'star'.</p>
2019	<p>Derby City Council names a public meeting room in the Council House, the 'Alice Wheeldon Room'.</p>

<sup>149</sup> [Held: Mason Family Papers > Rimington Papers 1919 > 10].

<sup>150</sup> [Held: NEWSPAPERS > Ideas].

<sup>151</sup> Hiley & Mason (2016) 'Alice Wheeldon, Internal Security and Justice in Wartime, or in any Time of Terror?' presented at one-day community engagement event as part of the three day international conference 'Resistance to War 1914-1924', three day international conference Leeds, UK.

Organised for *Legacies of War Centenary Project* by Professor Ingrid Sharpe who provided a statement in support of this application [Held: Statements from Third parties].

## 2. STATUTORY CRITERIA AND DISCRETION

### Skeleton Argument

#### *Criteria for CCRC to refer cases for appeal (Section 13, Criminal Appeal Act 1995)*

- 2.1. As the Commission will be well aware, s13 of the Criminal Appeal Act 1995 says:
- (1) A reference of a conviction, verdict, finding or sentence shall not be made under any of [sections 9 to 12B] unless –
    - (a) the Commission consider that there is a real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made,
    - (b) the Commission so consider –
      - (i) in the case of a conviction, verdict or finding, because of an argument, or evidence, not raised in the proceedings which led to it or on any appeal or application for leave to appeal against it, or
      - (ii) in the case of a sentence, because of an argument on a point of law, or information, not so raised, and
    - (c) an appeal against the conviction, verdict, finding or sentence has been determined or leave to appeal against it has been refused.
  - (2) Nothing in subsection (1)(b)(i) or (c) shall prevent the making of a reference if it appears to the Commission that there are exceptional circumstances which justify making it.
- 2.2. The bulk of the skeleton argument, and the material compiled by the Applicant, is concerned with persuading the Commission as to the existence of the ‘real possibility’ required by s13(1)(a).
- 2.3. Regarding s13(1)(b)(i) the Defendants sought leave to appeal their convictions by a Notice dated 19 March 1917 [Held: TNA > DPP 1-50 > *Application and grounds of appeal 1917.pdf*] on three grounds:
- (1) On the point of law:

That the prosecution kept out of the way the most material witness, to wit, one Alec Gordon and thereby perverted the course of justice to the detriment of the appellants.
  - (2) That the learned Judge misdirected the jury in so far

That he did not sufficiently point out to the jury that the evidence of Alice Wheeldon as to why Alec Gordon wanted the poison remained uncontradicted.

That he did not sufficiently point out to the jury the importance of the paper of instructions Exhibit No. 40, to the case for the defence.
  - (3) That the verdict of the jury is so against the weight of evidence as to be unreasonable and incapable of support.

- 2.4. Regarding s13(1)(c), permission to appeal on the above grounds was refused by Lord Reading LCJ, Avory & Rowlett JJ on 2 April 1917 [Held: TNA > J 81-6 *Court of Criminal Appeal Register 1917.pdf*]
- 2.5. Whilst the original application for leave to appeal raised the absence of 'Gordon', **the argument here raised is fundamentally different and is based on evidence unavailable to the Defendants:** it is now known that 'Alex Gordon' was an alias of William Rickard, a convicted criminal of unstable temperament, which was not disclosed to the Defence by the Crown. Additionally, the Applicant seeks to rely on the grounds of irregularities in the trial concerning the jury and the submission of evidence of bad character (see §1.20 above).

### ***Discretion of the CCRC (Section 9, Criminal Appeal Act 1995)***

- 2.6. Sec. 9 of the Criminal Appeal Act 1995 states:
  - (1) Where a person has been convicted on indictment in England and Wales, the Commission -
    - (a) may at any time refer the conviction to the Court of Appeal and...
  - (2) A reference under subsection (1) of a person's conviction shall be treated for all purposes as an appeal by the person under section 1 of the 1968 Act against the conviction.
- 2.7. It is acknowledged that the CCRC has to scrutinise posthumous applications for referral with care, for sound public policy reasons. It is submitted, however, that there are powerful grounds positively justifying referral of this unique case, which accord with the commission's casework policy on the exercise of its discretion.
  - 2.7.1. The case is 'historic' in more than one sense. It is old but of real historical significance, with meaningful contemporary resonance.
  - 2.7.2. The convictions were for offences of the utmost gravity: in terms of the nature of the crime fundamentally alleged; the status of the target; and the socio-political context in which the alleged conspiracy was formed.
  - 2.7.3. The core premise of the application is that the conduct of the case constituted an affront to justice, the Defendants' right to a fair trial having been sacrificed in the name of political interests.

### ***Appeals in cases of death (Section 7, Criminal Appeal Act 1995)***

- 2.8. As a direct descendant of the Defendants, with a substantial interest in the outcome of the appeal, the Applicant qualifies as an 'approved person', as required by the Court of Appeal in cases where the Defendants are deceased. The Applicant's substantial interest in the appeal is further described in sections 3.1 and 3.2.

## Supporting Material

- 2.9. In 2012, the Applicants corresponded with the CCRC to obtain advice about standing (s44), discretion in relation to 'very old cases', especially with respect to *Knighton*<sup>152</sup>, and access to closed material at Broadmoor (s17).<sup>153</sup>
- 2.9.1. In reply, Matthew Humphrey, then Acting Director of Casework for the Commission:
- confirmed the Commission's ability 'to consider applications on behalf of deceased persons in certain circumstances'
  - recommended the casework policy *Applications in Respect of Deceased Persons* and consideration of *Hanratty* [2002] and *Ellis* [2003].<sup>154</sup>
  - suggested taking legal advice.
- 2.10. Since 2012, the Commission has updated two policies that apply concurrently:
- *Discretion in Referrals*, 2017<sup>155</sup>
  - *Applications in Respect of Deceased Persons*, 2017 ('Deceased Persons')<sup>156</sup> which at paragraph 14 states 'the general principles described in the policy on *Discretion in Referrals* will also apply.'
- 2.11. The following material is provided in support of the Skeleton Argument.
- Guidance from CCRC casework policies on referral of 'old' cases (see below)
  - Application of the factors for considerations set out in *Discretion in Referrals*, paragraph 6 (see page 50)
  - Application of *Deceased Persons* (see page 53):
 

The qualification of the Applicant as an 'approved' person with a family interest (paras 1&2), and

This Applicant having substantial other interests, with these encompassing an emotional interest, and bearing upon the question of 'any delay in making an application' (paras 4 to 7).
  - A listing of some 'old cases' referred by the CCRC – Table 2-1 (page 48).

### *Guidance from CCRC casework policies on referral of 'old' cases*

- 2.12. CCRC casework policies provide guidance on the interpretation the Commission gives to s13, and the exercise of its discretion, s9. Lord Bingham in *Pearson* [1999]:
- 'The exercise of the power to refer depends on the judgment of the Commission and it cannot be too strongly emphasised that this is a judgment entrusted to the

<sup>152</sup> *R v Knighton* Court of Appeal – Criminal Division, October 17 2002 [2002] EWCA Crim 2227.

<sup>153</sup> Correspondence from Applicants (7 August 2012) reply from the CCRC, Matthew Humphrey, Acting Director of Casework, 24 October 2012. [Held: Mason Family Papers > Chloë Mason Papers Correspondence].

<sup>154</sup> *Hanratty, R v* [2002] EWCA Crim 1141 (10th May, 2002); *Ellis v R* [2003] EWCA Crim 3556 (08 December 2003), Kay LJ, Silber, Leveson JJ.

<sup>155</sup> 15 September 2017 #1870706. Available from <https://ccrc.gov.uk/publications/ccrc-casework-policies/>

<sup>156</sup> 15 September 2017 #1041875 Available from <https://ccrc.gov.uk/publications/ccrc-casework-policies/>

Commission and to no one else.': Lord Bingham of Cornhill CJ, *R v CCRC, ex parte Pearson* [1999] 3 All ER 498, 505C.

### ***Background to current CCRC policies***

- 2.13. The Court of Criminal Appeal (Criminal Division) had been querying the merit of the Commission's discretion in referring of some 'very old cases' - convictions made a long time ago where the convicted individuals had died. In such 'very old cases', the Court suggested that the net benefit of referral was limited to the (scant) public interest and personal benefit to the applicant as in *Knighton* [2002] para 73; it also complained about costs to the Court and resources expended.
- 2.14. In 2004, Professor Graham Zelic, as the incoming Commission Chairman took the opportunity to respond on the subject of very old cases in his '2004 Zelic Memorandum' to the Select Committee for Home Affairs of the House of Commons.<sup>157</sup>
- 2.15. In *Westlake* [2004], Burnton J concurred with the Commission that referral was unmerited having considered the CCRC's Case Committee's reasons (for its refusal to make a reference).<sup>158</sup> Burnton J expounded that the 'dictates of fairness' mean:  
'...different considerations apply when the person is deceased; and dictates of fairness are diminished further when the conviction is historic'<sup>159</sup> [merely a very old case rather than being one of historic importance].
- 2.15.1. It is not so much that there is a different rule for posthumous cases rather:  
'the requirements of fairness and justice are different when the convicted person is dead'.<sup>160</sup>
- 2.15.2. In *Westlake*, the deceased Defendant was convicted in 1950. For *Westlake*, the elapse between conviction and Commission referral was longer than in *Bentley* where it was said:  
'Rarely has the court been required to review the safety of a conviction recorded over 45 years earlier.'<sup>161</sup>
- 2.15.3. In *Westlake*, aside from the age of the case or elapse until referral, the Court upheld the Commission's reasons for its refusal in making a reference in this case on the basis of a variety of factors that weighed against sufficient benefit for a referral to be made. The factors in that case included the previous grant of a free royal pardon in 1966 and other compensation to the representative appellants. The Commission drew upon *Westlake* [2004] in

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<sup>157</sup> The '2004 Zelic Memorandum': *Memorandum submitted by the CCRC* ['Memorandum'], (2004) Select Committee on Home Affairs, House of Commons, paras 14-23, on *Ellis*: paras 19-21, of relevance then to exercising discretion in favour of referring Wheeldon: paras 22 and 18.

<https://www.publications.parliament.uk/pa/cm200304/cmselect/cmhaff/289/4012708.htm>

<sup>158</sup> *Westlake v CCRC* [2004] EWHC 2779 (17 Nov 2004), para 23, with Collins J para 37 concurrence. para. 17.

<sup>159</sup> *Westlake* para. 23.

<sup>160</sup> *Westlake* para. 24.

<sup>161</sup> *R v. Derek William Bentley (Deceased)* [1998] EWCA Crim 2516 (30 July 1998).

codifying how it would exercise its discretion for 'very old cases' or where the applicant is deceased.

- 2.16. In a reference case, as here, the issue becomes more acute if the appellants are deceased. The fact that a case has caused controversy and debate over time or serious impropriety which bears on the integrity of the criminal justice system,<sup>162</sup> could justify a reference to restore confidence, whether the conviction is ultimately upheld or quashed.

*Table 2-1. Some old cases referred by the CCRC*

Name	Conviction	Application/ Court decision	Est. time elapsed (yrs)*	Review case citation
Wheeldon	1917	2019	102	...
Knighton	1927	2001	74	<i>Knighton, R v</i> [2002] EWCA Crim 2227 (17 October 2002)
Kelly	1949	1990s–2001	45	<i>Kelly &amp; Anor, R v</i> , Court of Appeal - Criminal Division, October 28, 2003, [2003] EWCA Crim 2957
Westlake	1950	2003	53	<i>Westlake v Criminal Cases Review Commission</i> [2004] EWHC 2779 (Admin)
Mattan	1952	1997	45	<i>R. v. Mahmoud Mattan</i> [1998] EWCA Crim 676
Bentley	1953	c.1990s	45	<i>R v. Derek William Bentley</i> (Deceased) [1998] EWCA Crim 2516 (30 July 1998)
Ellis	1955	2002	47	<i>Ellis v R</i> [2003] EWCA Crim 3556 (08 December 2003)
Hanratty	1962	1997	35	<i>Hanratty, R v</i> [2002] EWCA Crim 1141 (10th May, 2002)
Luckhurst	1966	2010	44	<i>R v Luckhurst</i> (deceased) [2010] EWCA Crim 2618
Pendleton	1986	1999	13	<i>Pendleton, R v.</i> [2001] UKHL 66 (13th December, 2001)

\* Between conviction & referral

### **Revision of the Discretion in Referrals casework policy**

- 2.17. Since 25 October 2016, the Commission's *Discretion in Referrals* policy<sup>163</sup> recognised the need to adapt its criteria due to budgetary constraints and the need to avoid delayed determinations.<sup>164</sup> Although the 'very old cases' were a 'tiny proportion' of

<sup>162</sup> Taylor P. (2012) *Taylor on Criminal Appeals*, OUP, p. 462, para 12.123.

<sup>163</sup> CCRC *Casework policies: Discretion in Referrals* (including applications based on a change in the law), updated in June 2015 #1318153; updated, on 25 October 2016 #1870706; and again, on 15 September 2017 #1870706. Available from <https://ccrc.gov.uk/publications/ccrc-casework-policies/>

<sup>164</sup> Citation of research for the Commission in 2013 on casework policy for exercising its discretion to refer, being undertaken by Carolyn Hoyle, Law School, University of Oxford, Faculty of Law *News* (29 July 2013) <http://www.law.ox.ac.uk/newsitem=645> [Access no longer available], referenced at page 307, footnote 262 in Hamer David



the CCRC's caseload (at least as reported in 2004),<sup>165</sup> the Commission since 2017 marked its course by setting out factors which it shall regard when reviewing applications.<sup>166</sup>

***Current casework policy: Discretion in Referrals, September 2017***

- 2.18. The opening paragraph of this policy<sup>167</sup> lists a number of old cases in which the Court of Appeal has acknowledged the retention of the Commission's power of discretion.
- 2.19. In one referral by the Commission, *Luckhurst* [2010]<sup>168</sup> the Commission had requested the Court's opinion on their approach in referring to the Court of Appeal 'old cases like this'. In the circumstances of this particular case, the Court put to the Commission that it reverse its 'rather negative approach: namely that there was no justification not to refer the case. It should be the other way around; there should be a positive justification for referring it'. The Court emphasised that 'it was for the Commission to exercise its discretion'.
- 2.20. The 2017 policy retains the principles the CCRC adopted for exercising its discretion, and maintains the benefit resulting from a referral to the criminal justice system or to the applicant. Paragraph 9 states:
- 'An important public interest consideration is that, generally speaking, people should remain convicted only of those offences where the conviction is "safe". Some guidance was offered to the Commission by Lord Woolf LCJ in *Smith (Wallace Duncan)* [2004] EWCA Crim 631, para 29, when he said: "The Commission's role is to refer those cases to this Court where the Commission considers that there may have been some real injustice or there are other exceptional circumstances which justify referring the case."'
- 2.21. The Commission's consideration of the public interest is one to be balanced with private interests:
- 'Para 5. Nothing in this memorandum [Casework Policy] seeks to limit or circumscribe the Commission's discretion and it should consider exercising its discretion not to refer in any appropriate case, having regard to the public interest and the private interest which need to be balanced.'
- 2.22. The Commission's 2017 policy lists six factors that it considers when deciding 'whether to exercise its discretion not to refer'. These revised factors now incorporate considerations of cost, deceased individuals, and 'remedy already secured'.

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(2014) 'Wrongful convictions, appeals, and the finality of law principle: the need for a Criminal Cases Review Commission', *UNSW Law Journal*, vol 37(1), 270-311. [Held: Articles].

<sup>165</sup> 'Zellick' Memorandum paras 14,15, and 22.

<sup>166</sup> More recently, see: CCRC Corporate Plan 2015-2018, relevantly pages 1,3, 6 and 7. [www.ccrcc.gov.uk/wp-content/uploads/2015/01/CCRC-Corporate-Plan-2015-to-2018.pdf](http://www.ccrcc.gov.uk/wp-content/uploads/2015/01/CCRC-Corporate-Plan-2015-to-2018.pdf)

CCRC Business Plan 2016/2017 Extracts pages 1,5, 6-8. [www.ccrcc.gov.uk/wp-content/uploads/2015/01/CCRC-Business-Plan-2016-17.pdf](http://www.ccrcc.gov.uk/wp-content/uploads/2015/01/CCRC-Business-Plan-2016-17.pdf)

<sup>167</sup> CCRC *Casework policies: Discretion in Referrals* p. 1, updated 15 September 2017 #1870706.

<sup>168</sup> *Luckhurst* [2010] EWCA Crim 2618, Judge LJ, Irwin, Holroyde JJ., Paras 53-55.

Paragraph 6 reads:

'The Commission will have regard to the following factors [enumerated for convenience] in considering whether to exercise its discretion not to refer:

'[Factor 1] 'The public interest, including the cost to the public purse involved in an Appeal\* and in correction of an injustice.'

'[Factor 2] The age and seriousness of the conviction, and whether the convicted person is deceased\*\*.

'[Factor 3] The interests of third parties.

'[Factor 4] Whether the Defendant was denied a basic constitutional right.

'[Factor 5] Whether the prosecution constituted an abuse of process or affront to justice.

'[Factor 6] Other remedies already secured.'

\* Which has greater relevance in circumstances where the convicted person is deceased – see para 22 of *Westlake*

\*\* See, for example, paragraph 22 of *R (Westlake) v CCRC* [2004] EWHC 2799 and paragraph 54 of *R v Luckhurst (deceased)* [2010] EWCA Crim 2618.

Paragraph 7 reads:

'The above list is illustrative only and is in no sense meant to be comprehensive.'

### ***Applying the Discretion in Referrals policy to Wheeldon***

2.23. Factors 2 and 6 are first considered. The other factors are more complex and overlap.

#### ***Factor 2 – The age and seriousness of the conviction, and whether the convicted person is deceased***

2.24. In *Wheeldon*, the three convicted Defendants are deceased.

2.25. The convictions of three persons are now over 100 years old. These convictions are for the very serious offence of soliciting to murder (David Lloyd George and Arthur Henderson).<sup>169</sup> It ranks in the highest class of criminal offences.<sup>170</sup>

2.26. From a comparative table (see Table 2-1, page 48), the *Wheeldon* trial is older than other cases referred by the CCRC to the Court of Appeal for review. However, the *Wheeldon* case is distinguished by that fact that it would not have been possible to make an application for referral earlier. Key public records pertinent to the grounds of appeal were suppressed after the trial, and have been released intermittently only from 1947, with the most recent records discovered by the Applicant in 2016 (see Table 3-1, page 67).

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<sup>169</sup> Section 4, *Offences against the Person Act 1861*.

<sup>170</sup> CPS, Table of Offences (Class Order), Annex 18, Graduated Fee Scheme C, *Manual of Guidance*, with effect 1 March 2012, page 1. [www.cps.gov.uk/publications/docs/annex\\_1b\\_table\\_of\\_offences\\_scheme\\_c\\_class\\_order.pdf](http://www.cps.gov.uk/publications/docs/annex_1b_table_of_offences_scheme_c_class_order.pdf)

Factor 6 – Other remedies already secured

2.27. No remedy has been secured, distinguishing it from both *Westlake* [2004] and *Luckhurst* [2010]. Because there has been no official recognition of the injustice created by the convictions flowing from the Wheeldon trial, there is heightened importance for the Commission to review and refer this case to the Court of Appeal.

Factor 1 – The public interest, including costs borne by the State

2.28. The time and cost pressures on the CCRC will be substantially reduced by the Applicant's comprehensive presentation of primary documentary evidence, including evidence not available to the defence, discovered by expert archivists and historians. The application is detailed and prepared in conjunction with counsel. Further, should these convictions be referred, costs for the Crown investigating and preparing for the appeal, and the Court of Appeal's time are unlikely to be high.

2.29. On the public interest with respect to the merit of reviewing of old cases, justification for referring Wheeldon also lies in public confidence, as the CCRC put it:

'...there may also be a question of confidence in the administration of criminal justice where the correctness of a conviction has long been a matter of public debate and controversy.'<sup>171</sup>

2.30. The personal interest of the Applicant, as a third party, and of those who have provided supporting statements (see Table 1-1, page 35), is impelled by the much larger public interest that makes Wheeldon a justifiable 'exceptional case' for review.

Factor 3 – The interests of third parties

2.31. Public concern about whether the convicted persons received a fair trial was expressed in 1917 and in every decade since then, despite the suppression of public records.

2.32. From the late 1970s, professional historians<sup>172</sup> were granted professional privilege to closed private and public records. Their research led them to begin to question the fairness of the trial more thoroughly.

2.33. The benefits of a referral by the CCRC are now recognised by a broad group of people, and statements in support of this application have been obtained from third parties concerned by this apparent miscarriage of justice. These statements are listed in Table 1-1, page 35.<sup>173</sup>

Factor 4 & Factor 5 – Denial of constitutional right; abuse of process or affront to justice.

2.34. The non-disclosure of a material witness, 'Alex Gordon', by the prosecution is presented as one of the grounds for review.

2.35. The lawyer John Jackson has published an opinion on the significance of the Wheeldon trial in its constitutional context, referring to the priority given by the

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<sup>171</sup> Memorandum, para 18.

<sup>172</sup> Dr Hiley, Professor Rowbotham, and Julian Hendy for example.

<sup>173</sup> [Held: Statements from Third Parties].

prosecution to withholding 'Gordon' ostensibly for reasons of national security as the price of a fair trial. He observed that *Wheeldon* 'illustrates a dilemma that exposes the very foundations of democracy' with a government determined to pursue policies in the national interest and at a cost to the rights to dissent and to fair trial.<sup>174</sup>

- 2.36. Overall, it seems that viewing *Wheeldon* purely as a 'historic case' would risk obscuring the benefits of referral in the interests of fairness and justice. In this application for *Wheeldon*, the production of new information, concealed at trial, about 'Alex Gordon' – his identity, his criminal antecedents, use in investigation and exclusion from proceedings – is substantial. It underpins the grounds relating to the absence of 'Alex Gordon' that was deliberately contrived from the proceedings.
- 2.37. Aspects of the trial itself, including the inappropriate introduction of bad character evidence and the defective empanelling of a second jury, are also presented as grounds for review. Both constitute affronts to justice and abuse of process.

### *Distinguishing the application for Wheeldon from the circumstances in Knighton*

- 2.38. In 2002 the Court rejected an appeal for a 1927 conviction – *Knighton*.<sup>175</sup> In its conclusion the Court commented on the CCRC's referral of the case.
- 2.39. The Court observed that in exercising its discretion to refer the case, the CCRC had allowed suspicion to be directed from the convicted, William Knighton, to his own father. This effectively 'opened to the public gaze' a period of family history of which many Knighton descendants would otherwise have been ignorant. Further no issues of 'exceptional notoriety, and therefore public interest'<sup>176</sup> had been demonstrated.
- 2.40. By contrast, in the case of the *Wheeldon* application:
- 2.40.1. Suspicion could not fall on anyone else if the convictions were quashed.
- 2.40.2. The Applicant, herself a descendant of the Defendants, has extensively discussed the application with other descendants, who are strongly supportive.
- 2.40.3. Descendants of others who may be discredited by a referral have also expressed support for the application. The only descendant of 'Gordon', Mavis Jones, was satisfied by the prospect of using discovered records of her father, such as his record of being a patient in a mental hospital, to help clear the names of the *Wheeldons*.<sup>177</sup> Similarly, a great granddaughter of Emmeline Pankhurst, Helen Pankhurst, expressed support for this application to proceed.<sup>178</sup>

<sup>174</sup> Lawyer and Chairman Emeritus, Mischcon de Reya, and founding director of *Open Democracy*. "Alice *Wheeldon* and the Attorney-General", 17 April 2007, *Open Democracy* [www.opendemocracy.net/globalization-institutions\\_government/wheeldon\\_attorney\\_4540.jsp](http://www.opendemocracy.net/globalization-institutions_government/wheeldon_attorney_4540.jsp)

Also Jackson (2007) 'Losing the Plot', *History Today*, vol 57, Issue 5. [Held: Articles]

<sup>175</sup> *Knighton*, R v [2002] EWCA Crim 2227 (17 October 2002).

<sup>176</sup> *Knighton*, R v [2002] EWCA Crim 2227 (17 October 2002). at paragraph 73.

<sup>177</sup> [Held: Hiley Papers > 1987 Jones authorisation].

<sup>178</sup> [Held: Statements from Third Parties].

- 2.40.4. The Court also observed that the Knighton application did not meet the threshold requirement for 'significant new information'. The new material provided in this application, on the other hand, demonstrably fulfills this requirement.

### *Qualifications of the Applicant as an 'approved person' under the Deceased Persons policy*

- 2.41. The Commission's casework policy *Applications in respect of Deceased Persons* ('Deceased Persons') commences with the requirement for an applicant for review to be 'approved' by the Court of Appeal.<sup>179</sup>
- 2.42. Burnton J in *Westlake v CCRC* [2004] stated:  
 'In the case of a posthumous appeal there is a further requirement for an effective appeal, namely that there is a person who may be approved by the Court of Appeal under section 44 of the Criminal Appeals Act 1968 to begin the appeal and to conduct it.  
 'The Commission accepts that Timothy Evans' half-sister might be approved by the Court of Appeal under that section, and it is unnecessary to refer to it further.'<sup>180</sup>
- 2.43. The Applicant meets the definition of an 'approved' person under *Deceased Persons* (paragraphs 1, 4 to 7) in having family relationships with the Defendants, and holding 'substantial, other interests'. Supporting material about family relationships are set out below, and the impacts as part of 'substantial, other interests' in Part 3.

### *Family relationship to the Defendants*

- 2.44. Chloë Mason (born 1949) is the daughter of Peter Mason (1922-1987), only child of Winnie Mason and Alf Mason. She is the great granddaughter of Alice Wheeldon. The Wheeldon-Mason family tree is set out in Figure 2-1 below.<sup>181</sup>
- 2.45. Her sister, Deirdre Mason, contracted lymphoma in 2007 leading to protracted periods in hospital with invasive therapies and precarious health. From 2012 to 2017, Deirdre actively engaged in archival research to support this application prior to succumbing to her illness in 2017.
- 2.46. Until his sudden death in late 2018, Paul Marshall Mason, Chloë's brother, urged her to make this application and supported research developing it. Paul had been given the middle name 'Marshall' to reflect the family's connection to Alice Wheeldon, whose maiden name it was.
- 2.47. In making this application, Chloë has support from living family members:
- Orlando Mason, Paul's son, great great grandson of Alice Wheeldon, and great grandson of Winnie and Alf Mason
  - Laurence Marshall, great grandson of Alice's brother, Charles Marshall

<sup>179</sup> Paragraphs 1& 2, CCRC. *Applications in respect of Deceased Persons* ('Deceased Persons'). *Casework Policy* This current version was updated on 15 September 2017, #1041875  
<https://ccrc.gov.uk/publications/ccrc-casework-policies/>

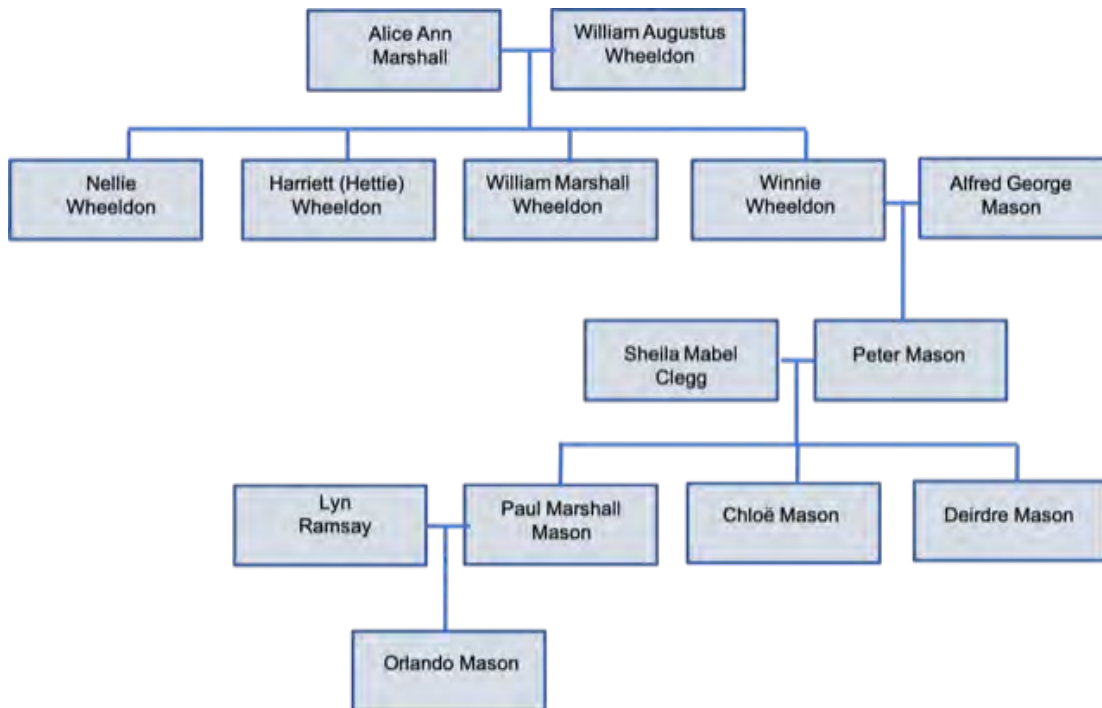
<sup>180</sup> EWHC 2779 (Admin) (17 November 2004) [para 19].

<sup>181</sup> Extracted from Wheeldon Family Tree: Ancestry.co.uk ... Login: Chloemason1 ..Pwd: 4z3zkby

- Fiona Cameron, great great granddaughter of Alice's sister, Elizabeth Gossage
- Judy McSorley, Alf Mason's second cousin.

No members of the family have voiced opposition or disquiet regarding this application.

*Figure 2-1. The Wheeldon-Mason family tree*



*Figure 2-2. The Applicant and her sister: Chloë Mason (left) and Deirdre Mason, Sydney 2013*



Photo credit: Edwina Pickles for Good Weekend, Sydney Morning Herald (Fairfax Media), 20 April 2013.

### *Family continuity and knowledge of the case*

- 2.48. The Applicant is a direct descendant of the Defendants.
- 2.49. In 1953, the Applicant (born 1949) with her immediate family (parents Peter and Sheila Mason, sister Deirdre, and brother Paul Marshall Mason) moved into the

house in Welwyn Garden City owned by Alf Mason, where Winnie Mason had lived until her death in May of that year. At that time Alf Mason lived in London, where he worked in a pharmacy. In the late 1950s and early 1960s Deirdre and Chloë recalled their family visiting him in his pharmacy, near Holborn in central London.

- 2.50. However, Chloë and Deirdre grew up not knowing anything of the convictions or trial. Their parents, and extended family, created an effective cone of silence.
- 2.51. As explained by the Applicant in her statement (page 29), it was not until 1986, only shortly before his death, that Peter revealed to the Applicant and her sister Deirdre, as adults, the trial and the extensive personal consequences, distress and damage after a lifetime of concealment.
- 2.52. Family documents about the trial – the Mason Family Papers – were passed on to Chloë and Deirdre from their father, Peter, by their mother, Sheila.
- 2.53. In passing on these documents, Sheila Mason reinforced a thread of continuity between generations, including those Defendants who the Applicant never met (Alice and Hettie).
- 2.54. Table 1-2 ‘Contextual chronology’, page 35, shows that there were two phases of acknowledgement and activity: in the late 1980s when the Applicant and her family tried to understand the trial, its circumstances and what had happened to her relatives, and from 2012 through the impetus of a new campaign to ‘clear Alice’s name’ (instigated by the Derby People’s History Group<sup>182</sup>) and ultimately, research for this application for post-appeal review.

#### *Continuity by way of shared values and beliefs*

- 2.55. Peter Mason held beliefs that show a family continuity of social and political engagement, especially against war. He was like his forebears Alice, Hettie, Will, Winnie and Alf in this respect.
- 2.56. Peter’s wife, Sheila Mason, was a member of the Society of Friends (Quakers) for whom their peace testimony is central. As children and teenagers, we attended Quaker Sunday school (in England and Australia). Alice Wheeldon’s gave her ‘liking of Quaker practice’,<sup>183</sup> as an explanation to the judge of her election to affirm rather than swear on the Bible, making the criminal allegations against her particularly galling as they were antithetical to her pacifist beliefs and conduct of her family.
- 2.57. The family’s move to Australia coincided with Australia’s entry to the Vietnam War and the subsequent introduction of conscription. Both Peter and Sheila took an active role in campaigning against the war and conscription. Both were public speakers; Sheila participated in Save our Sons, a group that contravened wartime restrictions to

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<sup>182</sup> Convenor, Keith Venables [Held: Statements from Third Parties].

<sup>183</sup> Quakers refusal to take oaths is based on their commitment to truth-telling, personal integrity and willingness to speak truth to power. Alice Wheeldon was not a member of the Society, although many associations and Derby Quakers contributed to the Derby Defence Fund, to raise funds for legal costs. From the outset of war, Quakers were prominent in opposing the war and conscription, consistent with the ‘peace testimony’: e.g. Ceadel Martin (2000), *Semi-detached idealists: the British peace movement and international relations, 1854-1945*, Oxford: OUP.

support men facing conscription enabling them to consider conscientious objection. Peter visited COs in prison, and was a candidate for the Australian Senate on a ticket opposing the war and conscription. Their support for conscientious objectors echoed the Wheeldons' actions – 50 years earlier.

- 2.58. Peter and Sheila also supported engagement by their children, including the Applicant, in debates and protests, such as ending the war (and conscription) in Vietnam, civil liberties and women's issues, also echoing the lives of Alice and her children.

### *Delay in making an application*

- 2.59. Paragraph 7 of *Deceased Persons* states:

'The CCRC will have regard to any delay in making an application, as that may bear upon the question whether the person making the application has a substantial interest. For example, if the applicant has not **tirelessly pursued** the issue but has only recently taken it up many years after the conviction or death of the convicted person, it would tend to indicate a less than substantial interest. This will be most relevant in cases where the basis for a review is not in any way contingent upon developments (for example in science or medicine) that had not occurred earlier.'

- 2.60. Evidence relating to the timing of the application and the Applicant's tireless pursuit of the issue is presented in Part 3 (page 63).

### *Summary*

- 2.61. In relation to the Commission's *Discretion in Referrals* policy (2017), the reasoning for referral in this application demonstrates that 'a positive justification' could be sustained by the Commission for review and referral of the Wheeldon case.
- 2.62. Wheeldon is distinguished from a number of old cases (e.g. *Knighton, Westlake, Luckhurst, Ellis*) on broad public interest including (but not limited to) cost, lack of other remedy, severity of offence, and time since conviction.
- 2.63. The qualification of the Applicant as an 'approved person' under the Commission's *Applications in respect of Deceased Persons* policy (2017) is uncontentious. The Applicant is a grand daughter and great grand daughter of the Defendants. In *Westlake*, the Applicant was a sister (thence half-sister)<sup>184</sup>, in *Luckhurst*, the widow, and in *Bentley*, a niece.<sup>185</sup>
- 2.64. As noted above, Part 3 describes why the Applicant began enquiring about the avenue for review through the Commission so many years after the deaths of the convicted persons. It demonstrates the obstacles to discovery of information that prevented any earlier formulation of grounds for review and appeal (in particular, see 'Delay due to suppression', page 63).
- 2.65. Part 3 also shows that since 2014 the Applicant has in fact 'tirelessly pursued' the acquisition of evidence once they became aware of this legal avenue for review.

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<sup>184</sup> *Westlake* para 15; *Luckhurst* para 53.

<sup>185</sup> *R v. Derek William Bentley (Deceased)* [1998] EWCA Crim 2516 (30 July 1998), para 2.



### 3. REASONS TO EXERCISE DISCRETION IN FAVOUR OF REFERENCE

#### Skeleton Argument

3.1. The profound feelings of humiliation, anger and sadness experienced by the Applicant and her family as a result of the case are described in the section 'Internal impacts: familial shame'. The sense of injustice was and is plainly felt very keenly. The impact of the case was particularly acute because its premise was anathema to the family's actual social and ethical outlook over generations.

> **Supporting material: page 58**

3.2. Examples are given by the Applicant of the convictions having meaningfully tarnished the family's name and reputation.

> **Supporting material: page 61**

3.3. A major factor in the timing of the application is delay due to suppression:

3.3.1. by the State, of official documents and records having been embargoed until relatively recently, and then gradually unearthed;

> **Supporting material: page 63**

3.3.2. by family, due to the emotional sensitivity of the matter. Since becoming properly and fully aware of the case the applicant has pursued the matter tirelessly and with thoroughness. Counsel have been enlisted to assist and advise on a *pro bono* basis.

> **Supporting material: page 70**

3.4. The issues involved in the application have significant contemporary resonance. Prosecutorial duties of fairness, particularly regarding disclosure, are of real concern currently. Use of undercover operatives to infiltrate political groups has been a subject of recent controversy and remains of public interest. We are within the centenary period of the First World War, the centenary year of the crucial *Sex Disqualification (Removal) Act 1919*, and it is now just over a hundred years since the trial in this case. There is also a real public interest in the case as an important event in the community history of Derby, as illustrated by the campaign by the Derby People's History Group to clear the Wheeldon family name.

> **Supporting material: page 71**

## Supporting Material

The following material is provided in support of the Skeleton Argument.

- **Internal impacts:** familial shame (Skeleton Argument 3.1), page 58.
- **External impacts:** stain on name/reputation (Skeleton Argument 3.2), page 61.
- **Delay due to suppression** (Skeleton Argument 3.3), page 63.
- **Contemporary resonance and currency of issues** (Skeleton Argument 3.4), page 71.

### *Skeleton Argument 3.1 – Internal impacts: familial shame*

3.5. In this section, Applicant, Chloë Mason, illustrates the emotional impact of the case on her and her family. Examples from papers and correspondence demonstrate that the sense of injustice was and is plainly felt very keenly.

#### *The Defendants' awareness of the trial's legacy for their family*

- 3.6. The notion of killing anyone was an anathema to this tightly knit family, who in 1915 had joined the No-Conscription Fellowship. As Hettie Wheeldon wrote: 'their conscientious objection was to the taking of life'.<sup>186</sup> Thus prosecution and conviction for (conspiracy to) murder cut especially deep.
- 3.7. The family correspondence and their in-court testimony convey their feelings of incredulity, dismay, outrage and affront to their personal dignity by the allegations and convictions.
- 3.8. Alf Mason wrote to his close friend Pte Charlie Klitz in India:  
'The charge is really, under the circumstances, terrible as it is that each one has conspired with others to murder the Rt Hon Lloyd George and Arthur Henderson. Try & get an idea (if you can) of say Win attempting to murder or even conspiring to murder anything. Yet they have a very strong case against us, having for the prosecution the Attorney-General (F.E. Smith), Maddox [*sic*], Bodkin, Matthews and a whole tribe of them.'<sup>187</sup>
- 3.9. It is apparent that Winnie and Alf Mason were fearful that the trial and its consequences had damaged their relationship with their son, Peter. Each of them wrote to him imploring his understanding and forgiveness, and assuring him of their love.
- 3.10. Alf's letters held by Special Branch indicate that the trial caused him enormous anxiety, and he felt keenly the failure to be able to fund better quality legal representation. In a surviving scrap of a letter, Alf wrote to Peter:  
'... unusual actions regarded from a normal standpoint, & why I've had to arrange my life differently from most in order to be able to "cover up" & start afresh if necessary. Still, don't let that perturb you in the least & just consider me as your "old man" to come to whenever you need help in any way. If you can do & do that I shall go along happily... Yours Dad.'

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<sup>186</sup> Letter R474 Hettie Wheeldon reply to Mrs Bolton, February 1917, Special Branch MEPO 9356-46-04. [Held: TNA > MEPO 9356 > FAMILY Letters 1917 - 02].

<sup>187</sup> Letter 468 Alf Mason to Charlie Klitz, 2 March 1917, Special Branch MEPO 9356-46-02. [Held: > TNA > MEPO 9356 > MEPO 9356 > FAMILY Letters 1917 Family Letters - 22].

- 3.11. Winnie's 1948 letter to Peter (Figure 3-1 below) is evidence that she felt the trial had corroded their lives. More than 20 years after the trial she clearly still held fears for her son, who by then had a young family.
- 3.12. Among other papers that Peter had preserved following Winnie's death in 1953 were two news clippings:
- 1940 – 'Lloyd George "Murder Plot" – that wasn't!' by barrister, George Stanley Godwin, who concluded, 'Would there have been a conviction under peace-time conditions? I very much doubt it.'<sup>188</sup>
  - 1953 – by another barrister, Edgar Lustgarten, who re-ran the 'Alice story', headlined as 'Lady Haw Haw'.<sup>189</sup> Such an appellation was deeply hurtful to Peter. Post-war and nowadays, it is generally imagined that British listeners treated Lord Haw Haw with scorn, or simply as a source of amusement; but contemporary evidence suggests it was a much more serious epithet.<sup>190</sup>
- 3.13. Over many house moves, Winnie's conservation of these papers for Peter indicates her deeply felt concerns, passed on to her son and his family, that the trial and convictions were unjust, and her keen awareness of the risks to future generations of her family.

**Figure 3-1. Letter from Winnie Mason to her son Peter, 1948**

Part of the Mason family papers,<sup>191</sup> this letter was attached to a typed carbon copy of Hettie Wheeldon's report on the trial.<sup>192</sup>

*I have hesitated whether to burn these records, & finish I hope the whole horror of the incident, or whether, as you will be of mature adult mind when you read them, you might derive some interest in reading them before finally destroying them.*

*The significant item which our defence (in the hands of a lunatic) failed to make and BREAK the charge lies in the statement by Booth 'This is the first mention of Dogs I have heard since I met Mrs W' - he should then have been referred to the instructions which he copied from the opened parcel and his whole evidence could have been undermined and the plot (the real one) exposed.*

*Don't whatever you do after reading it harbour any vindictive ideas. Uncle Bill [Will Wheeldon], Auntie Nell [Nellie Wheeldon] and myself did that and virtually ruined what was left of a chance to make good shattered lives – we accomplished nothing but more bitterness & misery.*

*If the perusal helps you to examine apparently conclusive evidence more closely – that's enough. Also it may help you to understand a little more forgivingly the thwarted views of Mam and Dad – forgive us both – we suffered a lot – & its effect was felt by your un-understanding – MY SON – I loved and love you.*

*Don't let this cloud your life at all – read it, burn it and pass on – My blessings always dear Peter.*

MAM

<sup>188</sup> *Reynolds News*, 31 March 1940, p.6 cols 1-3, 'Lloyd George "Murder Plot" – That Wasn't!' by George Godwin. [Held: Mason Family Papers].

George Stanley Godwin (1889-1974) called to the Bar in 1917 in absentia, (LW, Archivist, The Middle Temple, 13 January 2015), suffered ill-health, successful journalist and author, e.g. 1956 *Crime and Social Action*.

<sup>189</sup> Edgar Lustgarten, 'Lady Haw Haw' *Evening Standard*, 27 June 1953. [Held: Mason Family Papers]

Lustgarten was a barrister, crime novelist and broadcaster. In 1940 the BBC put him on air, as *alias* Brent Wood, to counter broadcasts by Lord Haw Haw. William Joyce (aka Lord Haw Haw) was a notorious broadcaster of Nazi propaganda to the UK during the Second World War. In 1945 he was captured, returned to the UK, and hanged for treason.': <http://www.bbc.co.uk/archive/hawhaw/>

<sup>190</sup> Ian Jack, 'Time for several whiskies: review of Auntie's war: the BBC during the Second World War (Stourton)' *London Review of Books*, vol 40, number 16, 30 August 2018, pp. 3-8. <https://www.lrb.co.uk/v40/n16/ian-jack/time-for-several-whiskies>

<sup>191</sup> Transcribed by Deirdre Mason 10 January 2012. [Held: Mason Family Papers > 07- Winnie Mason 1948 note to Peter Mason].

<sup>192</sup> [Held: Mason Family Papers > 03 - Hettie's Report c.1917].

*The emotional impact of finding out about the trial*

- 3.14. Knowledge of the trial and the Defendants' experiences has changed and unsettled many lives. The depth of feelings are magnified as more documents became available to myself, especially the family letters intercepted and retained in Special Branch files.
- 3.15. Alf and Winnie, Peter (with the co-operation and concurrence of his wife Sheila), their relatives and friends, successfully concealed the case. Living in Australia, my sister Deirdre and I were not aware of anything ever being withheld. An incident in 1965 revealed the sensitivity and secrecy hanging over family discourse. Deirdre, then aged 19, had been reading in the *Sydney Morning Herald* about 'a foiled plot'.<sup>193</sup> The article retold the story, taking a disparaging, mocking tone toward the Defendants, treating the whole matter as a big joke. Deirdre asked our mother whether this was about our family and our mother was uncharacteristically dismissive. She removed the newspaper. Generally, our parents were particularly open in discussing current affairs and public matters, so withholding any published material from us was inexplicable at the time. The emotional impact on us is further described in our personal statements (page 29).
- 3.16. Our parents were only able to maintain their silence, I believe, because of our move to Australia in 1964. Had we been living in England in the late 1970s, it is likely Deirdre and I would have heard about the case before 1986, particularly with the broadcast of the BBC-TV series<sup>194</sup> and later performance of the 'Alice' plays.<sup>195</sup> In all probability the new avenue for review of alleged miscarriages of justice through the CCRC would also have come to our attention; discourse on this subject had not then developed in Australia.<sup>196</sup>
- 3.17. In 1986, when Peter Mason described to Deirdre and me the causes and extent of the family's sufferings, he referred to the effects of persecution and life-long damaged reputation. He had lived with the knowledge of Winnie and Alf Mason's hardships, and how deeply it affected them. We realised that Peter feared the worst when he had told us that until he was 15 years old he had corresponded with his uncle Will (Winnie's brother), in the Soviet Union, when in 1937 the letters stopped. Will's execution was not confirmed until 1992.<sup>197</sup>
- 3.18. Despite Winnie having said in 1948, 'Don't let this cloud your life at all', Peter's upbringing had been deeply marred by the bitter legacy of the trial.

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<sup>193</sup> *Sydney Morning Herald*, 28 August 1965, p. 13. [Held: Newspapers].

<sup>194</sup> March 1983, causing publication of Wheeldon letters in the *Derby Evening Telegraph*, 23 March 1983 [Held: Newspapers].

<sup>195</sup> Three plays performed: 1988 Studio Theatre Company, 'The Pear Tree Conspiracy' performed in Derby: 1986 playwright Claire Luckham's 'Alice in Wartime' performed in Derby (poster) & reported in *Theatre Record*; Sheila Rowbotham's play 'Friends of Alice Wheeldon' performed in Rotherham: Rowbotham S. 'Friends of Alice Wheeldon' (1980) in C.M. Tylee (1999), *War plays by women: an international anthology*, London: Routledge.

<sup>196</sup> Sangha B., Moles Robert N., Roach K. (2010) *Forensic investigations of miscarriages of justice. The rhetoric meets the reality*, Toronto: Irwin Law; Networked Knowledge: <http://netk.net.au/Reports/Appeals.asp>  
Law Council of Australia(2012) Policy Statement on a Commonwealth Criminal Cases Review Commission: [www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/docs-dated/20120421ApprovedLCAPolicyStatementonCthCriminalCasesReviewCommission.pdf](http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/docs-dated/20120421ApprovedLCAPolicyStatementonCthCriminalCasesReviewCommission.pdf)

<sup>197</sup> Letter from Foreign and Commonwealth Office to Sheila Mason, 15 September 1992. [Held: Mason Family Papers > 10 - F & CO 1992].

### *Skeleton Argument 3.2 – External impacts: stain on name/reputation*

3.19. In this section, the Applicant, Chloë Mason, gives examples of the convictions having meaningfully tarnished her family's name and reputation, associating them with serious criminal activity.

#### *The risks of covert prejudice*

3.20. For most of my life, I was largely insulated from damage to our self-identity and reputation from external prejudice, due to our parents' effective silence and the family's move to Australia in 1964. I am conscious of the risk of prejudice arising from the bias that 'crime runs in families'.<sup>198</sup>

3.21. The greatest threat is covert prejudice.

#### *Portrayed as a 'murderers' like a coven of witches*

3.22. On visiting Derby in 2010, I found that the Derby City tourism office carried publicity for a commercial operator offering gruesome 'ghost walks' to the (disused) underground cells beneath the Guildhall to show where the Wheeldon women were held; they were portrayed as murderers, like a coven of witches. At the time I was sickened and hurt, and even today this memory causes me revulsion. I could sense the distress such imagery would have created for my father and grandmother, her siblings and my great-grandmother. It would have been very unpleasant to have lived in Derby with such shibboleths still holding sway.

#### *'They'll give a blue plaque to Philpott next'*

3.23. In May 2013, I was visiting Derby again, at the invitation of the Mayor of Derby City Council, Lisa Higginbottom. She had invited Deirdre and me participate in the public ceremony for the installation of a blue plaque in honour of Alice Wheeldon.

3.24. The day before the installation I accompanied my sister Deirdre to visit the Family History Centre searching for details about our great aunt, Nellie Wheeldon. When Deirdre gave the family name, Wheeldon, one volunteer staffer sneered: 'They'll give a blue plaque to Philpott next.'<sup>199</sup> My sister was visibly distressed at this malicious ignorance.

3.25. Later, still shaken by the experience, Deirdre wrote a letter of complaint to the Centre and received a standard reply. The next day, at the installation ceremony,<sup>200</sup> we

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<sup>198</sup> 'Official Bias in Intergenerational Transmission of Criminal Behaviour' *British Journal of Criminology* 53:438-455 April 2013. [www.researchgate.net/publication/259344063\\_Official\\_Bias\\_in\\_Intergenerational\\_Transmission\\_of\\_Criminal\\_Behaviour](http://www.researchgate.net/publication/259344063_Official_Bias_in_Intergenerational_Transmission_of_Criminal_Behaviour)

<sup>199</sup> This is a reference to a notorious lengthy trial in 2013 of a couple from Derby who were convicted of manslaughter of their six children who died while sleeping in the house the parents had set on fire. At sentencing, it was revealed Mick Philpott had prior convictions for attempted murder and grievous bodily harm. *Daily Telegraph* 2 April 2013 [www.derbytelegraph.co.uk/Mick-Philpott-Mairead-Philpott-Paul-Mosley-have-been-convicted-of-killing-the-couple's-six-children-who-died-while-sleeping-in-the-house-the-parents-had-set-on-fire-At-sentencing-it-was-revealed-Mick-Philpott-had-prior-convictions-for-attempted-murder-and-grievous-bodily-harm](http://www.derbytelegraph.co.uk/Mick-Philpott-Mairead-Philpott-Paul-Mosley-have-been-convicted-of-killing-the-couple's-six-children-who-died-while-sleeping-in-the-house-the-parents-had-set-on-fire-At-sentencing-it-was-revealed-Mick-Philpott-had-prior-convictions-for-attempted-murder-and-grievous-bodily-harm) Posted April 2, 2013. *Guardian* 3 April 2013 'Mick and Mairead Philpott convicted of manslaughter over Derby house fire' by Sandra Leville and Vikram Dodd: <https://www.theguardian.com/uk/2013/apr/02/mick-philpott-convicted-derby-fire>.

<sup>200</sup> Awarded by the Derby City Council on the recommendation of the Derby Civic Society. *Derby Telegraph* 2 May 2014 'Plaque honour for Suffragette Alice' by Chris Jones. Photo and interview. <http://www.derbytelegraph.co.uk/plaque-honour-suffragette-alice/story-18866862-detail/story.html>

spoke of the need to restore their reputation, with Deirdre quoting Martin Luther King's observation: 'Injustice anywhere is a threat to justice everywhere.'

#### ***Breadsall All Saints Church – fire 1914***

- 3.26. With the trial and extensive publicity, local people came to believe that 'the Wheeldon women' had carried out an arson attack on a church in Breadsall, near Derby.<sup>201</sup>
- 3.27. Although another person was convicted of this crime in 1914, this false attribution is maintained on the website of All Saints Church Breadsall.<sup>202</sup> (See also in Ground C, page 166.)

#### ***'Part of the gang'***

- 3.28. In 2015 and again in 2016, an episode of *Antiques Roadshow* originally from 2011 was re-broadcast on Australian television.<sup>203</sup> A Police Criminal Record Book from 1917, reputedly found in a skip, was the collectible object of interest.<sup>204</sup> It showed photographs of police suspects.
- 3.29. The expert commentator drew attention to photographs of two men (one was Alf Mason) and three women (Alice, Winnie and Hettie), who he said were part of the gang that plotted to kill Lloyd George.
- 3.30. In Sydney, we received many calls from people who had recognised our family and believed the (erroneous) commentary by the expert curator.<sup>205</sup>

#### ***Media villains***

- 3.31. The trial makes a compelling story that the media inevitably recycles. Since 1917, the story of the 'plot' has been retold every decade in various forms, from newspapers and books to plays and television.<sup>206</sup>
- 3.32. As long as the convictions stand, and without the opportunity to formally clear the names of the Defendants, such publicity has the potential to perpetuate errors of fact, compounding the injustices and prejudices inflicted on our family down the generations.

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<sup>201</sup> *Derby Daily Telegraph*, 16 October 1929, p.4 col.1, 'Gossip of the Day: Breadsall Church Restoration.' [Held: Newspapers].

<sup>202</sup> History of All Saints Breadsall: [https://www.breadsallchurch.org.uk/?page\\_id=41](https://www.breadsallchurch.org.uk/?page_id=41) [accessed 2018 and again, January 2019]. My request for documentary evidence has been rejected; the Churchwarden Jacqui Eastwood has retained the allegation despite not being willing to substantiate it. [Mason Family Papers > Chloë Mason – 2018 Email – Breadsall Church]; Whitmore (2000), 'The 'Shrieking Sisterhood' membership policy, strategy of WSPU in Leicester and East Midlands, 1907-1914', PhD thesis (De Montfort University) at page 219 references documents held at the Church : <https://core.ac.uk/download/pdf/2750373.pdf>

<sup>203</sup> Possibly a repeat broadcast - perhaps it had been screened in Australia before 2015. Re-broadcast on 1 June 2016.

<sup>204</sup> Owned by Clive Hannaford of Nottingham.

<sup>205</sup> Email Chloë Mason reply to John Dundas, 2 June 2016, 'Re: Your family featured in the Antiques Road Show last night'.

<sup>206</sup> For examples, see Documents > Newspapers.

### *Skeleton Argument 3.3 – Delay due to suppression*

- 3.33. A major factor in the timing of this application is delay due to suppression of documentary evidence:
- by the State: official documents and records having been embargoed until relatively recently, and then gradually unearthed (Skeleton argument 3.3.1), see below; and
  - by family: due to the emotional sensitivity of the matter (Skeleton Argument 3.3.2), see page 70.

#### *Skeleton Argument 3.3.1 Delay due to suppression by the State*

- 3.34. Restricted access to public records obstructed and delayed the capacity of the public and family/supporters to demonstrate the State's cover-up of flawed processes and deception that undermined the integrity of the trial.
- 3.35. A chronology of the Applicant's access to archival records is set out in Table 3-1. The table shows that selected public records relevant to this application were opened periodically from 1947 to 2011 but were only discovered and accessible to the Applicant and her family from 2012.
- 3.36. Further, it was not until 2015 that the Applicant uncovered enough evidence to (i) prove the official deceit and (ii) demonstrate the link from 'Gordon' to Rickard. This was a complex exercise due to Rickard's use of many aliases from 1910 to 1930.
- 3.37. Material collected by the Applicant is supplied as part of the application. The 'Guide to the Documents folder' at Appendix 1, page 172) gives an overview of this material.

#### *Relevance*

- 3.38. Archives of public records and private papers serve as sources of 'fresh evidence' of 'sufficient quality' that puts the defects of the trial in context: *R v Hanratty (deceased)* [2002] 2 Cr App R 30, Mantell LJ, paras 96 and 100.
- 3.39. The Court in *Erskine* (2009),<sup>207</sup> expanding on the principle in *Pearson* [2000], noted:
- [92] The court will normally expect the parties to provide a detailed analysis of the facts to assist it in the application of the statutory test, including an analysis of the following...
- (ii) The evidence which has become available since the trial, and an explanation why it was not available at trial.
- [93] These heads of analysis will not all necessarily apply in every case; in some cases additional areas of analysis may be required. However, any such analysis should suffice to assist and inform the court in its task of applying the provisions of s 23(1) of the 1968 Act.<sup>208</sup>

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<sup>207</sup> *R v Erskine; R v Williams* [2010] 1 All ER 1196; [2009] EWCA Crim 1425. LORD JUDGE CJ. para 1, considering s23 reiterated the principle stated in *R v Criminal Cases Review Commission ex p Pearson* [2000] 1 Cr App R 141 at 164; and 'heads of analysis' at paras 91-93.

<sup>208</sup> *Erskine*, paras 1 & 92 with in reference to s23 (1968).

- 3.40. In *Adams* (2011) the meaning of '[A] new or newly discovered fact' was in issue.<sup>209</sup> It was ruled to mean not being discovered until after the trial or appeal by the appellant, rather than when it became *discoverable*. Nonetheless, Table 3-1 gives both the dates when the Applicant and her sister first knew of the records and gained access, as well as the date of their release in the public domain.
- 3.41. In *Knighton* (2002) (deceased),<sup>210</sup> the Court considered embargoed public records obtained by the CCRC. This application also requests the CCRC to employ its supplementary powers (ss 17,18) to obtain records from Broadmoor held by the Berkshire Record Office. A Section 17 application requesting access to this file has been submitted by the Applicant concurrently with this application for CCRC review.
- 3.42. Records that were not released to the public until well after the Defendants' deaths are relevant to ascertaining:
- by inference, the reasons of the prosecution for non-disclosure of 'Alex Gordon'
  - the identity of 'Alex Gordon' as William Rickard
  - criminal antecedents, admissions to mental asylums and workhouses for William Rickard/'Alex Gordon'
  - the government's removal of 'Gordon' from England to South Africa
  - the conduct of 'Gordon' and Booth as agents in undercover investigations, and how that led to the disbandment of PMS2.

***Public records: relevant practices***

- 3.43. An understanding of British practices of public record-keeping and the release of documents is useful in interpreting Table 3-1.
- 3.44. The National Archives (TNA) is the official archive and publisher for the UK government. It was established in 2003,<sup>211</sup> replacing the Public Records Office (PRO).<sup>212</sup> TNA maintains a systematic process for registration and transfer, review, retention, and access to government records<sup>213</sup> as well as the adoption of criteria as to historical value.<sup>214</sup>

<sup>209</sup> in the context of s133 and ICCR Art: Lord Philips, para 1; Lord Clarke para 224: *Adams, R (on the application of) v Secretary of State for Justice* [2011] UKSC 18 (11 May 2011); [2012] 1 AC 48, [2011] 3 All ER 261, [2011] NI 42.

URL: <http://www.bailii.org/uk/cases/UKSC/2011/18.html>

In addition, incompetent defence representation was the ground on which Adams' conviction had been quashed: Lord Philips para 3-5.

<sup>210</sup> *R v Knighton* [2002] EWCA Crim 2227, Judge LJ, Butterfield J and Mccombe J.

<sup>211</sup> When the Public Record Office joined with the Historical Manuscripts Commission: Email TNA to Chloë Mason, 7 July 2016, Subject: TNA SR FW: TNA160199686: Education enquiry. <http://www.nationalarchives.gov.uk/about/our-role/what-we-do/> [Held: Mason Family Papers > 09 - Chloë Mason Correspondence, 2016]

<sup>212</sup> Cox Nicholas (1996), 'National British Archives: public records' in B.Brivati, J. Buxton & A. Seldon (eds), *The Contemporary History Handbook*, Manchester: Manchester University Press, pp. 257-258. The Public Records Office (PRO) had originated in 1838 to meet the need for retention of records from courts of law.

<sup>213</sup> For TNA's history of the *Public Records Act* 1958, and subsequent changes in 1967 and 2005:

[www.nationalarchives.gov.uk/information-management/legislation/public-records-act/history-of-pra/](http://www.nationalarchives.gov.uk/information-management/legislation/public-records-act/history-of-pra/)

<sup>214</sup> Gowing (1981) 'Modern public records: selection and access. The report of the Wilson Committee', *Social History* vol 6, Issue 3, pp. 351-357. Margaret Gowing was a member of the Lord Chancellor's committees of review: the Grigg Committee and Wilson Committee reporting respectively in 1954 and 1978.



- 3.45. Administrative records from the Central Criminal Court are held at TNA for *Wheeldon*, as well as records from many government agencies and departments relating to the investigation, prosecution and post-trial commentary.
- 3.46. Archival principles guide the review of government papers and files – a process of selection, known as ‘weeding’.<sup>215</sup> It results in:
- retention of papers of permanent historical value which may be ‘transferred’ to TNA to give public access
  - withholding/ withdrawal of papers as being ‘active’ or sensitive
  - destruction – an estimated 98 per cent of public records are destroyed.<sup>216</sup> The fact that so much of the *Wheeldon* material has been retained illustrates its historical value.
- 3.47. Typically the Home Office files and the Metropolitan Police correspondence files had a 75 or 100 year closure.<sup>217</sup> For *Wheeldon*, the Metropolitan Police files refused information to a (redacted) correspondent in 1978,<sup>218</sup> confirming that Home Office files and their files were not open to public inspection at that time.
- 3.48. TNA staff advised the Applicant of their registry card system<sup>219</sup> adopted c1958, which documents dates of transfer to and access from the TNA, coinciding with the 1958 *Public Records Act* that gave a general right of access, with a general 50 year access rule that was reduced to 30 years in 1967.
- 3.49. In the mid-1960s releases were made of some papers from the period of the First World War. These included papers by ‘Gordon’ about PMS2 investigations.
- 3.49.1. Wrigley (1987)<sup>220</sup> observed that such new discoveries enabled researchers to build upon HM Government’s *History of the Ministry of Munitions*, published in 1922. They included papers about the shop stewards movement and strikes in the Midlands that PMS2 (including ‘Gordon’ and Booth) had investigated.
- 3.49.2. Further, papers of Lord Milner and Dr Addison relevant to the PMS2 investigation of the *Wheeldon* household were opened to readers at the Bodleian Library from 1964 – 30 years before the same reports were released by the Home Office.<sup>221</sup> Dr Addison, Minister of Munitions, was a

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<sup>215</sup> For the Home Office, this process is described in *Weeding and Destruction of HO Papers* its record HO 45/10456 B17510 ‘Weeding and Destruction of HO Papers’, opened in 1969. [Not Held]

<sup>216</sup> Thurlow (1994), *The secret state. The British internal security in the twentieth century*, Oxford: Blackwell, p. 10-11;  
Cox Nicholas (1996), ‘National British Archives: public records’ in B.Brivati, J. Buxton & A. Seldon (eds), *The Contemporary History Handbook*, Manchester: Manchester University Press, pp.264-265.

<sup>217</sup> Thurlow (1994) *The secret state. The British internal security in the twentieth century*, Oxford: Blackwell, pp. 11-12.

<sup>218</sup> Identified subsequently as Stephen Churchett, writer and actor: [https://en.wikipedia.org/wiki/Stephen\\_Churchett](https://en.wikipedia.org/wiki/Stephen_Churchett). He visited Betty Keeling in Derby about a possible play about Alice. Betty wrote a note to Nicholas Hiley about his visit.

<sup>219</sup> Email from TNA Victoria Davis, 2 August 2016, to CM, advised CRIM 1/166 had been transferred prior to 1958, but not able to confirm the access date of 1947 (30 years beyond *Wheeldon* trial). [Mason Family Papers > 09 – Chloe Mason correspondence > 2016 Email TNA Pappalardo – Davis – Kumkertsukul].

<sup>220</sup> Wrigley C. (1987) (ed.) *A history of British industrial relations*. Volume II 1914-1939, Brighton: The Harvester Press, p.10.

<sup>221</sup> Access from 1964 in Document Description for Milner Papers [Held: Milner Papers] and Addison Papers [Held: Addison Papers].

contemporary of Lord Milner and they were both in Lloyd George's war cabinet. These papers were accessed by historians including Sheila Rowbotham and Nicholas Hiley.

- 3.50. By 1996, a culture of greater openness prompted the Waldegrave Initiative,<sup>222</sup> leading to a change in the designated release date of public records relevant to the Wheeldon investigation from 2042 to 1997.
- 3.51. Release of Home Office files relevant to the Wheeldon trial<sup>223</sup> was reported in the national press on 28 November 1997. The opening of the Home Office files in 1997 included 'weeder's notes' and the inclusion of some records of PMS2 about the Wheeldon investigation.<sup>224</sup>
- 3.52. 'Privileged access arrangements' referred to arrangements under s5(4) *Public Records Act* 1958. Such arrangements were made between a reader and an originating agency to view or take notes, but not copy, archival documents prior to release and transfer of public records to TNA; this practice was confirmed in correspondence.<sup>225</sup>
- 3.52.1. Typically, the Home Office and the Metropolitan Police typically granted such access to 'historians ...for scholarly research'. Agencies defined conditions of access and use and copyright,<sup>226</sup> although conditions varied between agencies.
- 3.52.2. Such provisions are highly relevant to modern discovery of records by professional researchers about the Wheeldon investigation and trial. Researchers have viewed, for example, DPP files of transcripts and correspondence, Home Office records of PMS2 reports forwarded by the Metropolitan Police (Special Branch).
- 3.52.3. These provisions granting limited scholarly access were removed with the passing of the *Freedom of Information Act* 2000.

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<sup>222</sup> Gorst A. & Brivati B. (1996) "National archives in the UK: a case study of the Waldegrave Initiative on Public Record Office releases" in B.Brivati, J. Buxton & A. Seldon (eds), *The Contemporary History Handbook*, Manchester: Manchester University Press.

<sup>223</sup> TNA Catalogue entry [Held: HO 144-13338-331997 - TNA Catalogue entry.pdf].

<sup>224</sup> Release of HO files, Weeder's Notes, correspondence, newspaper reports.[Held: TNA > HO 144 > HO 144-13338-331997 > Turner materials].

<sup>225</sup> Email from TNA Victoria Davis (Access at Transfer Manager) to Chloë Mason, 2 August 2016. [Held: Mason Family Papers > 09 - Chloë Mason Correspondence > 2016 > 2016 Email TNA Pappalardo - Davis - Kumkertukul].

The archived version of guidance on Access to Public Records (Section 4.4 page 3):

[http://webarchive.nationalarchives.gov.uk/20070108123845/http://www.nationalarchives.gov.uk/documents/access\\_manual.pdf](http://webarchive.nationalarchives.gov.uk/20070108123845/http://www.nationalarchives.gov.uk/documents/access_manual.pdf)

Letter David Turner to Julian Putkowski, 28 November 1997, page 2. [Held: TNA > HO 144 > HO 144-13338-331997 > Turner materials].

Hiley to Chloë Mason, 11 December 2012, 'I saw the Home Office file in the 1980s, under a process known as "privileged access", which meant that I couldn't take copies.' [Held: Mason Family Papers > 09 - Chloe Mason Correspondence > 2012 - Email Hiley to CM].

<sup>226</sup> Holmes Colin (1981), 'Government files and privileged access, *Social History*, 6:3, 333-350, p. 348 described the operation of the *Rehabilitation of Offenders Act* 1974 as a further restraint/protection on the use of information appearing in closed papers. <http://dx.doi.org/10.1080/03071028108567509> [Held: Articles].

**Table 3-1. A chronology of the Applicant's access to selected public records from the National Archives (TNA) and other sources**

Records / Record series / Description	Embargo	Record opening date	Applicant's access
<p>Central Criminal Court: Records relating to proceedings (1917) <i>CRIM 1/166</i></p> <p>Indictments, depositions, correspondence; but no transcripts. [Held: TNA &gt; CRIM 1-166]</p>	30 years <sup>227</sup>	1947	2012 copy from TNA <sup>228</sup>
<p>Criminal Court of Appeal: Application for appeal and refusal (1917) <i>J 81/6</i></p> <p>[Held: TNA &gt; J-81-6]</p>	Unknown	Unknown	2012
<p>Director of Public Prosecutions (DPP) Case papers: Wheeldon <i>DPP 1/50</i></p> <p>Including: Brief for the Prosecution, Central Criminal Court dated 27 February 1917. Trial proceedings, file notes, telegrams sent by PMS2, and correspondence. March 1917 trial transcript for Days 3 to 5. Police statements by 'Gordon' and Booth. Telegrams, including from 'VIVID' (one of 'Gordon's' aliases) to Booth, 27 December 1916. (VIVID contributed to the identification of 'Alex Gordon' as William Rickard.) [Held: TNA &gt; DPP 1-50]<sup>229</sup></p> <p>Director of Public Prosecutions (DPP) Criminal Appeals No. 2. Register of Cases <i>DPP 3/126</i></p> <p>Date: 1914 February – 1923 October. [Held: TNA &gt; DPP 3-126]</p>	75 years	1 Jan 1999	2012–13
<p>Director of Public Prosecutions (DPP) Criminal Appeals No. 2. Register of Cases <i>DPP 3/126</i></p> <p>Date: 1914 February – 1923 October. [Held: TNA &gt; DPP 3-126]</p>	75 years	1 Jan 1999	2015
<p>Metropolitan Police (MEPO): Wheeldon papers <i>MEPO 9356</i></p> <p>Principally about the investigation, including February copies of handwritten, signed police statements of 'Gordon' and Booth, copies of intercepted letters of the Defendants in custody, February-March 1917. Correspondence relating to Ramsay MacDonald's enquiry about 'Gordon's' identity and leaving England, March-May 1917. Scans sent by Metropolitan Police to Applicant's sister, Deirdre. [Held: TNA &gt; MEPO 9356]</p>	Held by MEPO	MEPO advised in storage, awaiting transfer to TNA. <sup>230</sup>	2012–2015: restricted access, continuing

<sup>227</sup> Cases being of historical value were preserved. From 1924 Criminal Court records were transferred for storage to the Public Records Office (now TNA). Librarian advised the Applicant that, in general, a 30-year embargo applied; thus for *Wheeldon* 1947 was estimated as the probable release date: email reply to Applicant from Matt Adams, Central Criminal Court to Chloë Mason, Central Criminal Court to CM, 13 March 2013. [Held: Mason Family Papers > Chloë Mason Correspondence > 2013 Emails]. TNA Victoria Davis, 2 August 2016, advised CRIM 1/166 had been transferred prior to 1958, and the ending of the 50 year access rule under the *Public Records Act* 1958.

<sup>228</sup> Email Hiley to Deirdre Mason (cc: Chloë Mason) 15 February 2012. Hiley offers to arrange for archivist Philip Tomaselli to provide scanned copies of TNA records for the files of the DPP, Home Office and the Criminal Court. [Held: Mason Family Papers > 09 – Chloe Mason correspondence > 2012 – Emails > 2012 – Hiley to DM cc CM – records].

Email Hiley to Chloë Mason, 11 December 2012, 'I saw the Home Office file in the 1980s, under a process known as "privileged access", which meant that I couldn't take copies.' [Held: Mason Family Papers > 09 – Chloe Mason correspondence > 2012 – Emails > 2012 – Email – Hiley to CM 20121211 - privileged access - releases].

<sup>229</sup> Provenance of the TNA DPP files is illustrated by TNA docket to Tomaselli, 2012 [Held: TNA > DPP 1-50 > Description of Documents – access 2012].

<sup>230</sup> Metropolitan Police confirmed retention of Wheeldon Papers and closed file on Will Wheeldon: Email David Capus, reply to Chloë Mason, 18 November 2016 and her email 24 October 2016. [Held: Mason Family Papers > Chloë Mason Correspondence > 2016 Email – Capus reply re access].

Records / Record series / Description	Embargo	Record opening date	Applicant's access
<b>Metropolitan Police (MEPO): Special Branch papers</b> <i>MEPO 345</i> Admin files for 9356. Relating to a request from an author to access the Wheeldon papers in 1978, which was refused, and a direction in 1986 that the 9356 file be retained for historical interest. [Held: TNA > MEPO 345]			
<b>Security Service: 'Report of an Informant'</b> <i>KV 2/1653</i> Records of the Security Service – Personal (PF) Files – British Socialist Party. Date: 1915 Jan 01-1918 Dec 31. Description of escape route for COs (& political detainees) via Liverpool to the US and disruption with the capture of Kehrhahn ('the hunchback'). [Held: TNA > KV 2-1653]	86 years	30 March 2004 <sup>231</sup>	2014
<b>Wiltshire Country Mental Hospital, Patient Record</b> <i>Archive, Wiltshire County Council</i> Record now filed for William Rickard presenting as alias 'Delamere Carrington'. [Held: Wiltshire County Mental Hospital]	Restricted access <sup>232</sup>	1987	2014
<b>Central Criminal Court: 'After-trial calendars of prisoners' 1855-1949</b> <i>CRIM 9/55</i> Record for William Rickard (alias 'Alex Gordon') 1909. [Held: TNA > CRIM 9-55]	76 years	1985 <sup>233</sup>	2015
<b>Metropolitan Police (MEPO): Register of Habitual Criminals, 1910</b> <i>MEPO 6/21</i> Lists William Rickard with his <i>alias</i> Francis Carrington for the offence and sentence. [Held: TNA > MEPO 6-21]	75 years	1985	2015
<b>Foreign Office: Passport records – Passport Nos. 142348 – 160106</b> <i>FO 10/134<sup>234</sup></i> Passport Issued: 151064 'Wm. Rickard' (for travel to South Africa) on 16 March 1917. [Held: TNA > FO - Passport]	Open – since transfer.  53 years	1970	2015

<sup>231</sup> Withheld from the public until 30 March 2004 when it was opened to the public: Email 2016 TNA Kumlertsakul to Chloë Mason, 7 July 2016 - record KV (Records and research enquiries). [Held: Mason Family Papers > Chloë Mason Correspondence > 2016 - Email - Kumlertsakul to CM].

<sup>232</sup> Mavis Jones (née Rickard) authorized access and unrestricted use to Dr Hiley [Held: Hiley Papers > 1987 Jones authorisation, Sheet 08 in particular], and who advised the Applicant of this authorisation, 17 February 2015.

<sup>233</sup> 'The closure information on TNA catalogue varies with the age of a document and when it was transferred... You have referred to 1909, which is piece CRIM 9/55. It looks to have been transferred in 1985, and would have been transferred as open': Email reply TNA Pappalardo to Chloë Mason, 8 July 2016, 'Re: 160199705 - Records CRIM 9 and HO 147'. [Held: Mason Family Papers > Chloë Mason Correspondence > 2016 - Email - TNA Pappalardo to CM].

<sup>234</sup> Probably transferred to TNA as open in 1970. Advice from TNA: Email Victoria Davis, Access at Transfer Manager TNA to Chloë Mason, 2 August 2016. [Held: Mason Family Papers > Chloë Mason Correspondence > 2013-2016 Emails - TNA].

Records / Record series / Description	Embargo	Record opening date	Applicant's access
<p><b>Home Office: Criminal lunacy books and warrants for transfers</b> <i>HO 145 and 147</i></p> <p>William Rickard's name is recorded for periods of imprisonment and transfers to asylums in 1898 and in 1909–11, and his discharge from Broadmoor under the <i>Criminal Lunatics Act 1884</i>.</p> <p><b>HO 145/9: p. 564:</b> 'Warrant of Removal of a Criminal Lunatic, ordered to be detained during Her Majesty's pleasure, from Prison to Asylum'. William Rickard transferred from Holloway Prison to Colney Hatch Asylum', 8 October 1898.</p> <p><b>HO 145/19 p. 486:</b> Warrant for removal of William Rickard from Wandsworth Prison to Broadmoor Criminal Lunatic Asylum, 31 December 1909</p> <p><b>HO 145/20 p. 662:</b> Warrant for removal of William Rickard, now certified as 'sane', from Broadmoor to Reading Prison, 5 January 1911.</p> <p><b>Warrant Books 1910 Oct 1 to 1915 Mar 4.</b></p> <p><b>HO 147/12:</b> Rickard discharged from Reading Prison on 'release warrant', 12 January 1911.</p> <p>[Held: TNA &gt; HO 145 &amp; 147 Warrants]</p>	<p>100 years</p> <p>100 years</p> <p>80 years</p>	<p>1999</p> <p>2011</p> <p>1990 [brought forward from 2016]</p>	<p>November 2015</p> <p>November 2015</p> <p>October 2015</p>
<p><b>Home Office: CRIMINAL CASES. Wheeldon</b> <i>HO 144/13338</i></p> <p>File within class of criminal cases, 1917-1931, that were closed by order Lord Chancellor s5(1) <i>Public Records Act</i>, 1958.</p> <p>Includes 23 pages of typescript reports by PMS2 agents &amp; officers about their investigation of the Wheeldons.<sup>235</sup></p> <p>[Held: TNA &gt; HO 144-13338-331997]</p> <p><b>Home Office minute with 1997 correspondence</b><sup>237</sup> <i>HO 144/13338-331997</i></p> <p>Weeder's note confirms that 'Alex Gordon' was an <i>alias</i> for his PMS2 agent name of 'No. 5' for his name (another <i>alias</i>) Francis Vivian. Illustrates excision of PMS2 from the Secret Service.</p> <p>[Held: TNA &gt; HO 144-13338-331997 &gt; Turner materials]</p>	<p>100 years<sup>236</sup></p> <p>80 years</p>	<p>2042 date 'bought forward' to 2017 and again to 1997, 27 November</p> <p>November 1997</p>	<p>2015</p> <p>2016</p>
<p><b>Berkshire Record Office. Reading Prison Nominal Register</b> <i>P/RP1/1/7</i></p> <p>Obtained for the Applicant by Judy McSorley, the Applicant's cousin and former librarian, on reading the 'Broadmoor' series in newspaper <i>Ideas</i>, 1913.</p> <p>[Held: Reading Prison &amp; Broadmoor]</p>		Unknown	Late 2015 to early 2016

<sup>235</sup> Transcription of Reports. [Held: TNA > HO 144-13338-331997].

<sup>236</sup> TNA Catalogue entry HO 144-13338-331997 indicating opened in 1997. [Held: TNA > HO 144-13338-331997 - Transcription of reports].

MEPO, the originating agency advised that the Wheeldon criminal case file had been '... previously closed for 100 years. Opened in 1997 following re-review'. : Email Andrew P. Brown, Met Police, to Julian Hendy, 19 April 2004. [Held: TNA > MEPO Correo with Julian Hendy > 01 Email 20040419].

Metropolitan Police 1978 minute confirmed that Home Office papers on the Wheeldon case were not available for public inspection. [Held: TNA > MEPO 345 Admin files > 03 - MEPO 345 pages 5 and 6].

<sup>237</sup> Turner materials. [Held: TNA > HO 144-13338-331997].

Records / Record series / Description	Embargo	Record opening date	Applicant's access
<p>South African National Archives: Office of Governor General of South Africa</p> <p>Correspondence and internal memorandum. e.g. Interior Dept file A1483 William Rickard, 15 May 1919, 21 August &amp; 27 September 1919, file 3935. (handwritten statements)</p> <p>Treasury file FO 20/223. Correspondence Secretary for Finance to Controller and Auditor-General, 11 March 1920 re funds transfer for return passages to England for William, and his wife and child, Lily &amp; Mavis.</p> <p>[Held: South African National Archive 1919]</p>		Unknown	September 2016

### *Skeleton Argument 3.3.2 – Delay due to suppression by family, and tireless pursuit of the matter since becoming aware*

- 3.53. The Applicant only became aware of the trial in 1986 at age of 37 (as detailed in her personal statement, page 29).
- 3.54. The Mason Family Papers were received by the Applicant after her father Peter's death in 1987 in an evidentiary and information void. At that stage, she had insufficient knowledge to distinguish a mere family belief in a miscarriage of justice from one that could be substantiated.
- 3.55. Since becoming alert to the injustice occasioned by the way the trial was run, the Applicant has demonstrably pursued the matter tirelessly and with thoroughness. Her pursuit of the matter is set out in Table 1-2. Contextual chronology, page 36.

### *Skeleton Argument 3.4 – Contemporary resonance, currency of issues and public interest, due to...*

#### *Ongoing interest in the use of undercover agents in the infiltration of political movements*

- 3.56. In 1917, publicity about the Wheeldon trial had exposed the existence of PMS2, until then a secret organisation, and its ill-disciplined use of undercover agents for domestic surveillance and infiltration.<sup>238</sup>
- 3.57. As an undercover agent, 'Gordon' was not produced at the trial, despite his key role in the discovery of the 'plot' and subsequent investigation. This had significant consequences for the fair conduct of the trial (set out under 'Grounds of Appeal' in Ground A, section 5).
- 3.58. Relying on undercover agents and lack of accountability continue to place pressure on investigatory integrity and fair trial processes within the criminal justice system.<sup>239</sup>
- 3.59. In 2012, for example, in relation to the environmental protest over Drax Power Station, Keir Starmer QC then DPP, invited the 29 individuals to appeal against their convictions from the protest 'on the basis of non-disclosure of material relating to the activities of the former undercover agent, Mark Kennedy'.<sup>240</sup> On 22 January the media reported the quashing of their convictions, and quoted Lord Thomas CJ: 'There was a complete failure to make a disclosure fundamental to the defence.'<sup>241</sup>
- 3.60. This 2012 episode is one of the 'historical failings' falling within the scope of the current ongoing Undercover Policing Inquiry.<sup>242</sup>
- 3.61. The 2015–2018 submissions to this Inquiry also contain many other examples of misbehaviour within government institutions, and of 'undercover police operations'<sup>243</sup>

<sup>238</sup> Held: Addison Papers; and Articles > Hiley > Hiley & Putkowski (1988).

<sup>239</sup> Lewis, Paul & Evans, Rob (2013), *Undercover: The True Story of Britain's Secret Police*, Faber & Faber. (*The Guardian* review of Lewis & Evans by Carole Cadwalladr, 29 June 2013: <https://www.theguardian.com/books/2013/jun/29/undercover-secret-police-lewis-evans-review?INTCMP=sfl>)

Cormac, Rory (2013) 'Much ado about nothing: terrorism, intelligence and the mechanics of threat exaggeration', *Terrorism and Political Violence*, 25:3, pp. 479-493: <http://dx.doi.org/10.1080/09546553.2012.667018>

Omand, David (2011) 'Learning from the Secret Past', in Robert Dover and Michael Goodman, eds., *Learning from the Secret Past: Cases in British Intelligence History*, Washington, DC: Georgetown University Press, 2011 - Sir David Omand, a former director of GCHQ and Intelligence and Security Coordinator in the Cabinet Office;

Christopher Andrew (2004) 'Intelligence Analysis Needs to Look Backwards Before Looking Forwards', *History and Policy* June 2004: <http://www.historyandpolicy.org/policy-papers/papers/intelligence-analysis-needs-to-look-backwards-before-looking-forward>

<sup>240</sup> CPS News, 'DPP invites defence to appeal convictions of Drax Power Station protesters', 3 July 2012: [www.cps.gov.uk/news/latest\\_news/dpp\\_invites\\_defence\\_to\\_appeal\\_convictions\\_of\\_drax\\_power\\_station\\_protestors/](http://www.cps.gov.uk/news/latest_news/dpp_invites_defence_to_appeal_convictions_of_drax_power_station_protestors/)

<sup>241</sup> Paul Peachey, 'Drax campaigners have convictions quashed as authorities failed to reveal an undercover policeman had driven them to environmental protest' *Independent*, 22 January 2014: [www.independent.co.uk/news/uk/crime/drax-campaign...](http://www.independent.co.uk/news/uk/crime/drax-campaign...) [accessed 20160814].

<sup>242</sup> The Undercover Policing Inquiry terms of reference include methods of document storage (para 28):

<https://www.ucpi.org.uk/>. Update note 16 July 2019.

Sir John Mitting is Inquiry Chairman following the retirement of Pitchford LJ who was appointment by the Home Secretary, then Theresa May.

<sup>243</sup> Here 'undercover police operations' means the use by a police force as a "covert human intelligence source" (CHIS) within the meaning of s26 (8) of the *Regulation of Investigatory Powers Act*, 2000 whether before or after the commencement of that Act.

directed against 'political and social justice campaigners'. Such contemporary examples parallel Alice Wheeldon's experience of improprieties of undercover policing and surveillance occurring in the guise of protecting democratic institutions.

- 3.62. Further there are numerous parallels between the PMS2 investigation of the Wheeldon-Mason Defendants during the First World War, and contemporary tensions, anxieties and fears associated with a 'War on Terror'.
- 3.63. In both situations, governments have tended to push for more intrusive powers of domestic surveillance without adequate checks and balances for due process.<sup>244</sup>
- 3.64. The 2016 report of The Iraq Inquiry (chaired by Sir John Chilcot)<sup>245</sup> similarly identified defects of the security, government and judicial sectors. As Guardian journalist Andrew Rawnsley commented:<sup>246</sup>
- 'We now know - ... Chilcot lays the blame on MI6. The spies over-promised about their ability to gather reliable intelligence from within Saddam's Stalinist regime. The agency realised that one of its key sources was a fabricator even before the invasion, but Chilcot says MI6 kept this concealed not just from the public, but also from Blair.
- '...Had the mistakes just been down to one over-messianic leader, as many of the other players have sought to suggest to displace culpability from themselves, it would not have been such a damaging episode in our public life. It wasn't just the infamous dossier and it wasn't just his personal miscalculations. Iraq was a collective failure of the political, diplomatic, intelligence and military establishments.'
- 3.65. Chilcot's 'lessons that can be learned' include intelligence that was 'over-promised and under-delivered', 'ingrained nepotism' driven by an eagerness to please politicians and by delivering 'hot' [and untested] intelligence to line managers.
- 3.66. These defects (and 'lessons') echo the roles of PMS2 in their hiring and use of Booth and 'Gordon' for undercover work, and the consequence of 'a grand and disastrous deceit'<sup>247</sup> revealed by Chilcot. This issue is discussed further in the supporting material for Skeleton Argument 5.2, page 102),
- 3.67. Arguably a major importance of the Wheeldon-Mason investigation and trial is to drive home that flawed practices are repeated across generations, and that lessons will not be learned unless institutions own up to the transgressions and improprieties that have occurred within.

<sup>244</sup> Notably in 2016 the Bill failed to meet international standards on the tests for authorization of intercepted communications. See also *Guardian* letter from Stephen Sedley (Philippe Sands QC and some 200 other lawyers as signatories), 14 March 2016 'Investigatory powers bill not fit for purpose'. <https://www.theguardian.com/world/2016/mar/14/investigatory-powers-bill-not-fit-for-purpose-say-200-senior-lawyers>; see also Bernard Porter, a historian specialising in surveillance, in *The Independent*, 3 January 2016: [www.independent.co.uk/voices/surveillance-bill-theresa-may-should-be-aware-how-un-british-spying-on-ourselves-is-a6794106.html](http://www.independent.co.uk/voices/surveillance-bill-theresa-may-should-be-aware-how-un-british-spying-on-ourselves-is-a6794106.html).

(1989) *Plots and Paranoia: a history of political espionage in Britain 1790-1988*, London: Unwin Hyman.

(1987) *The Origins of the Vigilante State: the London Metropolitan Police Special Branch before the First World War*, London: Weidenfeld & Nicolson.

<sup>245</sup> *The Report of the Iraq Inquiry* by John Chilcot (2016), HMSO, 12 vols. ('Chilcot Report'), Volume 10. 12.1 Security Sector Reform, pp. 198, 218-227.

Chilcot Report: <http://www.iraqinquiry.org.uk/the-report/>

<sup>246</sup> 10 July 2016, *The Guardian* Andrew Rawnsley.

<sup>247</sup> Philippe Sands QC (2016), 'A Grand and Disastrous Deceit', *London Review of Books*, 28 July 2016 reporting on Sir John's delivery and the Report as a whole. <http://www.lrb.co.uk/v38/n15/philippe-sands/a-grand-and-disastrous-deceit>



*Interest in the centenaries of the First World War and women's emancipation*

- 3.68. The community's interest about the Wheeldon trial and the experiences of the Defendants has grown throughout the centenary of the First World War, as more information has come to light.
- 3.69. The British government supported many activities for the *First World War Centenary Program 2014-2018*.<sup>248</sup> This included five First World War Engagement Centres established to encourage new generations to gain a better understanding of everyday life during the war, as well as an understanding of the war's history at home and at the front, including forms of dissent,<sup>249</sup> and commemoration of anti-war campaigners.<sup>250</sup>
- 3.70. The compelling nature and educational value of Alice Wheeldon's and her family's treatment by government and its agencies became evident in this centenary program.
- 3.71. In 2015, the BBC-TV's series *Home Front* presented by Jeremy Paxman, gave a sympathetic account of the Wheeldon story filmed at the entrance to the courtroom in the Old Bailey.
- 3.72. Alice Wheeldon and her family have become representative of educated 'ordinary people' from the Midlands. From 1910 they were deeply involved in adult education as co-operative educators and school teachers, recognising that education played a transformative role in the demands for women's emancipation.<sup>251</sup>
- 3.73. Achievement of women's suffrage was of growing public interest in the lead-up to the centenaries of the initial legislative electoral reform and removal of bars to women in occupations and as jurors.<sup>252</sup>
- 3.74. The 2015 release of the popular film *Suffragette*, a British period drama about women's suffrage set in the pre-War period, deepened interest in the effect of the war on campaigns for women's emancipation and the impact of the war on women's lives, especially among new generations.<sup>253</sup> The film championed working class women, such as the Wheeldon women, as well as highlighting divisions within the movement encapsulated by Emmeline and Sylvia Pankhurst's differing views about the Wheeldon women and their trial.

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<sup>248</sup> 2013 UK Government press release:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/320244/First\\_World\\_War\\_centenary\\_programme\\_2014-2018.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/320244/First_World_War_centenary_programme_2014-2018.pdf) -

Funded with more than £50m and Heritage Lottery Funding £12m. The programme encouraged public participation First World War Centenary Program 2014-2018 Guide to engaging local communities:

<https://www.gov.uk/government/publications/first-world-war-centenary-toolkit-for-local-communities>

<sup>249</sup> Millman Brock (2000), *Managing Domestic Dissent in First World War Britain*, Routledge.

<sup>250</sup> E.g. Gopal P. 'First World War bravery was not confined to the soldiers', *The Guardian*, 28 February 2014:

[www.theguardian.com/commentisfree/2014/feb/27/first-world-war-bravery-fight-for-peace](http://www.theguardian.com/commentisfree/2014/feb/27/first-world-war-bravery-fight-for-peace)

Margaret Macmillan's preface to republishing of Barbara Tuchman's classics, *The Proud Tower* (1966) and *The Guns of August* (1962). [www.loa.org/books/356-the-guns-of-august-the-proud-tower](http://www.loa.org/books/356-the-guns-of-august-the-proud-tower)

<sup>251</sup> Rubinstein David in Ben Pimlott & Chris Cook (eds) *Trade Unions, Politics and Public Opinion 1906-1914*, London: Longman. Grayzel Susan R. (1999) *Women's identities at War, Gender, motherhood, and politics in Britain and France during the First World War*, Chapel Hill: University of North Carolina Press.

<sup>252</sup> *Representation of the People Act, 1918* (known as the Fourth Reform Act, as the precursor to the 1928 legislation), and the *Sex Disqualification (Removal) Act 1919*.

<sup>253</sup> Born after the period of major legislative and social reform for women's equality in the 1970s.

- 3.75. The Centenary also encouraged publishers to revise and re-issue their backlists. Alice Wheeldon and her family are now being included in new books and revised histories of resistance to war and conscientious objection.<sup>254</sup>

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<sup>254</sup> E.g. Christopher Hitchens, Sunday Book Review 'The pacifists and the trenches' (review of Adam Hochschild (2011) *To end all wars*) *New York Times*, 13 May 2011. [www.nytimes.com/2011/05/15/books/review/book-review-to-end-all-wars-by-adam-hochschild.html](http://www.nytimes.com/2011/05/15/books/review/book-review-to-end-all-wars-by-adam-hochschild.html)?  
Cyril Pearce (2014), *Comrades in Conscience. The story of an English community's opposition to the Great War*, 2nd edition, Francis Boutle.  
Cyril Pearce (2015) *Writing about Britain's 1914-18 War Resisters - Literature Review*, (review no. 1779), DOI: 10.14296/RiH/2014/1779 (accessed: 6 May, 2016) [Held: Articles].  
Sheila Rowbotham (2015) *Friends of Alice Wheeldon. The Anti-War Activist Accused of Plotting to Kill Lloyd George*, London: Pluto Press (first published 1986). Introduction, pp. viii-xvi [Held: Articles].

## 4. APPLICABLE LAW

### Skeleton Argument

#### *General principles*

- 4.1. References under s9(1)(a) of the Criminal Appeal Act 1995 ('the 1995 Act') are to be treated, in accordance with s9(2) of that Act, as an appeal against conviction under s1 of the Criminal Appeal Act 1968 ('the 1968 Act'). The test for allowing an appeal is in s2(1)(a): 'the Court of Appeal... shall allow an appeal against conviction if they think that the conviction is unsafe'.
- 4.2. Lord Bingham gave guidance, as a member of the judicial committee of the House of Lords, in *R v Pendleton* [2002] 1 Cr App R 441, on the proper approach to s2(1)(a) of the 1968 Act (at paragraph 7):
  - 4.2.1. The section's predecessor is s4(1) of the Criminal Appeal Act 1907 which, with the accompanying sections, 'clearly expresses Parliament's overriding intention that the interests of justice should be served and also its expectation that the court would have to grapple with potentially difficult factual issues'.
  - 4.2.2. The 'core provision' of s4(1) is 'now expressed more shortly and simply in s2 of the 1968 Act'.
- 4.3. His Lordship said the following in relation to fresh evidence (at paragraph 91):

It will usually be wise for the Court of Appeal, in a case of any difficulty, to test their own provisional view [as to the effect of the evidence on the safety of the conviction] 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.
- 4.4. In *R v Hanratty (Deceased)* [2002] 2 Cr.App.R. 30 the Court of Appeal, led by Lord Woolf LCJ, referred to Lord Bingham's judgment in *Pendleton* and summarised its 'most important lesson' as follows:

It should be [the Court of Appeal's] central role to ensure that justice has been done and to rectify injustice.
- 4.5. In *R v Bentley (Deceased)* [2001] 1 Cr App R 21 the Court of Appeal, led by Lord Bingham CJ, set out principles of general application as to the approach which should be taken to appeals brought many years after conviction (emphasis added):
  - (1) We must apply the substantive law... as applicable at the time...
  - (2) The liability of a party to a joint enterprise must be determined according to the common law **as now understood**.
  - (3) The conduct of the trial and the direction of the jury must be judged **according to the standards which we would now apply** in any other appeal...
  - (4) We must judge the safety of the conviction **according to the standards which we would now apply** in any other appeal.

4.6. Returning to the judgment in *Hanratty*, the court noted (at paragraph 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.

4.7. It continued (paragraph 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.

4.8. In relation to procedural defects, the court cited another decision of Lord Bingham in *Randall v R* [2002] 2 Cr App R 267 (PC) at its paragraph 97, which included the following passage:

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.

4.9. On the effect of the passage of time, the Court of Appeal in *Hanratty* made it clear that current standards should be applied but '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' (paragraph 100). If 'what has happened did not comply with a rule which was in force at the time of trial [that] makes the non-compliance more serious than it would be if there was no rule in force' (paragraph 98).

### ***Core submissions on legal principles***

4.10. Here, it is the Applicant's case that:

4.10.1. The decision to keep 'Gordon' out of the way amounted to an abuse of process, rendering the convictions unsafe: -

- In *R v Mullen* [1999] 2 Cr App R 143 the Court of Appeal confirmed that a conviction may be unsafe due to abuse of process because 'for a conviction to be safe, it must be lawful; and, if it results from a trial which should never

have taken place, it can hardly be regarded as safe'. Such abuse may come to light only after trial.

- On the basis that it was improperly motivated, the decision to keep 'Gordon' out of the way puts the case into the category of proceedings that would bring the administration of justice into disrepute (the second form of abuse identified in *R v Maxwell* [2010] UKSC 48).
- Furthermore, and in any event, it rendered the trial process unfair (the first form of abuse identified in *Maxwell*). 'Gordon' was a material witness for all the reasons set out below. Furthermore, the additional evidence regarding the true identity and history of 'Gordon', is such that:
  - (a) It can reasonably be supposed that he would have damaged the prosecution's case if called and exposed to cross-examination; and,
  - (b) If he had been deployed by the defence at trial, it would have profoundly affected the jury's decision.

4.10.2. Further and in any event, the irregularities in relation to the jury and bad character evidence render the conviction unsafe.

**GROUND S OF APPEAL**

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## 5. GROUND A: THE ROLE OF 'GORDON', THE FAILURE TO CALL HIM, AND THE FAILURE TO DISCLOSE HIS BACKGROUND

### Skeleton Argument

#### (1) Role of 'Gordon'

- 5.1. 'Gordon' was a critical figure in this prosecution in, inter alia, the following respects:
- 5.1.1. He encouraged the principal Defendant to embark upon an expedition of obtaining poison irrespective of whether the eventual victim of that poison was to be an animal or a human being.  
> **Supporting material: page 83**
  - 5.1.2. He purported to receive admissions of (a) intention to make and complicity in an attempt upon Lloyd George's life from the principal Defendant and (b) passed on material allegedly incriminating the Defendants to Booth, upon which Booth acted.  
> **Supporting material: page 92**
  - 5.1.3. He was present with Booth when Booth claimed incriminating admissions were made by the principal Defendant.  
> **Supporting material: page 98**
- 5.2. At all material times 'Gordon' was a special agent in the employ of an agency of the British Government.  
> **Supporting material: page 99**

#### (2) Failure to call 'Gordon'

- 5.3. No reasons were disclosed for the prosecution decision not to call 'Gordon'. The Attorney-General simply said that he took responsibility for the decision 'for reasons which seem to me good'. However:
- 5.3.1. 'Gordon' was 'named on the back of the indictment'.  
> **Supporting material: page 105**
  - 5.3.2. Defence was not aware that 'Gordon' was not being called or made available.  
> **Supporting material: page 111**
  - 5.3.3. The guiding principle for calling witnesses at the time was set out by Baron Alderson in *R v Woodhead* (1847) Car & K 520: 'a prosecutor is not bound to call witnesses merely because their names are on the back of the indictment; but the prosecutor ought to have all such witnesses in court, so that they may be called for the defence, if they are wanted for that purpose; if, however, they are called for the defence, the person calling them makes them his own witnesses'.

5.3.4. *R v Russell-Jones* [1995] 1 Cr App R 538 reviewed the history of that principle, referred to as 'the 1847 rule' which Lord Parker CJ had described (in *R v Oliva* (1965) 49 Cr App R 298) as having 'continued in full force' ever since it was laid down, but concluded that the prosecution's discretion was not 'unfettered'.

(a) The first limiting principle is that the discretion 'must be exercised in the interests of justice, so as to promote a fair trial' (p. 544D). The court should interfere if the prosecutor had acted out of an oblique motive, that is to say if he had not called his mind to his overall duty of fairness, as a minister of justice (p. 544F).

(b) The next principle is that the prosecution ought normally to call or offer to call all the witnesses who give direct evidence of the primary facts of the case, unless for good reason, in any instance, the prosecutor regards the witness's evidence as unworthy of belief. That reflected statements of principle by Lord Roche in *Seneviratne v R.* [1936] 3 All ER 36, and by Lord Hewart CJ in *R v Harris* [1927] 2 KB 587 (see p. 545C).

Certainly by current standards, this was a situation in which it would have been contrary to the interests of justice to require the defence to call 'Gordon', and so, if the Crown refused to do so, the learned judge ought to have exercised his power to call the witness (see *R v Haringey Justices Ex. p. DPP* [1996] QB 351).

> **Supporting material: page 112**

5.4. The failure to call 'Gordon', or make him available, prevented the defence from exploring:

5.4.1. 'Gordon's personal involvement with investigating escapes from internment camps and his dealings with dogs in that context. It was the defence case that all discussion about poison and guard dogs in internment camps originated from 'Gordon'.

> **Supporting material: page 117**

5.4.2. The accuracy of Booth's notes alleging admissions by the principal Defendant at a time when 'Gordon' was present. In the context of Booth being permitted to rely on his notes without being required to exhaust his memory, the evidence of 'Gordon' may have undermined the accuracy/reliability/honesty of those notes.

> **Supporting material: page 123**

### (3) Failure to disclose 'Gordon's background

5.5. The decision not to call 'Gordon' was not a legitimate decision, nor made in good faith. It was a deliberate (and successful) attempt to suppress from the defence and from the jury that in truth 'Gordon' was a man both of mental instability and serious criminal background, called William Rickard.

5.5.1. The fact that 'Alex Gordon' was in truth William Rickard is demonstrated by contemporaneous sources – photographs, handwriting, official registers, etc.



and supported further by recorded admissions Rickard made personally under one or other alias.

> **Supporting material: page 126, including graphical summary of evidence identifying 'Alex Gordon' as William Rickard (Figure 5-3)**

5.5.2. Rickard had been in mental institutions and had criminal convictions including for blackmail. None of this was disclosed to the defence.

> **Supporting material, including references to contemporaneous records: page 143**

5.5.3. Prosecution confirmed its awareness of 'Gordon''s antecedents immediately before his withdrawal as a witness.

> **Supporting material: page 150**

5.6. 'Gordon' was kept out of the way by Sir Charles Matthews, the DPP, during the trial and then deliberately sent to South Africa shortly afterwards to remove all risk of his antecedents being exposed.

> **Supporting material: page 154**

5.7. In the circumstances the defence were denied any opportunity to cross-examine any prosecution witness on 'Gordon''s criminal antecedents and mental history. The relevance of this is that Booth acted on information provided by 'Gordon' and disclosure would have exposed Booth to cross-examination on both his competence and reliability in acting on the word of such a man.

> **Supporting material: page 157**

## Ground A Conclusion

5.8. In addressing this issue in the summing up, the judge directed the jury wrongly on the approach to the absence of 'Gordon'. The judge stated: 'If you think the absence of 'Gordon' is so fatal and renders the prosecution so uncertain and the evidence in support of it so unreliable as that you would not be justified in convicting the prisoners, of course you are bound to acquit them.'

5.8.1. This direction confines itself to the mere fact of the absence of the witness. It does nothing to address why his presence might have been so important to the defence. The principal Defendant's account, that 'Gordon''s plan was to poison a dog, would have been lent substantial weight by 'Gordon''s inevitable admission that immediately prior to his contact with the Defendants he had been in Liverpool, investigating escape from London internment camps where he claimed dogs were deployed.

5.9. Further, until the truth of 'Gordon''s antecedents emerged, the judge's words could not address what would have been the central issue if proper disclosure had been made, namely that the source of all the hard evidence as supplied to Booth was from a man who was mentally unstable and a criminal who the prosecution had deliberately concealed to avoid the risk of either side calling him to give evidence.

- 5.10. It is beyond doubt that the prosecution knew of 'Gordon''s mental health and criminal antecedents (as established in 5.5.3). The clearest evidence is found in an account of a meeting between the DPP, Douglas Straight, the head of PMS2, and Sir Basil Thomson, the head of Metropolitan Police CID and Special Branch, in the French version of Sir Basil's memoirs. Correspondence between Major Melville Lee, of PMS2, and the DPP alludes to the revelation of 'Gordon''s identity and antecedents. Contemporaneous correspondence and the fact of 'Gordon''s name being included on the back of the indictment strongly suggests that the prosecution intended to call 'Gordon' but changed their mind late in the day. Furthermore, one of the prosecuting counsel (Bodkin) had been the Recorder in a criminal case where 'Gordon' was the Defendant and convicted of theft prior to the Wheeldon trial [Dover Quarter Sessions, files for the quarters ending 13 April 1908 and 4 August 1908. Held: *Dover Quarter Sessions* 1908].
- 5.11. There was no perceived need at the time for formal duties of disclosure because the courts were thought able to rely on notions of fair play and the integrity of those acting on behalf of the Crown in criminal cases. The duty of prosecuting counsel to act as 'a minister of justice' was well established by 1917: see *R v Puddick* (1865) 4 F & F 497, per Crompton J; and *R v Banks* [1916] 2 KB 621 per Avory J. By contemporaneous standards the concealment of 'Gordon''s true identity and antecedents was in breach of the Crown's general duties of fairness.
- 5.12. Furthermore, plainly, under the duties of disclosure now in force, such information, about a man of pivotal importance to the events concerned, would have been disclosable - whether or not, in fact, he was to be called to give evidence. It would have been potentially useful to the defence in any abuse of process argument; in exploration at trial of the Crown's reasons for not calling 'Gordon'; and/or in criticism of the essential basis of the Crown's case.

## Ground A(1) Role of 'Gordon'

### Skeleton Argument

- 5.1 'Gordon' was a critical figure in this prosecution in, inter alia, the following respects:
- 5.1.1 He encouraged the principal Defendant to embark upon an expedition of obtaining poison irrespective of whether the eventual victim of that poison was to be an animal or a human being.
- > Supporting material: page 83
- 5.1.2 He purported to receive admissions of (a) intention to make and complicity in an attempt upon Lloyd George's life from the principal Defendant and (b) passed on material allegedly incriminating the Defendants to Booth, upon which Booth acted.
- > Supporting material: page 92
- 5.1.3 He was present with Booth when Booth claimed incriminating admissions were made by the principal Defendant.
- > Supporting material: page 98
- 5.2 At all material times 'Gordon' was a special agent in the employ of an agency of the British Government.
- > Supporting material: page 99

### Supporting Material: Role of 'Gordon'

*Skeleton Argument 5.1.1 - It was 'Gordon' who ... encouraged the principal Defendant to embark upon an expedition of obtaining poison irrespective of whether the eventual victim of that poison was to be an animal or a human being.*

- 5.13. There was no dispute between the Crown and defence that an oral agreement reached between 'Gordon' and the principal Defendant, Alice Wheeldon, resulted in her requesting poison from her son-in-law, Alf Mason. It was the intended use of the poison that marked the key difference between the Crown and defence cases - to assassinate Lloyd George and Arthur Henderson (the Crown) or for dogs in internment camps (the defence). Further, the defence maintained that it was 'Gordon' who raised the issue of dogs guarding internment camps in the first place.

A detailed chronology in Table 5-1 shows the development of the agreement between 'Gordon' and Alice Wheeldon, including the timing of her request for poison.

#### *Trial evidence: References supporting each of the contentions*

##### 5.14. The Crown case

- 5.14.1. The Crown maintained that it was Alice Wheeldon's idea, not "Gordon's" to obtain poison.

- 5.14.2. In his Opening Speech, the Attorney-General stated that after speaking with 'Gordon', Alice Wheeldon had despatched her 'application ... for some poison' on the evening of 26 December 1916. On the evening of 29 December 1916, 'Gordon' introduced Booth to the Wheeldon household.<sup>255</sup>
- 5.14.3. The Attorney-General's description of events showed that the decision to embark on obtaining poison had been made with 'Gordon' before Booth's arrival in Derby and his subsequent introduction to Alice Wheeldon.
- 5.14.4. As the Attorney-General put it in his Opening Speech, 'Gordon, I say, had established himself in the confidence of Mrs Wheeldon'. This was in contrast to Booth, about whom, the Attorney-General said: 'Mrs Wheeldon did not express herself very explicitly or definitively to Booth upon the matters with which we are concerned.'<sup>256</sup>
- 5.14.5. Booth recounted his conversations with 'Gordon' about poison to his superior officer, Melville Lee on 28 and 29 December, before he was introduced to the Wheeldon household.<sup>257</sup> Booth, in cross-examination, described the conversation:
- L401 - I said [to 'Gordon'] 'well what do you want?' He said 'A most extraordinary thing... There are some people here who want to poison Lloyd George and Arthur Henderson'.
- L405 - ... I said: 'You say she is sending away for the poison'. He said: 'Yes'. I said 'Who is it to?' He said 'I cannot quite tell at all; she has not told me who it is... I said 'Has she sent off for it yet?' He said 'Yes, she has sent off a parcel with four mince pies in it and one of the mince pies has got a request in it for the poison, and there is another letter, and that is a general letter, but it commences 'Dear 'A' and finishes 'Z'. So I said 'All right, I will go and see the Railway Company and see if I can get a stop on.'
- 5.14.6. Booth was not successful in 'stopping' the letter requesting the poison that 'Gordon' had described to him.<sup>258</sup>
- 5.14.7. A few days later, 2 January 1917, Booth visited Alice Wheeldon alone. Booth found she had just written to her daughter Winnie Mason in Southampton following up her request to send poison. This second letter, Booth intercepted and had copied. At court, counsel Bodkin read out the letter (Exhibit 37) containing the passage:
- '...Oh, did you get the pie paper and will you send me that stuff. I want it for a fellow who will risk anything to accomplish something...'<sup>259</sup>

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<sup>255</sup> Opening Speech, March 1917, in *Record* p. 142. [Held: Proceedings]

<sup>256</sup> Opening Speech, March 1917, in *Record* p. 147. [Held: Proceedings]

<sup>257</sup> 1st Trial, First Day, Booth XXN, L401 - 409 in *Record* p.250. [Held: Proceedings]

<sup>258</sup> 2nd Trial, Third Day, Booth XXN L3001 in *Record* p.379.[Held: Proceedings]

<sup>259</sup> 1st Trial, Exhibit 37: letter from Alice Wheeldon to Winnie Mason dated 2 January 1917, in *Record*. [Held: Proceedings]

5.14.8. On the 3rd day of the trial, again in cross-examination<sup>260</sup>, Booth referred to a conversation between ‘Gordon’ and Alice Wheeldon on 29 December:

L3007 – Q: Did you hear her talk to Gordon also? A: Yes.

L3008 – Q: Did she say to Gordon something about her three boys trying to get out of the country? A: Yes, that was the purport of the letter.

L3009 – Q: The purport of what letter? A: The letter written by Gordon to McManus at the request of Mrs Wheeldon.

L3010 – Q: So that you knew at the time that Mrs Wheeldon had a son, William? A: Yes.

L3011 – Q: And you knew at the time that she was trying to get him off?

L3012 – Q: And knew at the time that Gordon was actually helping him get out of the country? A: He was helping her as far as I allowed him.

5.14.9. Booth therefore understood that prior to his own visit, ‘Gordon’ had a role in helping Alice Wheeldon.

### 5.15. The defence case

5.15.1. The defence argued that the efforts made by the principal Defendant Alice Wheeldon, to obtain poison arose at ‘Gordon’s’ request. This request arose in the prior context of ‘Gordon’ describing to Alice the ‘emigration scheme’ to America available to escaped internees and COs on the run.

5.15.2. At trial, Alice Wheeldon recounted conversations with ‘Gordon’ at their initial meeting on 26 December 1916, when he had introduced himself to her as a CO on the run. The following morning, ‘Gordon’ returned to her house and told her of his involvement in getting ‘Kieran [Kehrhahn<sup>261</sup>] and two others’ out – helping them to escape from an internment camp – and his going to Liverpool to arrange for them to get to America. Alice Wheeldon testified:<sup>262</sup>

‘Of course this naturally interested me and I asked him all the particulars about America, thinking, of course, of letting my boy go.’ [‘my boy’ – her son, William Marshall Wheeldon, a CO on the run.]

5.15.3. The testimony then turned towards Alice Wheeldon’s own concerns and ‘Gordon’s’ request for poison:<sup>263</sup>

L1928 – ...In conversation my daughter Winnie’s name came up. I was very talkative probably, I might say, and I explained her position and my son-in-law’s position and a friend of ours, McDonald [Alexander Macdonald], and he said it was quite easy to get them all over to America if they would ...

<sup>260</sup> 2nd Trial, Third Day L3007-3012 in *Record* pp.379-380.[Held: Proceedings]

<sup>261</sup> Ferdinand Kehrhahn, a British citizen known for his opposition to the war, had been detained under the *Defence of the Realm Act 1914* (DORA).

<sup>262</sup> 1st Trial, Second Day Alice Wheeldon EIC L1916-1918, L 1933-1934 in *Record* p. 326 [Held: Proceedings]

<sup>263</sup> 1st Trial, Second Day, Alice Wheeldon EIC L 1928-1937 in *Record* p. 326. Equivalent testimony in 2nd Trial, Fourth Day, Friday 9 March 1917, Alice Wheeldon EIC in *Record* p. 433-434. [Held: Proceedings]

L1933 - ... we had been in conversation for some time and he said: 'I wonder if your daughter's husband, being a chemist, could help me.'

L1934 - Q: Did he suggest any way in which your daughter's husband could help him? A: Well, after a little while, of course I asked him and he said that he might get him some poison for the dogs.

L1935 - Q: Did he tell you where those dogs were? A: He said they were at the internment camp where these boys were in. He said: 'Since Kieran's escape they have not only doubled the guards, but they have put Police dogs on.'

L1936 - Q: Did he say that the poison was wanted for those dogs? A: Yes.

L1937 - Q: Who was the first person who introduced the name of Mr Mason, your son-in-law? A: I told him ['Gordon'] all about it.

- 5.15.4. In cross-examination (first trial),<sup>264</sup> Alice Wheeldon made it plain that 'Gordon' had encouraged her to obtain poison for him:

L2323 - Q: I want you to tell me now fairly, it [sic] you will, how the subject of the poison first came to be introduced? A: It was through my daughter's name being brought up and her husband being a chemist.

L2335 - Q: Then how did he ['Gordon'] approach the subject of poison, or how did you approach it after that? A: He ['Gordon'] asked me if it was possible for him to do anything to get rid of these police dogs.

- 5.15.5. Winnie Mason supported Alice Wheeldon's contention that 'Gordon' had initiated the obtaining of poison. At trial, she stated:<sup>265</sup>

L5267 - Then after Christmas I had a letter from my mother in which she referred to the general disappointment we had all had at Christmas; we had all had a miserable Christmas, naturally, and she told me that a man had come to the house in a similar position to that in which my brother was then in, and quite shortly told me that this man said he could get Will out of the country, but there was some difficulty about a dog.

L5268 - Low J: A dog? A: ...I suppose she knew that Alf had often killed dogs, and asked me for some poison. She said that the man had undertaken as a sort of bargain that if she got the poison he would get Will out of the country, and she added a note that if I wanted to get Alf to get out - as a matter of fact he did not - she would ask for that.

- 5.15.6. That the arrangement to procure poison lay between Alice Wheeldon and 'Gordon' is also suggested by Booth. On 4 January 1917, Booth and 'Gordon' on finally leaving Alice Wheeldon, Booth said:<sup>266</sup> 'She gave the box [of poison] to Gordon and Gordon put it in his pocket.'

<sup>264</sup> 1st Trial, Second Day, Alice Wheeldon XXN L2323; L2334-6, in *Record* p.343; Equivalent testimony in 2nd Trial L 4133-4140, in *Record* p. 433-434. [Held: Proceedings]

<sup>265</sup> Fourth Day, Winnie Mason EIC, L5267-5269 in *Record* pp.258-259. [Held: Proceedings]

<sup>266</sup> Third Day, Booth EIC, L2952 in *Record* p.377. [Held: Proceedings]

**Table 5-1. Visits by 'Gordon' and Booth to the Wheeldon household****a. Detailed chronology**

The table provides a chronology of the visits by 'Gordon' and Booth to the Wheeldon household between December 1916 and January 1917 and their significance. It is constructed from both prosecution and defence evidence at trial and supplemented by documents not produced at trial, namely writings produced by 'Gordon' and Booth in telegrams, reports, and statements discovered in the course of preparing this application. One such document is the Brief for Prosecution, Central Criminal Court Sessions 27 February 1917<sup>267</sup> setting out the dates of visits of 'Gordon' and Booth as well as principal events.

Points of inconsistency/contest with the prosecution evidence at trial are noted.

Visits are numbered after each visitor [V1, V2 etc]

Visits	Significance
<p><u>Tuesday 26 December 1916</u></p> <p>'Gordon' [V1] arrives 'just before tea', talks to Alice for 45 minutes, then talks further when Hettie and Nellie arrive. TOTAL = approx. 75 minutes <i>Sleeps at Lydia Robinson's house.</i></p>	'Gordon' first arrives at household.
<p><u>Wednesday 27 December 1916</u></p> <p>'Gordon' [V2] arrives talks to Alice first, before Hettie comes downstairs and joins them. 'Gordon' then leaves at lunchtime with Macdonald, a friend of the family living in the household.<sup>268</sup> TOTAL = approx. 120 minutes <i>'Gordon' sends telegram to Booth</i><sup>269</sup></p> <p>'Gordon' [V3 + V4] calls twice in the afternoon and evening, without going in as he learns from Alice's husband that she and Hettie are out. TOTAL = no more than 5 minutes</p> <p>'Gordon' [V5] returns at 9.15pm, staying less than 15 minutes. He then returns at 10.15pm and stays the night. TOTAL = perhaps 90 minutes before family goes to bed. <i>Sleeps at the Wheeldon household.</i></p>	'Gordon' has long conversations during which, according to the defence case, he asks Alice to help him: 'to get some poison to get rid of those dogs'. <sup>270</sup> [Contested by the prosecution.]
<p><u>Thursday 28 December 1916</u></p> <p>'Gordon' [V6] has breakfast with Alice and Hettie, talks with Macdonald, then leaves soon after 10.00am. TOTAL = approximately 20 minutes <i>7pm Booth arrives at Derby station</i><sup>271</sup> <i>where he's met by 'Gordon'.</i></p>	'Gordon' has conversations at the Wheeldon household about the 'emigration scheme'.

<sup>267</sup> 'Brief for Prosecution Central Criminal Court 27 February Sessions 1917'. Also, for Counsel's 'Precis of Facts'. [Held: TNA > DPP 1-50].

<sup>268</sup> 2nd Trial, Fourth Day, Alice Wheeldon L4144-4146 and L4152 in *Record* p.434; Hettie Wheeldon, L4610-4615 in *Record* pp. 457-458. [Held: Proceedings]

<sup>269</sup> Telegrams available: DPP 1-50 Telegrams.

'Original telegrams: Particulars of original telegrams available for production by Lieutenant Brodie...No.4. From: - Midland Road, Derby 27 Decr. 1916': [Held: TNA > DPP 1-50 > DPP 1-50 Telegrams]

Telegram. To Booth, 102 Beverstone Rd, Thornton Heath Surrey. Text: 'Am busy: Come, Vivid, Derby.' [Held: TNA > DPP 1-50 > Telegrams]

(NB Booth gave 28 December as date of receipt and of travel to Derby the same day: 1st Trial, First Day, Booth EIC L25, p.231; 2nd Trial Third Day Booth EIC L2784-2787 in *Record* p.367. [Held: Proceedings])

Telegram trace request - 'Gordon' to Booth PMS London telegram, as being sent 28th December: Special Branch MEPO-- [Held: TNA > MEPO 9356 > MEPO 9356-11-01 - Telegram trace]

<sup>270</sup> 2nd Trial, Fourth Day, Alice Wheeldon L4134-4135 in *Record* pp.433-434.

<sup>271</sup> 1st Trial First Day, Booth EIC L31 in *Record* p.231. [Held: Proceedings]

Visits	Significance
<p><b>Gordon' [V7]</b> returns after 8.00pm, but stays only a short time. TOTAL = not more than 20 minutes.</p> <p><i>Sleeps at Councillor Farrow's house.</i></p>	<p>Agreement reached: 'Gordon' offers to give Macdonald a letter of introduction to McManus in Liverpool;<sup>272</sup> and Alice is to help him by arranging to get poison for, according to the defence case, the dogs he says are guarding the internment camp where his friends are held. [Contested by the prosecution.]</p> <p>Alice and Hettie arrange for Macdonald to go to Liverpool with 'Gordon's' letter to investigate the emigration scheme.<sup>273</sup></p>
<p><u>Friday 29 December 1916</u></p> <p><b>'Gordon' [V8]</b> returns at 8.00am,<sup>274</sup> and stays some time. TOTAL = not more than 60 minutes.</p> <p><i>Booth, before lunch meets 'Gordon' at Derby station.<sup>275</sup> Then he went to a post office and dispatched 2 telegrams to his superior officer.<sup>276</sup></i></p> <p><i>Booth meets Melville Lee on arrival in Derby.</i></p>	<p>According to Booth's evidence, Alice packs parcel with letter and note requesting poison.<sup>277</sup></p> <p>At this point, 'Gordon' claims that Alice let him read the request for poison in her letter to Winnie Mason.<sup>278</sup> [Contested by the prosecution.]</p>
<p><b>First joint meeting:</b></p> <p><b>'Gordon' [V9]</b> goes together with <b>Booth [V1]</b> to Wheeldons at 8.20pm,<sup>279</sup> and they stay until about 9.10pm. TOTAL = approximately 50 minutes</p>	<p>'Gordon' introduces Booth to Alice Wheeldon.</p> <p>At trial, Booth claims Alice said to 'Gordon':<sup>280</sup></p> <p>'Hettie took it [parcel with request note] by the 7:15' (L74)</p> <p>'You ['Gordon'] might write that letter to McManus introducing Macdonald and my son and another man [Alf Mason].' (L76-77)</p>
<p><u>Saturday 30 December 1916</u></p> <p><b>Booth [V2]</b> visits at 8.15pm, staying for some time.<sup>281</sup> TOTAL = approximately 60 minutes</p>	<p>Booth says he hands 'Gordon's' letter to Alice and she says '...poison has not come yet'.<sup>282</sup></p>
<p><u>Sunday 31 December 1916</u></p> <p><b>Booth [V3]</b> visits alone in the evening, but finds no-one in.<sup>283</sup> TOTAL = 0 minutes</p>	

<sup>272</sup> No. 5 First Report on the Wheeldon Case', c.30 December 1916. undated typescript 'Reports' p.5, [Held: TNA> HO 144-13338/331997 > Transcription reports]

'Further Statement of Herbert John Walsh Booth', p.1. [Held: TNA > DPP 1-50 > DPP 1-50 Booth Statement & Further 1917]

<sup>273</sup> Alice Wheeldon: 1st Trial, Second Day, L1995 in *Record* p.330; 2nd Trial, Fourth Day L4187 in *Record* p. 436. [Held: Proceedings]

<sup>274</sup> 'Gordon' Police Statement, 18 January 1917 [Held: TNA > DPP 1-50 > DPP 1-50 Gordon Statement]

<sup>275</sup> 'Gordon' Police Statement, 18 January 1917, p.7 [Held: TNA > DPP 1-50 > DPP 1-50 Gordon Statement]

<sup>276</sup> Booth's Police Statement 5 February 1917, p.3 [Held: TNA> DPP 1-50 > DPP 1-50 Booth Statement & Further 1917]

<sup>277</sup> 2nd Trial, Third Day, Booth EIC L2890-2892 and L2896 in *Record* p.371-372; Booth XXN L2998 in *Record* p.378. [Held: Proceedings]

<sup>278</sup> 'No. 5 First Report on the Wheeldon Case', c.30 December 1916. undated typescript 'Reports' p.5. [Held: TNA> HO 144-13338/331997 > Transcription PMS2 reports]

<sup>279</sup> First Day, Booth EIC L2794 in *Record* p.367; AW EIC 'about 8pm' L4192 in *Record* p.436.[Held: Proceedings]

<sup>280</sup> 1st Trial First Day, Booth EIC L74-77 in *Record* pp.232-233. [Held: Proceedings].

<sup>281</sup> 8.15pm: 2nd Trial Booth EIC L2840 in *Record* p.367; 9.05pm - Booth EIC L2860 in *Record* p.370. [Held: Proceedings]

Alice Wheeldon EIC 'before dinner' L4232, L4242, 4250 in *Record* p.438-439. [Held: Proceedings]

<sup>282</sup> 2nd Trial Booth EIC L2841, L2850-1 in *Record* p.369; Booth XXN L3043 in *Record* p. 380. [Held: Proceedings]

<sup>283</sup> 2nd Trial Third Day Booth EIC L2841, L2850-1 in *Record* p.369; Booth XXN L3043 in *Record* p. 380. [Held: Proceedings]



Visits	Significance
<p><u>Monday 1 January 1917</u></p> <p>Booth [V4] calls alone at around 1.00pm.<sup>284</sup> TOTAL = no more than 30 minutes</p>	Booth talks with Nellie who is present with Alice, Hettie and her fiancé Walter Goodman. <sup>285</sup>
<p><b>Second joint meeting:</b></p> <p>Together 'Gordon' [V10] and Booth [V5] visit household, arriving at 8.20pm,<sup>286</sup> and leaving about 9.20pm.<sup>287</sup> TOTAL = 60 minutes</p>	Booth describes how he talks with Nellie and others while Alice is 'left alone' in company of 'Gordon'. <sup>288</sup>
<p><u>Tuesday 2 January 1917</u></p> <p>'Gordon' [V11] and Booth [V6] together arrive at lunchtime and speak to Hettie.<sup>289</sup> TOTAL = no more than 30 minutes</p>	
<p>Alone, Booth [V7] calls again in the afternoon.<sup>290</sup> TOTAL = unknown duration, but probably no more than 30 minutes.</p>	Poison not arrived, second request with letter inside explaining more. <sup>291</sup>
<p><u>Wednesday 3 January 1917</u></p> <p>'Gordon' [V12] calls in the evening, but Alice is out.<sup>292</sup> TOTAL = 0 minutes</p>	Although Alice is out, 'Gordon' meets Macdonald on the doorstep and they leave together 'to have a drink'. 'Gordon' subsequently reports this conversation to PMS2. <sup>293</sup>
<p><u>On Thursday 4 January 1917</u></p> <p>Alone, Booth [V8] calls 5.15pm.<sup>294</sup> TOTAL = unknown duration, but probably 5 minutes.</p>	Booth and Melville Lee intercept letter from Winnie Mason. <sup>295</sup>
<p><b>Third joint meeting:</b></p> <p>'Gordon' [V13] and Booth [V9] call just before 8.00pm,<sup>296</sup> and stay a short time. TOTAL = not more than 20 minutes.</p>	Alice Wheeldon shows them box containing poison; hands it to 'Gordon' before they leave. <sup>297</sup>

<sup>284</sup> 1st Trial Booth EIC L 153 in *Record* p. 236; Alice EIC L4256 "before dinner" in *Record* p. 440. [Held: Proceedings]

[Both Riza & Low J. were confused since they hadn't understood that 'dinner' meant the main, midday meal...- see L4257 p. 440]. [Held: Proceedings].

<sup>285</sup> Third Day, Booth EIC L2878-2881 in *Record* p. 371. [Held: Proceedings]

<sup>286</sup> 1st Trial Booth EIC L 158 in *Record*, p.237; 2nd Trial Booth EIC L2883 in *Record* p.371. [Held: Proceedings]

<sup>287</sup> 2nd Trial Third Day, Booth EIC L2896 in *Record* p.372. [Held: Proceedings]

<sup>288</sup> Third Day, Booth EIC L2884 in *Record* p. 371. [Held: Proceedings]

<sup>289</sup> Fourth Day, Hettie Wheeldon EIC L4670-4672 in *Record* p.461.

<sup>290</sup> Third Day, Booth EIC L2901 in *Record* p. 372. [Held: Proceedings]

<sup>291</sup> Exhibit 37 in *Record* page 90-91. [Held: Proceedings]

<sup>292</sup> No. 5 Third Report on Wheeldon Case': [Held: TNA > HO 144/13338/331997 > Transcription of reports].

<sup>293</sup> 'No. 5 Third Report on Wheeldon Case': [Held: TNA > HO 144/13338/331997 > Transcription of reports].

<sup>294</sup> Third Day, Booth EIC L2925 in *Record* p. 375. [Held: Proceedings]

<sup>295</sup> Third Day, Booth EIC L2924 in *Record* p.374, and Exhibit 39 3 January 1917 in *Record* page 95-96. [Held: Proceedings]

<sup>296</sup> Third Day, Booth EIC L2927 in *Record* p. 375; Booth XX L3187: 7.45pm and L3188: 'with Gordon' in *Record* p.385. [Held: Proceedings]

Alice Wheeldon: 2nd Trial Fourth Day, EIC L 4279: 'twice' visited L4284 and before 5pm, 'the afternoon, after dinner' ...L4295: 'not many minutes' in *Record* p.440-441; Alice RX L4307-4310 in *Record* p.441-442. [Held: Proceedings]

<sup>297</sup> 2nd Trial Third Day, Booth EIC L2930-2950 in *Record* pp. 376-377. [Held: Proceedings]

*b. Comparison of relative numbers of visits by Booth and Gordon*

	Visits by 'Gordon'	Visits by Booth
Actual number of visits, as per table (a) above	13 (including 3 joint)	9 (including 3 joint)
Overnight stay	1	-
Total duration of conversations at Wheeldon household	11 hours	4 hours 45 mins
Duration of conversations on sole visits	8 hours 40 mins	2 hours 5 mins

*Contemporaneous public comment*

5.16. In February 1917 for the Derby Assizes, the *Manchester Guardian* reported on the Attorney-General's Opening Speech (described above). It noted the gap in the prosecution's evidence:

'The Attorney-General did not indicate how Gordon became intimate with the Wheeldon family or how the alleged plot was first conceived...'<sup>298</sup>

*Table 5-2. Transcript references to poison*

References to poison by Booth and the Defendants in the transcripts of both trials; page references are from the *Record of Proceedings* [Held: Proceedings].

BOOTH	DEFENDANTS
<b>FIRST TRIAL</b>	
<p><b>Booth EIC - 1st Day, 6 March 1917</b></p> <p>p. 235 L 129 – 'Has the poison come yet?' [Question in Gordon's letter to Alice, written under Booth's direction]</p> <p>p. 237 L 163 – 'poison has not arrived'</p> <p>p. 237-238 L 172-173 – asked her 'best way to poison Lloyd George'</p> <p>p. 238 L 182 - asked her 'What size will the phial be?'</p> <p>p. 240 L 218 – Ex 35 letter [Alice to Winnie]: asked about 'what you think of proposed scheme we wrote about in the parcel'</p> <p>p. 243 L 261 – dose</p> <p>p. 243 L 262 – Ex 40 – 'dog' 'own it'</p> <p>p. 244 L 274 – box to 'Gordon'</p> <p>p. 244 L 279 – 'done them in'</p> <p><b>Booth XXN- 1st Day, 6 March 1917</b></p> <p>p. 248 L 380 – Depositions</p> <p>p. 250 L 401 – she got it</p> <p>p. 250 L 402 – in possession</p> <p>p. 250 L 405 – send away</p> <p>p. 251 L 409 – could you let me have</p> <p>p. 256 L 538 – poison arrival &amp; handover</p> <p>p. 256 L 539 – arrival address</p>	<p><b>Alice Wheeldon EIC – 2nd Day, 7 March 1917</b></p> <p>p. 326 L 1933-4; L 1941-44 (quoted above) – '...after he suggested to you about this poison for dogs?'</p> <p>p. 331 L 2036 – Booth as go-between for message about poison</p> <p>p. 331 L2039-2043 – AW wrote letter (requesting poison) on morning Friday 29 December 1916</p> <p>p. 334, L 2110, L 2117 – failure of poison to arrive</p> <p>p. 335 L 2127, 2132 – questioned about Booth saying anything about poisons or emigration scheme</p> <p>pp. 335-6 L 2144 – 2158 – poison pick-up</p> <p>p. 336 L 2165, 2168, 2173 – questioned on reference to poison for dogs in Winnie's letter; Low J intercedes to ask about her dictation to Booth of directions for poison.</p> <p>p. 337 L2174- 2175 – questioned about contents of letter from Winnie (included in parcel with box of poison), 'to get very near to the dogs to destroy them...'</p> <p>p. 338 L 2209, 2219. – Low J asks about her intercepted letter to Winnie in which she had asked about receipt of the 'pie paper', sending 'the stuff ...for a fellow who will risk anything ...' (i.e. the note requesting poison that she had wrapped around mince pies for the parcel she had sent Winnie)</p>

<sup>298</sup> *Manchester Guardian*, 5 February 1917 'Alleged Plot against the Premier. Wheeldons in Court. Strange Story. Attorney Generals Speech.', p.10; same issue, p. 4: 'Lloyd George and daughter lunch with Sir Frederick Smith'. [Held: Newspapers]

BOOTH	DEFENDANTS
<p>p. 259 L 618 – poison [Questioned on him asking Alice, Hettie &amp; Nellie ‘has anything come yet?’]</p> <p>p. 259 L 631 – stolen poison</p> <p>p. 260 L 650 – sending for poison, not for dogs</p> <p>p. 261 L 660 – poison arrival</p> <p>p. 261 L 662 – nature of poison</p> <p>p. 261 L 663 – to kill 500</p> <p>p. 262 L 670 – showed phials</p> <p>p. 262 L 696 – poison handed to ‘Gordon’</p> <p>p. 263 L 701 – ‘G would have been principal’.</p>	<p><b>Alice Wheeldon XXN– 2nd Day, 7 March 1917</b></p> <p>p. 343 L 2323, L 2334-2336.- Attorney-General questions her ‘how did he approach the subject of poison’; answered: ‘if it was possible for him to do anything to get rid of these police dogs.’</p>
<b>SECOND TRIAL:</b>	
<p><b>Booth EIC – 3rd Day, Thursday 8 March 1917</b></p> <p>p. 369 L 2832 – ‘poisonous’ snake bracelet<sup>299</sup></p> <p>p. 371 L 2885 – poison not arrived</p> <p>p. 371 L 2887 – poison in Crippen Trial</p> <p>p. 372 L 2892 – Q: best way to poison Lloyd George: A: prior plan ‘to get a position in a hotel where he stayed and drive a nail in his boot that had been dipped in the poison. ‘...skull to McKenna plan to stick poisoned needle in it</p> <p>p. 372 L 2896 – Booth asked ‘How is this poison used’. ...A: dissolve it, ‘dip your article in it... leaves the poison’.</p> <p>p. 372 L 2902 – Booth told ‘...not received the poison yet’ ...it has to come in a roundabout way.’</p> <p>p. 373 L 2916 – Ex 37 Tuesday night letter – Booth opinion on handwriting. Counsel read Alice’s intercepted letter, following up enquiry about previous parcel with note requesting poison be sent.</p> <p>p. 376 L 2935-2936 – Ex 40 directions with poison in box. Questioned about what Booth wrote from Alice’s dictation: ‘...a chance to get at the dog I pity it.’</p> <p>p. 377 L 2950 – Q: ‘...what became of the box?’ A: ‘She gave the box to Gordon and Gordon put it in his pocket.’</p> <p>p. 377 L 2952 – Q: ‘you left then, did you?’ A: The box was handed to Gordon.’</p> <p>p. 377 L 2953-2955 – Q: ‘What became of the box when you got outside?’ A: About a quarter of a mile away I had the box handed to me by Gordon. Q: What did you do with it? A: I went and found Melville Lee...handed it to Major Melville Lee’.</p> <p><b>Booth XXN – 3rd Day, Thursday 8 March 1917</b></p> <p>p. 378 L 3000-3002 – interception of Alice’s request for poison: ‘The parcel beat me.’ LOW J: You did not succeed in securing it? A: I did not, my Lord.’</p>	<p><b>Alice Wheeldon XXN – 4th Day, Friday 9 March 1917</b></p> <p>p. 433-434 L 4132-L4140 –Q: ‘Did he say anything else about those five Jews? A He said he was sorry but since Kernan’s and the others had escaped they had doubled the guard. Q: Doubled the guard? A: They had put on police dogs at the same time. We talked about my son-in-law being a Chemist, and he said ...</p> <p>p. 434 L 4146 – LOW J: ‘I then made a bargain with him that if he would, yes? A: If he would help get my boy and the two others to America I would undertake to give him poison for the dogs.’</p> <p>p. 437 L 4209 -4214 – snake bracelet (not poisonous!)<sup>300</sup></p> <p>p. 437 L4260-4265 –... Q: Have you got that letter [from Gordon], Mrs Wheeldon? A: No; the letter asked me to burn it, as he would all my communications, and after I had read it no reference in letter</p> <p>p. 441 L 4285-4294 – Booth arrived alone.</p> <p>Q: Did he say anything to you? A: He said ‘has it come?’</p> <p>LOW J: Well, you see, Mrs Wheeldon, you have not told us, so far as I know, of any reference whatever between you and Comrade Bert [Booth] as to the poison, up to this time. A: But he knew from Gordon Q: But how did you know that? A: Well, he asked me distinctly once when he came in ... Q: Whether the poison had arrived? A: Yes. Q: That is what he told us; that is correct, then? A: Yes, but I never discussed it with him. Q: Did he ask you about it? A: Yes. Q: Very well. ’</p> <p>p. 442 L4314-4321 – Q: What was the subject of the conversation that night? A: It was the poison.’</p> <p>p. 442 L 4324 – LOW J: ...is that the box? A: Yes. Q: And had it got those four little tubes in it, glass tubes? A: Yes.’</p>

<sup>299</sup> Booth testified he expressed interest in Alice Wheeldon’s snake bracelet, as if it were made of poisonous snakes, as part of his imputations as a ‘poisoner’. DPP had listed snake bracelet as property Booth could identify: [Held: TNA > DPP 1-50 Property Booth ID snake bracelet Sheet 645].

<sup>300</sup> In response to Booth’s suggestion about the snake bracelet, Alice Wheeldon readily dismissed his factual error, apparently oblivious to his sinister imputation. Part 7 (Ground C) addresses the bad character imputations.

BOOTH	DEFENDANTS
<p>p. 378 L 3029-3031 – Q: ...to be a go-between Gordon and Mrs Wheeldon? A: Yes. Q: Can you tell me the reason why? A: Well, I wanted to see when the poison turned up. to see when poison arrived. Q: Could not Gordon see it? A: I had to agree with Mrs Wheeldon in some respects.'</p> <p>p. 380 L 3050 –3055 Q: '...you went to the station and you opened some parcels? A: I did. Q: Did you take down a copy of the letter? A: No. Q: Why not? A: It was no good to me. Q: Did you read that letter? A: I think I did, but ... there was nothing with regard to poison in it. LOW J: It was not material? A: And no bad language, so it was in no way material.'</p> <p>p. 380 L 3058-3060 – Q: 'What was the reference to Crippen ..to Guy's Hospital? ...A: She said the young fellow as at Guy's Hospital at the time of the Crippen murder... while there he stole a phial containing cura, or curare, or cure.'</p> <p>p. 383 L 3139 – Q: 'Who was the first to introduce the conversation about poison? A: Mrs Wheeldon.'</p>	<p>p. 443 L 4340 – Parcel with poison delivered to Edie Marshall's house.</p> <p>p. 443 L4341 – Q: '..what did you do with the phials? ...A: I put them in a drawer.'</p> <p>p. 443 L 4370 – Q: Did you hand this box to anybody after the instructions had been taken down? A: Yes, to Gordon.'</p> <p><b>Winnie Mason EIC</b> p.484-485 L 5267-5269. A: '...Then after Christmas I had a letter from my mother... she told me that a man had come to the house in a similar position to that in which my brother was in, and quite shortly told me that this man said he could get Will out of the country, but there was some difficulty about a dog. LOW J: A dog? A: '... it was a dog.'</p> <p><b>Hettie Wheeldon EIC</b> p.470 L4826 XXN Attorney-General. – Q: '..is it your statement that, during the whole of those conversations not a single word was said about getting any poison? A: Certainly not. Q: Not a word? A: No, I never heard the word. LOW J: You never heard the word 'poison'? A: I never heard the word 'poison'. L4829: From the first to last that is true? A: Yes, the first time I heard of poison was in Derby Police Court.'</p>

***Skeleton Argument 5.1.2a – It was 'Gordon' who purported to receive admissions from the principal Defendant of intention to make an attempt upon Lloyd George's life and complicity in such an attempt.***

***At trial: Attorney-General's Opening Speech***

5.17. The Attorney-General's speeches refer many times to 'Gordon': what he heard from the principal Defendant about the conduct of the war, conscription, Lloyd George and linking those subjects to the Crown's claim that poison was intended for an attempt on the life of Lloyd George. Moreover, that:

'Gordon, apparently as indicated by words addressed to him by Mrs Wheeldon was to be the hand that carried out this scheme ... And Booth was to act as a go-between Mrs Wheeldon and Gordon.'<sup>301</sup>

<sup>301</sup> Attorney-General Opening Speech February in *Record* p.12 (Chapter 2); March, in *Record* p.162(Chapter 7). [Held: Proceedings]

*At trial: Booth's testimony*

- 5.18. 'Gordon's receipt of admissions of intent and complicity from the principal Defendant can be inferred extensively from Booth's evidence, either mentioning them (discussed in this section) or in acting upon them (see 1st Trial First Day in *Record* page 336).
- 5.19. Booth testified that he had tried (but failed) to intercept the parcel sent by the principal Defendant because: 'I knew what the parcel contained.': L2994-3001.
- 5.20. He was reliant on 'Gordon' for this knowledge.
- 5.20.1. In cross-examination Booth acknowledged that it was from 'Gordon' that he knew Alice Wheeldon had packed a parcel with a note requesting poison, the purported use being to make an attempt upon Lloyd George's life: 2nd Trial, Third Day, Booth XXN in *Record* pp. 378-384.
- L3145 - Q: At the time when this question of poison was introduced, you did not know what was the purpose for which this poison was going to be used? A: I knew all about it:
- L3147 - Q: So that you knew well what the poison was wanted for? A: Certainly.
- L3149 - Q: Had she mentioned this name [curar or cure] on that evening before you asked her 'How is this poison used'? A: Yes, and I also knew it from my informant.
- L3150 - Q: The word 'this' implies something.  
LOW J: He says that he knew it from some other source in addition to what her statement was.
- 5.21. Booth recalled that the first time the principal Defendant had spoken in his hearing about Lloyd George being killed was on 1 January 1917 at the second joint meeting with 'Gordon', the principal Defendant and himself: 2nd Trial Third Day, Booth XXN L3134 in *Record* p. 383. Booth's certain knowledge was from 'Gordon', as he stated in his Deposition (in *Record*, p.57).
- 5.22. Booth testified that 'Gordon' was in some arrangement with the principal Defendant that had been entered into before his arrival. Booth testified as to the nature of this pre-existing arrangement (1st Trial, First Day, Booth EIC in *Record* page 233):
- L76 - Q: Did Mrs. Wheeldon ask Gordon to do anything? A: Yes.  
Q: What was that? A: She said to Gordon: 'You might write that letter to McManus introducing Macdonald and my son and another man'.
- 5.23. Prosecuting Counsel pursued with Booth the relevance of 'Gordon's undertaking to the principal Defendant to introduce three men to McManus (1st Trial, First Day, EIC Booth in *Record* page 233). To PMS2, McManus was a person of interest because in 1916 he was involved with a scheme to get conscientious objectors (and other war resisters) across to the United States via Liverpool.<sup>302</sup>

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<sup>302</sup> 'Memorandum' by D.M.S[traight], 11 December 1916, f.48, p.2. [Held: Milner Papers - 04].

In 1920, 'Alex Gordon' described someone who 'earned big money on Government work and plotted to smuggle deserters and absentees out of the country' *Gloucestershire Chronicle*, 10 April 1920, p.6 col.3, 'The Red Peril'. [Held: Newspapers]

- 5.24. Booth's testimony shows his restraint. He reserved his knowledge of McManus' role and why the principal Defendant relied upon 'Gordon' for an introduction – a crucial element of the defence case.

L78 – Q: Was anything said as to who McManus was? A: No, but of course we knew.

L79 – Q: You knew, did you? A: Yes, and so did she.

L80 – Q: You did not hear her say anything about McManus? A: Oh, yes, I did.

L81 – Q: Did you hear from Mrs. Wheeldon who McManus was? A: No.

L82 – Q: I want you to distinguish between what you may have heard elsewhere and what you heard from any of the prisoners.

A: Mrs. Wheeldon spoke to me on one occasion with regard to McManus.

L 83 – Q: What did she say to you about him?

A: Sometime on I said to her - -

LOW J: Do you think it is necessary to go into this, Mr. Young?

L 84 – MR. HUGO YOUNG: If your Lordship pleases. Perhaps not. (To the witness) Did you say she asked him to write a letter?

A. Yes.

*Material not disclosed at trial*

PMS2 reports

- 5.25. 'Gordon' furnished reports on his allegations that the principal Defendant was intent on 'removing' Lloyd George by poisoning.
- 5.26. In his first written report dated 29 December 1916,<sup>303</sup> he said he had received Alice Wheeldon's admissions of intent and complicity, and had been recruited by her. He wrote:

'She asked me whether I was prepared to try and remove these two men by poison....

'It is quite certain that Mrs. Wheeldon has only been waiting for some extremist to come her way who would be wicked or mad enough to aid her in her nefarious designs on the lives of L. George and Henderson, I promised to see the job through and she packed up a box on Friday morning. In the box, among other things, were a letter in a sealed envelope and four mince pies. In the centre of one of the pies was a note addressed to Dear 'A' and signed 'Z,' asking for the phial of poison to be sent at once, as a man had been found who would remove L. George if at all possible.'

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<sup>303</sup> 'No. 5' First Report on Wheeldon Case: [Held: TNA > HO 144-13338-331997 > Transcription of Reports].

Police Statement by 'Gordon'

5.27. In his Police Statement<sup>304</sup> 'Gordon' claims that the principal Defendant made comments that purport to demonstrate:

5.27.1. her hostile disposition towards Lloyd George and Henderson:

- '...Mrs Wheeldon referred to Mr Lloyd George as an unscrupulous swine and tyrant and Mr Arthur Henderson as a bloody traitor of the worst type having sold the working classes.' (p. 3)
- 'She said "As a test, are you prepared to try and remove these two men by poison?"' 'I said "I am prepared to scheme out the destruction of the whole Cabinet provided the weapons employed are not crude".' (p. 3)
- 'I read the note and remember that it contained a definite request for the phial of poison to be sent at once as a man had been found who would remove Lloyd George if at all possible.'" (p. 6)

5.27.2. her capacity and intent for using poison for taking human life:

- 'Continuing she said "I believe in direct action by removing by killing that bloody oppressor Lloyd George who was the cause of so many men being killed and of so much misery." She also said "And I should like to get that other bugger George at Buckingham Palace too.'" (p. 8-9)
- '...placed a phial of this poison entirely at the disposal of herself (Mrs Wheeldon) with the object of its being used to kill Lloyd George and Asquith.' (p.9)

5.27.3. her suggestions for administering poison to an enemy:

- 'stay at his house ...drive a nail impregnated with poison into his boot so that the point sticks up a little inside'. (p. 4)
- 'She suggested to me that I should go to London and try and get an Editor of a Newspaper to send me to interview Lloyd George so that I could administer the poison to him during the interview and failing that to go to Walton Heath Golf Links and get a position as a caddie go out with Lloyd George on the links stumble against him when near a furze bush and prick him with a needle ... (p. 11)
- 'She said, "If I carried the killing through I would be a saviour of my country.'" (p. 9)

5.27.4. her previous experience of using poison through the Women's Social and Political Union (WSPU), the Breadsall Church incident, and the poisoning death of detective, Inspector Rolfe:

- 'conversation touching on destruction of Breadsall Church, [Alice] said, "we got clear away".' (p. 7)
- 'Mrs Wheeldon said 'it was first used on a well-known Detective who died very suddenly according to the press.' She said 'The Detective [Inspector Rolfe] was killed because a picture appeared in the illustrated press

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<sup>304</sup> 'Statement of Alex. Gordon', 18 January 1917, Typescript copy pp. 1-11. [Held: TNA > DPP 1-50 > DPP 1-50 Gordon Statement]; Handwritten, signed version, 18 January 1917: [Held: TNA > MEPO 9356 > MEPO 9356-05 - Gordon & Booth Statements > MEPO 9356-05-02 & 03 Gordon handwritten statement].

depicting him carrying Mrs Pankhurst in his arms and it was considered by the suffragettes as an insult.” (p. 4)

- ‘She repeated the statement made previously to the effect that the poison was first tested on a detective who died very suddenly.’ (p. 9)

### *Skeleton Argument 5.1.2b – It was ‘Gordon’ who passed on material allegedly incriminating the Defendants to Booth upon which Booth acted*

5.28. ‘Gordon’ was a critical figure in passing on ‘intelligence’. His timing and pivotal role is shown: in visiting the Wheeldon household [see Table 5-1] and in calling upon Booth, his superior officer, to come to Derby.

5.29. In his sworn deposition: ‘In connection with those duties I employed Mr Alec. [sic] Gordon. He reported to me almost daily.’<sup>305</sup>

#### *At trial: Booth’s evidence*

5.30. Booth said he took many actions from the material he received from ‘Gordon’ (1st Trial, First Day, Booth EIC L23-L56 in *Record* p. 231-232), precipitated by a telegram from ‘Gordon’ in Derby to Booth on 28 December 1916.<sup>306</sup>

5.31. On receiving the telegram, Booth handed it over to Treasury after showing and discussing it with Labouchere, his departmental head, who referred it to Melville Lee; this caused Booth to be sent to Derby.

5.32. After meeting ‘Gordon’ in Derby Booth received an oral report from him.

5.33. Booth dispatched two telegrams to his superior, Melville Lee, at his house, ‘Laudates’, in London.<sup>307</sup> The first read ‘Plot to poison Lloyd George and Henderson. Will wire if assistance wanted’; the second ‘Send assistance’,<sup>308</sup> causing Melville Lee to come to Derby.

5.34. In Derby, Booth relayed to Melville Lee the account ‘Gordon’ had given him earlier that day. Melville Lee formally took over responsibility for the investigation<sup>309</sup> and filed the first PMS2 account of the Wheeldon case which he sent to London.

- On 29 December, on ‘Gordon’'s information, Booth went to look for a parcel from the principal Defendant, and to speak with Station Master Shannon.<sup>310</sup>
- On Friday evening 29 December, Booth met ‘Gordon’ again at the Normanton Arms<sup>311</sup> and together they went to 12 Pear Tree Road [the Wheeldon residence]. ‘Gordon’ introduced Booth to the principal Defendant.

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<sup>305</sup> Depositions in *Record*, p.57. [Held: Proceedings].

<sup>306</sup> Telegram not produced at trial. ‘Particulars of Original Telegrams, No. 4. From Midland Road, Derby, 27 Decr. 1916. Reply paid. To: Booth, 102 Beverstone Road, Thornton Heath, Surrey. Text: Am busy, come, Vivid, Derby.’ [Held: TNA > DPP 1-50 > Telegrams]

<sup>307</sup> Second Trial, Third Day, Booth EIC L2788 in *Record*, p.367. [Held: Proceedings]

<sup>308</sup> [Held: TNA > DPP 1-50 > Telegrams].

<sup>309</sup> Second Trial, Third Day, Booth EIC L2790 in *Record*, p.367. [Held: Proceedings]

<sup>310</sup> 1st Trial, First Day, Booth EIC, L41-45 in *Record* p.232 [Held: Proceedings].

<sup>311</sup> 1st Trial, First Day, Booth EIC, L54-56 in *Record* p.232 [Held: Proceedings].



5.35. On 4 January 1917, when Booth and 'Gordon' returned to the Wheeldon household, the poison had arrived. Alice Wheeldon handed the box of poison to Gordon,<sup>312</sup> and he and 'Gordon' then left. Booth recounted that '400 yards away from the premises he handed me the box. I said goodnight to him and then I went on to Major Melville Lee ...I handed to Major Melville Lee in the presence of the Postmaster and a Lieutenant de Balda [de Valda] the box containing four tubes as handed to me.'<sup>313</sup>

#### *Melville Lee's evidence*

5.36. Melville Lee stated that while reports from 'Gordon' came always through Booth, he had also read "'Gordon's reports' from Derby: 2nd Trial Third Day EIC L3548-3550 in *Record* pp. 406-407.

5.37. 'Gordon's reports prompted Melville Lee's own actions,<sup>314</sup> as well as his directions to other PMS2 staff and to police for investigation of some allegations.

5.38. He heard 'Gordon's purported admissions from Booth in Derby, having travelled there at Booth's request: 1st Trial Second Day EIC L1427-1430 in *Record* p. 293

5.39. On 4 January 1917 he received from Booth the small tin box containing poison that had been handed to 'Gordon' by Alice Wheeldon [Exhibit 28 at trial]: 1st Trial, First Day, Melville Lee EIC L957 in *Record* p. 272.

#### *Material not included at trial: contemporaneous reports*

5.40. In his Police Statement dated 18 January 1917, 'Gordon' wrote that he was: '... talking and communicating the whole of the facts about the poison to him [Booth]'.<sup>315</sup>

5.41. Melville Lee's undisclosed reports<sup>316</sup> reveal his initial caution about 'Gordon's claims.

5.41.1. In his first report, 31 December 1916, he wrote: 'the recital of certain incriminating statements alleged to have been made by a woman and her daughters who are probably a bit crazy. So far no corroboration of any kind has been obtained. At the same time information given by No. 5 is almost invariably found to be correct in its main features.'

5.41.2. In his second report, 3 January 1917, he noted that Labouchere (head of PMS2) had informed him that Straight (Home Office), at interview with Scotland Yard, had found: 'similar stories had been reported from time to time which had turned out to have no foundation in fact.'

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<sup>312</sup> 1st Trial, First Day, Booth EIC, L274 in *Record* p.244 [Held: Proceedings].

<sup>313</sup> 1st Trial, First Day, Booth EIC, L279-281 in *Record* p.244-245 [Held: Proceedings].

<sup>314</sup> By going to Derby where he heard from Booth the purported admissions from 'Gordon' relayed by Booth: 1st Trial, Second Day Booth EIC L1427-1430 in *Record* p.293. [Held: Proceedings].

<sup>315</sup> 'Statement Alex. Gordon', 18 January 1917, pp.1-11. [Held: TNA > DPP 1-50 > DPP 1-50 Gordon Statement].

<sup>316</sup> See reports under covering letter from DPP's office, dated 5 December [Mistake for 5 January] 1917 and *Short Resume of the Wheeldon Story. W.M.L..* [Held: TNA > HO 144 -13338-331997 > Transcription of reports.doc].

***Skeleton Argument 5.1.3 – ‘Gordon’ was present with Booth when Booth claimed incriminating admissions were made by the principal Defendant***

- 5.42. Table 5-1 (page 87) shows that ‘Gordon’ was present with Booth and the principal Defendant on three occasions.
- 5.43. Booth’s testimony at both the first and second trials included claims that the principal Defendant had made many incriminating statements at times when both he and ‘Gordon’ had been visiting the Wheeldon household.
- 5.44. Speaking of his third joint meeting with ‘Gordon’ at the Wheeldon house, Booth repeated his claims that the principal Defendant made a number of incriminating statements: 2nd Trial, Third Day Booth EIC, in *Record* from p.371 onwards.

**5.44.1. Incriminations 1 (wishful deaths; use of poison):**

L2890 – Q: Tell us what she said. A: And I was agreeing and all at once she said: ‘I hope the buggers will soon be dead’. Then there was other conversation.’

L2892 – Q: What further remark did she make about Mr Lloyd George? A: ‘She said ‘He’, meaning Mr Lloyd George, ‘has been the cause of millions of innocent lives sacrificed. The bugger should be killed to stop it, and as for that other bugger Henderson, he is a traitor to his people, but Asquith is the bloody brains of the business. He has not gone as far as Lloyd George; he is neither fit for heaven nor bloody hell. Another bugger that ought to be done in is George at Buckingham Palace. He has always poned [sic] on the people and is no bloody good. ‘Listening to that, I said to her: ‘What, in your opinion, would be the best way to poison Lloyd George?’ She replied: ‘We had a plan before when we, the Suffragettes, spent £300 in trying to poison him. It was to get a position in a hotel where he stayed and drive a nail in his boot that had been dipped in the poison, but he went to France, the bugger. We did intend to do McKenna in, but when we sent the skull I was going to stick a poisoned needle through, but it was argued that an innocent person might touch it and die.’

**5.44.2. Incriminations 2 (role of ‘Gordon’ in assassination; use of poison; dissociation from use; quantity):**

L2896 – Q: Later on did she say something to Gordon? A: There was other conversation ...and later on she said to Gordon: ‘You know what you are doing, you will rid the world of a bloody murderer and be a saviour to the country.’ I said: ‘How is this poison used?’ She replied: ‘It is a crystal ...it leaves the poison...when I hand the poison over to you I wash my hands of it’. I said: ‘How much did the phial contain the last time you saw it.’ She replied: ‘Enough to kill 500’.

**5.44.3. Incriminations 3 (principal Defendant receipt of poison; read out instructions – ‘dog’; cleaned finger prints, gave box to Gordon; Walton Heath):**

L2930 – LOW J: Did she hold anything up? A: Yes a box – a tobacco box. [Identification of box as Exhibit 28.]

L2934 – LOW J: About directions? A: She said ‘I have got the directions in the letter now, will you copy it?’ I replied ‘Yes, give me some paper.’ (Exhibit 40)

L2941 – MR HUGO YOUNG: Did she say anything about ... she had done to the box? A: Yes, she said: ‘I have cleaned the box...Be careful ...so as not to show finger prints.’

L2950 – Q: When you were leaving what became of the box? A: She gave the box to ‘Gordon’ and ‘Gordon’ put it in his pocket.

L2951 – Q: Did she say anything? A: She said ...‘Now Walton Heath will be the best place to catch George with an air-gun’. I said ‘Right-ho’.

L2952 – Q: You left then, did you. A: The box was handed to Gordon and we shook hands most heartily, and going out of the door she said ‘Now when you have done them in you can do the others’. I said ‘right ho’ and left.

5.45. Booth also said at the second trial that the principal Defendant requested his address to follow up ‘help for her boys’ (the ‘emigration scheme’):

L2948 – MR HUGO YOUNG: Did she ask you for your London address? A: She said: ‘I shall want you to help me with the boys.’ I said: ‘Yes’. She said: ‘Give me the London address.’

L2949 – Q: Very well...You did give it to her? A: Yes.

L2957 Q: Later on did you receive a letter in an envelope... in the same handwriting? A: Yes.

L 2962 Q: The letter is Exhibit 41. ‘Dear Comrade. When we discussed here emigration for the boys Mac. Will and Alf. Should like to know what is being done in this direction. ... Shall be glad to hear from you all the news of things in general. Yours to a cinder, (signed) A.W.’ Is that right? A: That is so.

### *Skeleton Argument 5.2 – At all material times ‘Gordon’ was a special agent in the employ of an agency of the British Government*

5.46. The prosecution referred to ‘Gordon’ as a special agent in the employ of an agency of the British Government. His role and engagement was described consistently, shown in evidence, from the trial, undisclosed police statements, and more recently discovered material.

5.47. Although recruited as a ‘writer’ (see paragraph 5.62, page 102), ‘Gordon’ effectively worked as an agent for PMS2 from November 1916 until being terminated in February 1917 after coming under Ministerial scrutiny.

#### *‘Gordon’'s engagement by PMS2*

5.48. The Attorney-General in his Opening Speeches described ‘Gordon’'s status as:

‘An agent in the employment of the authorities, and especially of the Munitions Department – a department which has most to apprehend from schemes of sabotage, and from plots to produce explosions. An agent, I say, in the employment of the

Munitions Department was sent to Derby towards the end of December of last year. He passed under the name of 'Alec [sic] Gordon'.<sup>317</sup>

5.49. Booth had engaged 'Gordon'.

5.49.1. In October 1916, Booth travelled to Leicester where he was introduced to 'Alex Gordon': 1st Trial, First Day, Booth XXN L329-330 in *Record* p.247. Booth stated that he:

- employed 'a man of the name Alec Gordon': First Day, Booth EIC L11-19, in *Record* p.231; Third Day, Booth EIC L 2772-2778 in *Record* p.367.
- 'engaged him [Gordon] to make general enquiries when I wanted them': First Day, Booth XXN L337-341 in *Record* p.247; Third Day, Booth XXN L 2980.in *Record* p.378.
- agreed he'd employed Gordon because 'I liked him': Third Day, Booth XXN L2980-298 p. 147.

5.50. Under Melville Lee, Booth had been recruited 'for detective work as and where required'<sup>318</sup> and 'on confidential enquiries for the Ministry'<sup>319</sup> to be directed against political and industrial groups opposed to the war.

5.51. Regarding the engagement of 'Gordon', Melville Lee said:

- He [Melville Lee] knew of 'Gordon's engagement before it was made and 'Gordon' was 'actually engaged by Booth': Second Day, Melville Lee EIC L1432-1434, in *Record* p.293.
- 'Gordon' was the only man Booth engaged to assist him: Third Day, Melville Lee XXN L 3543-47 in *Record* p.406.<sup>320</sup>

5.52. Regarding 'Gordon's employment, Melville Lee also said that he never saw or had any direct communication with Gordon, although 'I got reports of course': Third Day, Melville Lee XXN L 3548-3550. in *Record* p.406.

- L1482 - MR RIZA: Do you know whether Gordon is an ex-criminal? MELVILLE LEE: I have already explained that I do not know this man; and I do not know whether I should answer questions that are not within my own knowledge: Second Day, Melville Lee XXN L1482, in *Record* p. 297.<sup>321</sup>

5.53. Melville Lee confirmed at trial that the Ministry of Munitions had a secret service [PMS2] separate from 'the secret service department of the Metropolitan Police'.<sup>322</sup>

<sup>317</sup> *The Attorney-General's Opening Speech for the Prosecution, R v Wheeldon & Ors*, 3 February 1917, Derby Borough Police Court, in *Record* pp. 3- 4 [Held: Proceedings].

Identical in March 1917, in *Record* p.138, except for the omission of: 'An agent, I say, in the employment of the Munitions Department'. Sentence reported as delivered: *Derby Mercury* 9 February 1917. [Held: Newspapers]

<sup>318</sup> J.Sealy-Clarke to V.G.W.Kell, 18 January 1917, p. 2. TNA, KV 1/13, f.91 [Not Held].

<sup>319</sup> 'Statement by Herbert John Walsh Booth', signed by Insp.Edward Parker and Supt P. Quinn, 17 January 1917, p.1 [Held: TNA > MEPO > MEPO 9356> 9356-05-05].

<sup>320</sup> In 1921, the former head of PMS2 Major Frank Labouchere repeated this statement: 'Gordon was Booth's only man' in press coverage of Booth's libel action: *Booth v Victoria House Printing Company Ltd & Ors*, 1921 KB reported in *The Times*, 8 February 1921, p.5 col.3, 'Secret Service in the War. The Career of 'Comrade Bert. [Held: Newspapers]

<sup>321</sup> Reported in *The Times* 8 March 1917, 'The poison plot charge' with Melville Lee's evidence under 'Secret Agent Gordon' p.2; and *The Yorkshire Post*, 8 March 1917, p.3 col. 1, 'The alleged plot to poison the Premier'. [Held: Newspapers].

<sup>322</sup> Second Day, Melville Lee XXN L1466-1474 in *Record* p.296. [Held: Proceedings].

5.54. There was no dispute at trial about the employment status of 'Gordon'.

*The impact of the trial and Gordon's role on awareness of covert government activities*

- 5.55. 'Gordon's work for PMS2 in the Wheeldon investigation occurred during unstable political circumstances, at several levels.<sup>323</sup>
- 5.56. By the time Booth and 'Gordon' began their assignments, Special Branch had formed a lowly opinion of PMS2 and its 'amateur service', being '...very expensive'. Assistant Commissioner of Metropolitan Police, Sir Basil Thomson, had observed: 'It has a host of private agents who produce little that cannot be found in the local press.'<sup>324</sup>
- 5.57. Public concern about the conduct of PMA2 agents exemplified by 'Gordon' intensified with the publicity surrounding the Wheeldon trial. This concern was reflected in parliamentary agitation,<sup>325</sup> correspondence to the Home Office,<sup>326</sup> and responsive activity by Special Branch<sup>327</sup> and PMS2.<sup>328</sup>
- 5.58. PMS2 was shut down in late April 1917,<sup>329</sup> its functions transferred to Thomson at Special Branch and to MI5.<sup>330</sup> Booth and other officers were assigned to regular military positions.
- 5.59. On 7 June 1917, the War Cabinet considered how to respond to a foreshadowed question concerning 'Gordon's conduct to be brought by Mr W.C. Anderson MP in the House of Commons.<sup>331</sup> Minister Addison explained to Cabinet that as this unit of the Ministry was not competent, he had given orders for its abolition and in future all such investigation be undertaken by Scotland Yard. As the Attorney-General was not present, Cabinet concurred in requesting the Attorney-General to answer the question in the House.<sup>332</sup>

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<sup>323</sup> Hiley, N. (1986). 'Internal security in wartime: the rise and fall of PMS2, 1915-1917, *Intelligence and National Security*, 1, and Eirug, A. (2017) 'The Security Services in South Wales during the First World War', *Welsh History Review*, 28/2, pp. 763-771 at p. 755 [Held: Articles].

<sup>324</sup> Basil Thomson (1939) *The scene changes* London: Collins: London, p.312, diary entry for 1 December 1916. Also published by Doubleday [cited by Millman Brock (2000) *Managing domestic dissent in First World War Britain*, London: Frank Cass Publishers].

<sup>325</sup> *Hansard*, House of Commons debates from 7 February 1917 to 29 October 1917 [Held: Hansard].

<sup>326</sup> J.H. Baum Lee to Home Secretary, 8 March 1917; L. Wells to Home Secretary, 6 March 1917. [Not held].

D. Ramsay to Home Secretary, 10 March 1917; Home Office Register of correspondence "Criminal Cases 1917", page 451 [Held: TNA > HO 46-207 > Leicester & Liverpool correspondence].

<sup>327</sup> Letter Basil Thomson reply to the Prison Commissioner, 29 June 1917 requested copy of prisoner correspondence of Alice Wheeldon and Winnie Mason 'at least until this agitation about the informant Alec Gordon has died down.' [Held: TNA > MEPO > MEPO 9356 > MEPO 9356-69].

<sup>328</sup> Memo by de Valda, 7 February 1917. Addison Papers, op.cit. [Held: Addison Papers]; 'Report by WML Notes on the W Case' [Milner papers > 07 & 08].

<sup>329</sup> 'Historical Sketch' [1920], p. 13., transcribed. [Held: TNA > WO 32-10776].

<sup>330</sup> *Hansard*, House of Commons 14 June 1917, col. 1108. [Held: Hansard > Kellaway reply to Anderson.]

<sup>331</sup> *Hansard*, House of Commons 25 May 1917, col. 2735. [Held: Hansard > Anderson - munitions unrest - use of agent ].

<sup>332</sup> War Cabinet Meeting 157, 7 June 1917, p.4, Minute 11, Question in the House of Commons regarding the man 'Gordon'. [Held: TNA > CAB 23-3-4.].

5.60. On 11 June 1917, in Prime Minister's Question Time:<sup>333</sup>

5.60.1. Mr Anderson asked the question:

'Whether his attention has been called to the charges made in respect of the activities in the munition areas of a man calling himself Alexander Gordon, whose evidence as a Government agent was used in a public trial; whether he is aware of the allegations that this man has urged strikes among munition workers, and has suggested the stealing of fuses and the setting up of a secret printing press; whether the man Gordon is still in this country or whether he has recently been sent to America; and whether he will cause public investigation to be made into the activities of this man, and will cause him to be produced at such investigation?'

5.60.2. The Attorney-General (Sir Frederick Smith), for the Prime Minister, replied:

'There is no foundation whatever for the suggestion made. The man known as Alexander Gordon has not been employed by the Government since January of the present year. His present whereabouts are unknown, and no investigation is necessary or is proposed.'

5.61. In fact, the government had placed 'Gordon' on a passage to South Africa on 3 April 1917 (see page 154).

*The nature of 'Gordon's' employment as a special agent and its impact on the Wheeldon case*

5.62. From 'Gordon's' perspective, his recruitment by Booth was not as an agent but as a 'writer'.

5.63. In October 1916, 'Gordon' was working as a journalist.<sup>334</sup> His then editor Alfred Sprigg at the *Leicester Mail* set up a meeting for 'Gordon' introducing him to Booth who was introduced as a publisher's representative.

5.63.1. At that time, 'Gordon' (then as 'Francis Vivian'), with his wife, Lily Rickard, was producing investigative articles on fortune-telling specifically on 'fake spiritualistic mediums.' The series ended on 15 November 1916,<sup>335</sup> about the time 'Gordon' began working for Booth.

5.64. 'Gordon' said<sup>336</sup> that Booth had introduced himself as a representative of: 'a firm of publishers, the senior partners of the concern has wide sympathies with ideal socialism...a book will be compiled as a result of careful investigations.' On being recruited by Booth, 'Gordon' claimed to have been introduced to Douglas Straight as the 'senior partner' of the supposed 'firm' of publishers.

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<sup>333</sup> *Hansard*, House of Commons 11 June 1917, col. 587-589 [Held: Hansard > Anderson Q on Gordon - Attorney-General reply].

<sup>334</sup> Previously undisclosed sources for 'Gordon's' occupation are cited in Table 5-3 in relation to establishing 'Gordon's' true identity as William Rickard.

<sup>335</sup> *Leicester Mail* on 25 October 1916, p.5 'Fortune Telling'; 28 October 1916, p. 5; 4 November 1916, p. 4-11; 11 November 1916, p.5; 15 November 1916, p.3, 'Fortune telling/More Amazing Revelations': With this instalment, the articles dealing with fortune-telling in Leicester came to an end.[Held: Newspapers].

<sup>336</sup> 'No. 5' -*The True Story of Alex Gordon*, November 1919, Part 1 and 2, pp.6 and 18. [Held: Mason Family Papers > Rimington papers 1919 > 11 - Alex Gordon Stories > 13 - 1919 No. 5 True Story of Alex Gordon - 21 pages].

5.65. According to Inspector Parker of the Metropolitan Police, who took statements from Booth and 'Gordon' in January 1917, Douglas Straight had given him special directions about handling 'Gordon'<sup>337</sup>: '[Gordon'] did not know who he was working for, and they did not want him frightened at this stage.'

5.65.1. 'Gordon' opened his statement with: 'I am a journalist by profession and also have a hobby of investigating matters which I consider a social evil.'

5.65.2. In his statement, Booth had written:

'With regard to Alec Gordon, previous to my employing him he was obtaining a livelihood by journalism; he is well known in Anarchist, Socialist and Labour centres. He is personally known to McManus and most other prominent Labour Leaders from the Clyde to the South of England. Gordon acts entirely under my instructions and receives from me a regular wage, acting as an Agent for me. He is known to be working for me by P.M.S.2, but reports directly to me and has no knowledge as to whom I work for. I gave him the impression that I am working for a very wealthy gentleman, who is interesting himself in exposing fakeism in Anarchist and Socialist centres.'<sup>338</sup>

5.66. In 1919, trying to return from South Africa, 'Gordon' wrote: 'I was not told that I was a Government agent until after the plot to assassinate Mr L George was divined by me at Derby early in February 1917.'<sup>339</sup> The effect of such duplicity, he claimed was that: 'the Government had got me ... that made it absolutely impossible for me to come straight out into the limelight'.<sup>340</sup>

5.67. In 1919, back in England, 'Gordon' recalled his employment by Booth, each time commenting on being rewarded for good copy:

[Booth told him] 'I tried to get you £3 a week but the "firm" won't offer more than £2/10 for a start'. ... He however stated that a special reward would be granted for 'copy' of the 'scoop' type.<sup>341</sup>

5.67.1. In December 1919, 'Gordon' gave a lengthy interview to the *Daily Herald* as 'Francis Vivian':<sup>342</sup>

- 'I regarded as nothing untoward about this new assignment with Booth ...considering that the proposition was merely a common incident in a journalist's career, I took the job.'

<sup>337</sup> Covering memo for 'Gordon' and Booth's Police Statements from Inspector Parker to the DPP 18 January 1917 [Held: TNA >MEPO> MEPO 9356 > MEPO 9356-05-01].

<sup>338</sup> 'Statement by Herbert John Walsh Booth', 17 January 1917, p.10. [Held: TNA > DPP 1-50 > Booth Statement & Further 1917].

<sup>339</sup> Rickard Statement in South Africa, 15 May 1919, page 2 of 6. [Held: South African National Archive > Rickard Application - SA 1919 > 06 - Rickard statement 2 of 6].

<sup>340</sup> 'Alex. Gordon's Own Story', *Daily Herald*, 27 December 1919, page 8 section 'c'. [Held: Newspapers].

<sup>341</sup> 'No. 5' -*The True Story of Alex Gordon*, November 1919, Part 2, 10-11. [Held: Mason Family Papers > Rimington papers 1919 > 11 - Alex Gordon Stories > 13 - 1919 No. 5 True Story of Alex Gordon - 21 pages].

<sup>342</sup> 'Alex. Gordon's Own Story', *Daily Herald*, 27 December 1919, p. 8 section 'a'. [Held: Newspapers].

Booth's own conditional employment meant that he was aware that their failure would see him 'sent into the Army at once': *The Times*, 8 February 1921, p.5 col.2, 'Secret Service in the War. / The Career of 'Comrade Bert''. [Held: Newspapers].

- 'X [Booth] said he had done his best to get me £3 a week, and any travelling expenses I might incur, but the governor would only start me at £2 10s a week, with an occasional bonus if the "copy" was coming in well.

'He suggested, by the way, that the governor wanted fairly exciting copy, and, in fact, the more exciting copy the better the governor would be pleased. "But," he added, "you must get facts."'

- 'X [Booth] knocked off writing to me for days...I wrote several times to him, but he did not answer. I said to myself - I have trusted this man and he has deserted me now, and I have no money to send my wife.'
- 'I never had my money properly. I did on one or two occasions get a £2 bonus, but they were isolated instances.'

5.68. 'Gordon' also described feeling misled and pressured by Booth, in that:

- He was tied to Booth, having handed him military registration and medical discharge papers.
- He remembered feeling desperate after the failed investigation in Salford (tram strike affecting munitions workers) where they had represented themselves as violent extremists (9-16 December), before going to the Wheeldon household.

5.69. 'Gordon''s initial misapprehension of his status, the reward-based payments that he received, and his sense of being under duress could have infected his investigation, leading him to exaggerate, or otherwise impair his role as Booth's informant of this alleged conspiracy.<sup>343</sup> These factors could have been explored by the defence, were he to have been called, and could have created doubt for the jury.

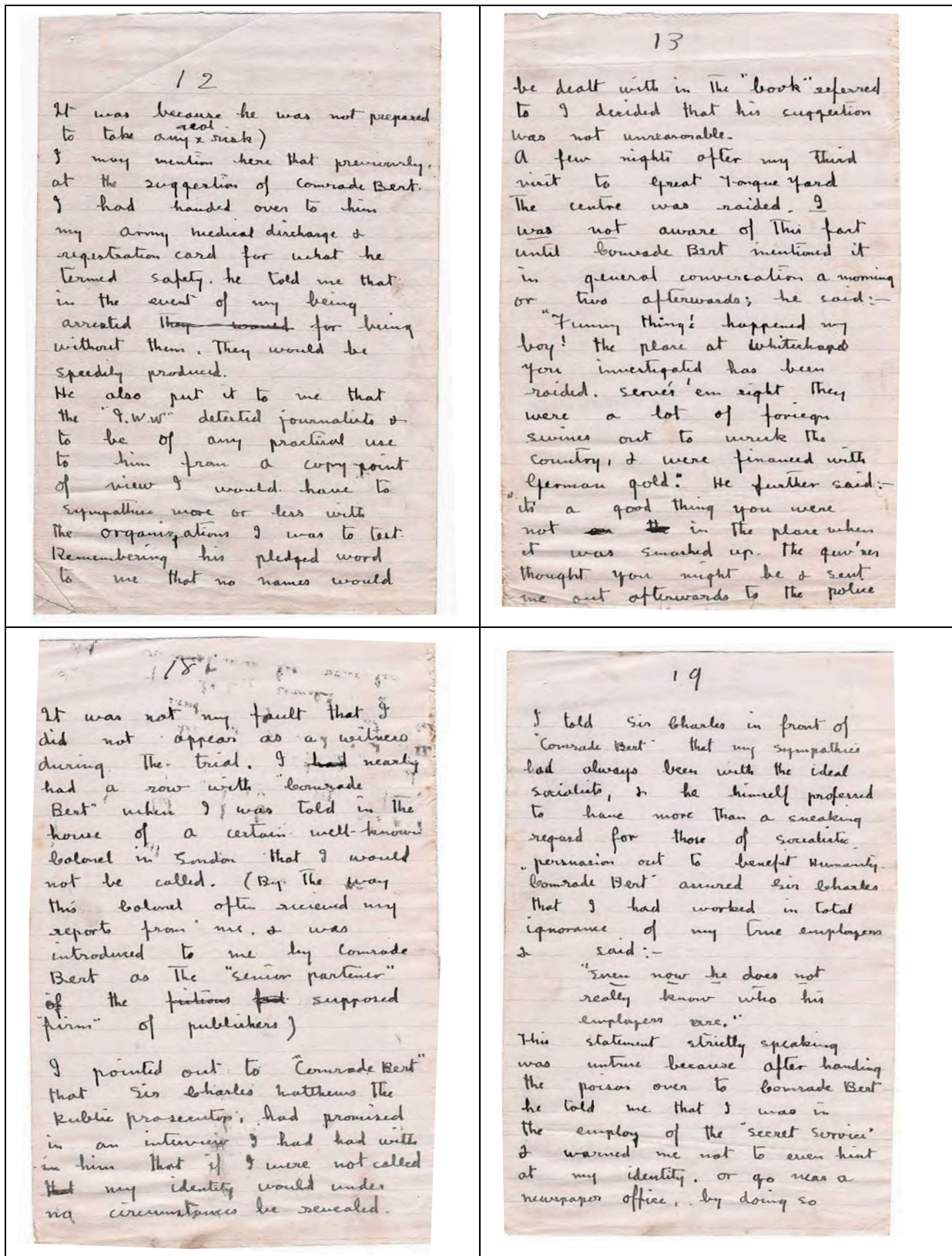
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<sup>343</sup> Radzinowicz L.(1956), *A history of English criminal law and its administration from 1750*, London: Stevens & Sons Ltd, Volume 2: The clash between private initiative and public interest in the enforcement of the law, pp.340-345.



## Figure 5-1. 'Gordon's' own account of aspects of his employment by PMS2

Accounts written by 'Gordon' at meeting with Rimington on return from South Africa (see page 134) provide insights into his employment as a journalist, the duress he experienced in his relationship with Booth, and his expectations of being called to testify at the trial. Extracts from 'No. 5 - The True Story of Alex Gordon' are provided below. These accounts can also be read in full [Held: Mason Family Papers > Rimington Papers 1919 > 11 - Alex Gordon stories].



## Ground A(2) Failure to call 'Gordon'

### Skeleton Argument

5.3 No reasons were disclosed for the prosecution decision not to call 'Gordon'. The Attorney-General simply said that he took responsibility for the decision 'for reasons which seem to me good'. However:

5.3.1 'Gordon' was 'named on the back of the indictment'.

> **Supporting material: page 110**

5.3.2 Defence was not aware that 'Gordon' was not being called or made available.

> **Supporting material: page 111**

5.3.3 The guiding principle for calling witnesses at the time was set out by Baron Alderson in *R v Woodhead* (1847) Car & K 520: 'a prosecutor is not bound to call witnesses merely because their names are on the back of the indictment; but the prosecutor ought to have all such witnesses in court, so that they may be called for the defence, if they are wanted for that purpose; if, however, they are called for the defence, the person calling them makes them his own witnesses'.

5.3.4 *R v Russell-Jones* [1995] 1 Cr App R 538 reviewed the history of that principle, referred to as 'the 1847 rule' which Lord Parker CJ had described (in *R v Oliva* (1965) 49 Cr App R 298) as having 'continued in full force' ever since it was laid down, but concluded that the prosecution's discretion was not 'unfettered'.

(a) The first limiting principle is that the discretion 'must be exercised in the interests of justice, so as to promote a fair trial' (p. 544D). The court should interfere if the prosecutor had acted out of an oblique motive, that is to say if he had not called his mind to his overall duty of fairness, as a minister of justice (p. 544F).

(b) The next principle is that the prosecution ought normally to call or offer to call all the witnesses who give direct evidence of the primary facts of the case, unless for good reason, in any instance, the prosecutor regards the witness's evidence as unworthy of belief. That reflected statements of principle by Lord Roche in *Seneviratne v R*. [1936] 3 All ER 36, and by Lord Hewart CJ in *R v Harris* [1927] 2 KB 587 (see p. 545C).

Certainly by current standards, this was a situation in which it would have been contrary to the interests of justice to require the defence to call 'Gordon', and so, if the Crown refused to do so, the learned judge ought to have exercised his power to call the witness (see *R v Haringey Justices, Ex parte DPP* [1996] QB 351).

> **Supporting material: page 112**

5.4 The failure to call 'Gordon' or make him available prevented the defence from exploring:

5.4.1 'Gordon''s personal involvement with investigating escapes from internment camps and his dealings with dogs in that context. It was the defence case that all discussion about poison and guard dogs in internment camps originated from 'Gordon'.

> **Supporting material: page 117**

5.4.2 The accuracy of Booth's notes alleging admissions by the principal Defendant at a time when 'Gordon' was present. In the context of Booth being permitted to rely on his notes without being required to exhaust his memory, the evidence of 'Gordon' may have undermined the accuracy/reliability/honesty of those notes.

> **Supporting material: page 123**

## Supporting material: failure to call 'Gordon'

### *Skeleton Argument 5.3 – No reasons were given for the prosecution's decision not to call 'Gordon'*

- 5.70. The Attorney-General simply said that he took responsibility for the decision.
- 5.71. References to the fact that 'Gordon' was not called are drawn from the transcript and from contemporaneous commentary.

#### *The Attorney-General's Opening Speeches*<sup>344</sup>

- 5.72. The Attorney-General provided no justification for his decision not to call 'Gordon'.
- 5.72.1. 3 February 1917 for Derby Borough Police Court:
- '...An agent in the employment of the authorities, and especially of the Munitions Department – a department which has the most to apprehend from schemes of sabotage, and plots to produce explosions. An agent, I say, in the employment of the Munitions Department was sent to Derby towards the end of December last year. He passed under the name "Alec Gordon".
- 'I take the responsibility myself of deciding that, **for reasons which seem to me good**, I shall not call this witness before the court.' (in *Record* p. 4) [emphasis added]
- 5.72.2. 6 March 1917 at the Central Criminal Court, the Attorney-General re-stated his position on not calling 'Gordon'.

#### *Melville Lee's evidence*<sup>345</sup>

- 5.73. RIZA: Now I am going to put a question – I do not know whether it comes within your lordship's ruling – can you tell me why Mr Gordon is not produced here. MELVILLE LEE: That is not my affair at all.
- LOW J: The answer then is No. MELVILLE LEE: I do not know.
- LOW J: Is that so – the answer is No. MELVILLE LEE: Yes.<sup>346</sup>

#### *The judge's summing up*<sup>347</sup>

- 5.74. On 10 March 1917:
- '...Now the singular feature of this case is that Booth is called before you and that Gordon is not. You are not told why Gordon is not called. The Crown acting through their highest officers, have come to the conclusion that they will not call Gordon, and he is not called; and of course, Mr Riza in defending the prisoners made, as he was quite entitled to, a great feature of the absence of Gordon.' (in *Record* p. 543)
- '... if you are satisfied that the Crown having called before you such witnesses as they have called before you have fulfilled the burden which is upon them.' (in *Record* p. 543.7)

<sup>344</sup> Attorney-General Opening Speech, 3 February 1917 in *Record* pp. 1-33; 6 March 1917, Central Criminal Court, Old Bailey in *Record* pp.138-139. [Held: Proceedings].

<sup>345</sup> 7 March 1917, 1st Trial, Second Day Melville Lee XXN, L1479-1481, in *Record* p.269. [Held: Proceedings].

<sup>346</sup> Reported by *The Times* 8 March 1917, p.3 'The poison plot charge'; and by *The Yorkshire Post*, 8 March 1917, p.3 col. 1, 'The alleged plot to poison the Premier'. [Held: Newspapers].

<sup>347</sup> In *Record* pp.539-553. [Held: Proceedings].

*Contemporaneous commentary on the failure to call 'Gordon'*

5.75. On 5 February 1917, a 'D' notice was drawn up, warning for the press not to publish photographs of any secret service officers 'who may give evidence or be present in court', especially 'the government agents Booth and Gordon'.<sup>348</sup>

5.76. The Attorney-General's Opening Speeches were closely reproduced in the press, including his reason for not calling 'Gordon' as a witness<sup>349</sup>. Examples include:

*The Times* Monday 5 February 1917 on the Derby proceedings: 'In conclusion, the Attorney-General repeated that it was the duty of the Executive to get into touch with dangerous persons of this kind. The difficulty of accepting the unsupported story of a confidential agent did not arise in this case, because almost from the first moment responsibility was on an officer of Field rank, Major Lee.'<sup>350</sup>

*Manchester Guardian* Monday 5 February 1917: 'The Attorney General did not indicate how Gordon became intimate with the Wheeldon family or how the alleged plot was first conceived....The Attorney General confirmed the statements of the secret agents, Booth and Gordon, as to the nature of the conversations which took place at the house.'<sup>351</sup>

*Daily Telegraph*, 12 March 1917 (post-trial, but prior to appeal) in supporting the Attorney-General's decision not to call Gordon, noted: 'that his usefulness to the authorities would have been compromised by his appearance in the witness-box.'<sup>352</sup>

5.77. In the House of Commons, the Attorney-General's speech in the February proceedings in Derby was raised as part of the wider debate about expenditures on secret services.

5.77.1. On 7 February 1917, Mr Joseph King Member for North Somerset stated:<sup>353</sup>

'Yet we hear now that the Government has gone in for a number of secret agents. I must call attention to the speech delivered at Derby two or three days ago by the Attorney-General. I need not state the circumstances under which he delivered that speech, but I will read some of the words out of it, words, I remark, which were suppressed in most of the papers, even in *The Times* report, but which I take from the *Manchester Guardian*. This is what the Attorney-General said in his speech – ' (Col 55) [The Speaker ruled it not be read to the House.]

'I put it to him [the Home Secretary] that ... and allow us to carry on justice in war time in the same way as we carry on justice in times of peace, by straightforward and reliable methods.' (Col 56)

5.78. In April 1917, commenting on the hearings at the application for appeal:

<sup>348</sup> *Hansard*, House of Commons, Sitting Wednesday, 7 February, 1917, cols 55-6, Mr Joseph King MP. [Held: Hansard].

<sup>349</sup> Extract from 1917 *Derby Mercury* 9 February 1917 p. 6 sheet 2 col. 1 (description of giving reason for not calling witness) and concluding after one hour and 50 minutes (col. 4) [Held: Newspapers]

<sup>350</sup> *The Times* 5 February 1917, p. 4 'The Poison Plot Charge' [Held: Newspapers];

Third Day, Booth EIC p. 136 L2790 from Melville Lee's arrival 29 December 1917. [Held: Proceedings].

<sup>351</sup> *Manchester Guardian*, Monday 5 February 1917, 'Alleged plot against the Premier', p.10. [Held: Newspapers]

<sup>352</sup> *Daily Telegraph* 12 March 1917 p.8 col.6, 'The Poison Trial'. [Held: Newspapers]

<sup>353</sup> *Hansard*, House of Commons, 7 February 1917, col 45. [Held: Hansard > 19170207 - King - police system].

*The Times* Law Report:<sup>354</sup>

'The Lord Chief Justice asked Sir A. Bodkin whether the Crown gave any explanation for not calling Gordon before the jury.'

'Sir A. Bodkin said that the Attorney-General had said that the Crown had carefully considered the question of calling Gordon and they accepted the responsibility of not calling him, and if the jury were not satisfied with the case in the absence of Gordon they could acquit the prisoners.'

*Derbyshire Advertiser*:<sup>355</sup>

'Sir A. Bodkin replied that he thought it was stated by the Attorney-General at the trial that the matter had been carefully considered, and his evidence was not put before the jury. The Attorney-General was most emphatic in saying that the Crown took full responsibility for not calling Gordon, and asked the jury to deal with the evidence before them. The Crown had never been requested to produce Gordon for the defence.'

*Northern Daily Mail*:<sup>356</sup>

'The Lord Chief Justice asked Sir Archibald Bodkin, who represented the Crown, whether any explanation of Gordon's absence was given by the Crown at the hearing. / Sir A. H. Bodkin said that the Attorney-General told the jury that the question of calling Gordon had been carefully considered, and asked the jury solely to deal with the evidence before them. / Asked if he was prepared to argue the case, Sir Archibald said that he had no instructions to argue.'

- 5.79. *The Law Journal* ran an editorial on the grounds of appeal, 'the conduct of the prosecution in refusing to call Gordon, the secret agent.'<sup>357</sup>
- 5.80. *New Witness*, a journal edited by G.K. Chesterton, ran editorials and correspondence on the refusal to produce 'Gordon' in Court - 'the prosecution is hiding the principal witness.'<sup>358</sup> Correspondence came from:
- Theodore Maynard 'Conspiracy Case' 22 March 1917. Hilaire Belloc 'Two recent decisions', 3 May 1917, p.18 (*Barrett v John Bull Ltd*, KB 25 April 1917, reported in *Straits Times*, 16 June 1917).
  - D.H. Prynne 'A Dangerous Precedent' 31 May 1917, p.115. Prynne was a barrister who had acted for the DPP in *R v Anderson* (1913). Prynne's letter cited this case in which a deposition from a dying witness was admitted into evidence to raise his concern as to 'why was not Gordon called?' Prynne's letter was quoted in *Hettie's Report* (1917), pp. 54-61. [Held: Mason Family Papers].
- 5.81. With typical wit, Chesterton's first editorial in *New Witness* ran: 'The obvious danger is that the spy may become the *agent provocateur*, and ... may even discover the crime by the infallible method of committing it.'<sup>359</sup>

<sup>354</sup> *The Times*, 'Court of Criminal Appeal' 3 April 1917, p. 4. [Held: Newspapers]  
Rowlatt, J. also presided at the Derby Borough Police Court.

<sup>355</sup> *Derbyshire Advertiser* 6 April 1917 p.7 col.5, 'Derby poison plot. Prisoners refused leave to appeal.' [Held: Newspapers].

<sup>356</sup> *Northern Daily Mail* 3 April 1917 p.2 col. 4, 'Mystery man of the Poison Plot. Who and where is Alec Gordon. Appeal fails.' [Held: Newspapers].

<sup>357</sup> *The Law Journal*, 'Poison Plot Appeal' 4 April 1917, p. 135. [Held: Articles]

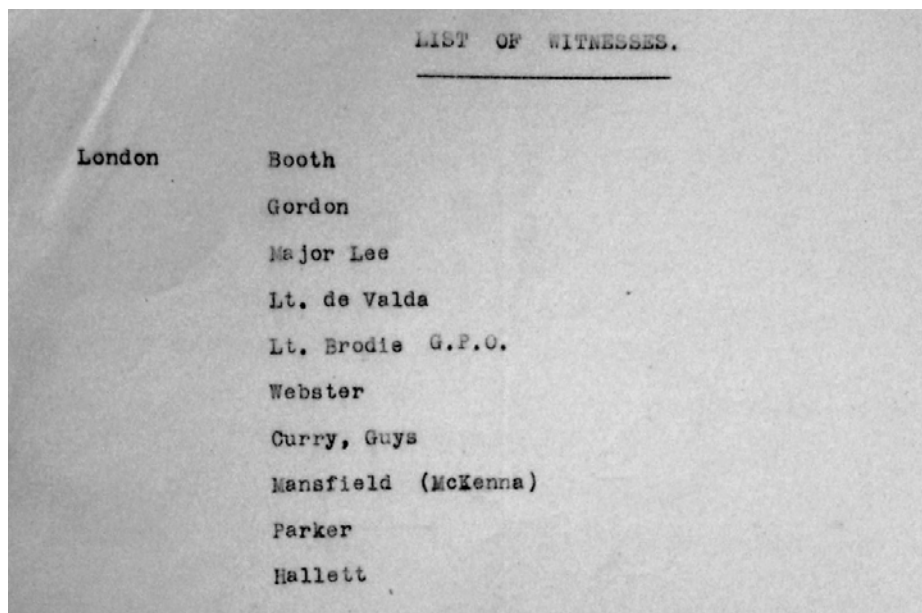
<sup>358</sup> *New Witness*, Editorials: 'Vanishing Spy' 15 March 1917; 'The Gordon Scandal' 29 March 1917; 'Pose of the Strike-Breakers' and 'I Spy!' 31 May 1917. [Held: Newspapers]

<sup>359</sup> *New Witness*, 'The Vanishing Spy' 15 March 1917, col. 1. [Held: Newspapers > New Witness]

*Skeleton Argument 5.3.1 - 'Gordon' was 'named on the back of the indictment'*

5.82. 'Gordon' was 'named on the back of the indictment' and his name is on the 'list of witnesses'.<sup>360</sup>

*Figure 5-2. List of witnesses from London, prepared by the DPP's office c.1 February 1917.*



5.83. The prosecution had intended to call 'Gordon' from the beginning and continued to operate on that basis throughout the investigation up until the trial. For example:

5.83.1. On 14 January 1917, writing to Sir Edward Troup, Permanent Under-Secretary at the Home Office,<sup>361</sup> Sir Basil Thomson (Special Branch, Metropolitan Police) wrote: 'It is understood that both the informants [Gordon, Booth] will be available as witnesses.'

5.83.2. On 20 January 2017, the DPP wrote to Sir Archibald Bodkin, Senior Treasury Counsel: 'Not to be able to produce No. 5 as a witness might be grave, but it is at least possible that his reluctance may be got over.'<sup>362</sup>

5.84. Even after the preliminary proceedings in Derby on 3 February 1917, when the Attorney-General stated that 'Gordon' would not be called as a witness, there was an expectation that he might yet appear at the Old Bailey.

5.84.1. On 5 February, the Home Office issued a 'D Notice' warning not to publish photographs of any secret service officers 'who may give evidence or be present in court', especially 'the government agents Booth and Gordon'.<sup>363</sup>

<sup>360</sup> 'List of Witnesses' [Held: TNA > DPP 1-50 List of Witnesses].

<sup>361</sup> Basil Thomson to Troup, 14 January 1917, 4 pp. [Held: TNA > MEPO > MEPO 9356 > MEPO 9356-1-1a, Sheets 2 to 5 of 10].

<sup>362</sup> DPP to Bodkin, 20 January 1917, DPP 1/50 [Held: TNA > DPP 1-50 > DPP Correspondence > DPP 1-50 DPP to Bodkin].

<sup>363</sup> D Notice, 5 February 1917. TNA HO 139/45, Notice D532 [Not held].

- 5.84.2. On 24 February, Melville Lee wrote in response to a request from the DPP that he would 'bring him [Gordon] to London if possible, but I am by no means sure he would appear without coercion'.<sup>364</sup>
- 5.85. These accounts giving 'Gordon's reluctance as the reason he did not appear are inconsistent with 'Gordon's own recollections, recounted at the meeting with Francis Rimington in 1919, that:
- he had stood outside the court during the trial, on Booth's instructions<sup>365</sup>
  - he had been willing to appear: 'It is not my fault that I did not appear as a witness in the trial. I nearly had a row with 'Comrade Bert' when I was told in [Colonel Straight's house] that I would not be called'.<sup>366</sup>
- 5.86. The timing of the DPP's decision not to call 'Gordon' is further explored in the supporting material for Skeleton Argument 5.5.3, page 150, relating to the prosecution's awareness of 'Gordon's antecedents.

***Skeleton Argument 5.3.2 – Defence was not aware that 'Gordon' was not being called or made available***

- 5.87. The Applicant has no evidence that the defence received advance notice that 'Gordon' was not being called or not being made available.
- 5.88. Especially given that the DPP seems to have intended 'Gordon' to be a witness right up until just before the preliminary hearing (see paras 5.83–5.84), it may have been that the Attorney-General's Opening Speech on 3 February 1917,<sup>367</sup> was when the Defendants first learnt that 'Gordon' would not be called.
- 5.89. Defence counsel Riza was also refused the true identity of 'Gordon'.

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<sup>364</sup> Melville Lee to Seward Pearce [Office of the DPP], 24 February 1917. [Held: TNA > DPP 1-50 > DPP 1-50 Correspondence > DPP 1-50 Melville Lee to Pearce - 02].

<sup>365</sup> Untitled manuscript by 'Alex Gordon', November 1919, page 1: Rimington Papers. [Held: Mason Family Papers > Rimington Papers > 11 – Alex Gordon Stories > 12 – 1919 Untitled].

<sup>366</sup> 'No. 5.' *The True Story of 'Alex Gordon*, November 1919, page 18. [Held: Mason Family Papers > Rimington Papers 1919 > 11 – Alex Gordon Stories > 13 – 1919 No. 5 True Story of Alex Gordon – 21 pages].

<sup>367</sup> Attorney-General's Opening Speech, p.4 in *Record* Chapter 2. February Speech: [Held: Proceedings].

### *Skeleton Argument 5.3.3 and 5.3.4 – Guiding principles on calling witnesses*

5.3.3 The guiding principle for calling witnesses at the time was set out by Baron Alderson in *R v Woodhead* (1847) Car & K 520: 'a prosecutor is not bound to call witnesses merely because their names are on the back of the indictment; but the prosecutor ought to have all such witnesses in court, so that they may be called for the defence, if they are wanted for that purpose; if, however, they are called for the defence, the person calling them makes them his own witnesses'.

5.3.4. *R v Russell-Jones* [1995] 1 Cr App R 538 reviewed the history of that principle, referred to as 'the 1847 rule' which Lord Parker CJ had described (in *R v Oliva* (1965) 49 Cr App R 298) as having 'continued in full force' ever since it was laid down, but concluded that the prosecution's discretion was not 'unfettered'.

(a) The first limiting principle is that the discretion 'must be exercised in the interests of justice, so as to promote a fair trial' (p544D). The court should interfere if the prosecutor had acted out of an oblique motive, that is to say if he had not called his mind to his overall duty of fairness, as a minister of justice (p544F).

(b) The next principle is that the prosecution ought normally to call or offer to call all the witnesses who give direct evidence of the primary facts of the case, unless for good reason, in any instance, the prosecutor regards the witness's evidence as unworthy of belief. That reflected statements of principle by Lord Roche in *Seneviratne v R*. [1936] 3 All ER 36, and by Lord Hewart CJ in *R v Harris* [1927] 2 KB 587 (see p545C).

Certainly by current standards, this was a situation in which it would have been contrary to the interests of justice to require the defence to call 'Gordon', and so, if the Crown refused to do so, the learned judge ought to have exercised his power to call the witness (see *R v Haringey Justices ex. p. DPP* [1996] QB 351).

#### *Supporting material*

5.90. The prosecution's discretion, then as now, was to be exercised in the interests of justice so as to promote a fair trial or assisting in the administration of justice: *R v Banks* [1916] KB [Court of Criminal Appeal] 2 KB 612; (1917) 12 CrAppR 74. Avory J held:

'It is true that prosecuting counsel ought not to press for a conviction' (at 621).

'Counsel for the prosecution throughout a case ought not to struggle for the verdict against the prisoner, but they ought to bear themselves rather in the character of ministers of justice assisting in the administration of justice.' (at 623)

5.90.1. Avory J was also on the Court of Criminal Appeal that rejected the Wheeldon leave application.



*Russell-Jones [1995] principles*

5.91. In *Grant v The Queen (Jamaica)* [2006] the Justices Committee of the Privy Council<sup>368</sup> stated that the extent of the duty on a prosecutor to call witnesses named on the back of an indictment had been fully reviewed<sup>369</sup> in *R v Russell-Jones* [1995] 3 All ER 239; and that 'the principles there summarised... provide authoritative guidance'.

5.92. In *Russell-Jones* Kennedy LJ set out seven points regarding with the Crown's obligations to call witnesses:<sup>370</sup>

'(1) Generally speaking the prosecution must have at court all the witnesses named on the back of the indictment (nowadays those whose statements have been served as witnesses on whom the prosecution intend to rely), if the defence want those witnesses to attend. In deciding which statements to serve, the prosecution has an unfettered discretion, but must normally disclose material statements not served.

'(2) The prosecution enjoy a discretion whether to call, or tender, any witness it requires to attend, but the discretion is not unfettered.

'(3) The first principle which limits this discretion is that it must be exercised in the interests of justice, so as to promote a fair trial.

'(4) **The next principle is that the prosecution ought normally to call or offer to call all the witnesses who give direct evidence of the primary facts of the case, unless for good reason, in any instance, the prosecutor regards the witness's evidence as unworthy of belief.** In most cases the jury should have available all of that evidence as to what actually happened, which the prosecution, when serving statements considered to be material, even if there are inconsistencies between one witness and another. The defence cannot always be expected to call for themselves witnesses of the primary facts whom the prosecution has discarded. For example, the evidence they may give, albeit at variance with other evidence called by the Crown, may well be detrimental to the defence case. If what a witness of the primary facts has to say is properly regarded by the prosecution as being incapable of belief, or as some of the authorities say "incredible", then his evidence cannot help the jury assess the overall picture of the crucial events; hence it is not unfair that he should not be called.

<sup>368</sup> *Grant v The Queen (Jamaica)* UKPC 2 (16 January 2006) at para 25.

'The prosecutor need not call witnesses whose evidence is not material': *R v Harris* [1927] 2 KB 587, 590.

'The present case, however, seems to me to call for a reminder that the discretion should be exercised with due regard to traditional considerations of fairness.' : *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279, 307-308).

<sup>369</sup> *R v Woodhead* (1847) 2 Car & Kir 520, 175 ER 216.

*Adel Muhammed El Dabbah v A-G for Palestine* [1944] 2 All ER 139, [1944] AC 156, PC. "Unless it can be shown that the prosecutor has been influenced by some oblique motive": Judicial Committee in *Adel Muhammed el Dabbah v. Attorney-General (Palestine)* (1944) AC 156, at 167-169; (followed in *Russell-Jones* see below).

*R v Balmforth* (12 June 1992, unreported), CA.

*R v Harris (Dora)* [1927] 2 KB 587, [1927] All ER Rep 473, CCA.

*R v Nugent* [1977] 3 All ER 662, [1977] 1 WLR 789, CCC.

*R v Oliva* [1965] 3 All ER 116, [1965] 1 WLR 1028, CCA.

*Seneviratne v R* [1936] 3 All ER 36, PC.

*Ziems v Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279, Aust HC. Appeal against conviction.

<sup>370</sup> *R v Russell-Jones* [1995] 3 All ER 239.

'(5) It is for the prosecution to decide which witnesses give direct evidence of the primary facts of the case. A prosecutor may reasonably take the view that what a particular witness has to say is at best marginal.

'(6) The prosecutor is also, as we have said, the primary judge of whether or not a witness to the material events is incredible, or unworthy of belief. It goes without saying that he could not properly condemn a witness as incredible merely because, for example, he gives an account at variance with that of a larger number of witnesses, and one which is less favourable to the prosecution case than that of the others.

'(7) A prosecutor properly exercising his discretion will not therefore be obliged to proffer a witness merely in order to give the defence material with which to attack the credit of other witnesses on whom the Crown relies. To hold otherwise would, in truth, be to assert that the prosecution are obliged to call a witness for no purpose other than to assist the defence in its endeavour to destroy the Crown's own case. No sensible rule of justice could require such a stance to be taken.

'Plainly, what we have said should not be regarded as a lexicon or rule book to cover all cases in which a prosecutor is called upon to exercise this discretion. There may be special situations to which we have not adverted; and in every case, it is important to emphasise, the judgment to be made is primarily that of the prosecutor, and, in general the court will only interfere with it if he has gone wrong in principle.'

- 5.93. The fourth point from *Russell-Jones* is taken as the general rule. It reflects statements of principle made by Lord Roche in *Seneviratne v R* [1936]<sup>371</sup> not to fetter discretion or discourage candour and fairness on the part of those conducting prosecutions. Lord Roche stated: 'Witnesses essential to the unfolding of the narratives on which the prosecution is based, must, of course, be called by the prosecution, whether in their result the effect of their testimony is for or against the case for the prosecution.'

#### *The 'Haringey Justices' principle*

- 5.94. In *R v Haringey Justices, Ex parte Director of Public Prosecution* [1996] QB 351, the situation was that two police witnesses had made statements central to the very issues in the case. One of those witnesses had been suspended because of an alleged impropriety. At that stage, the practice in relation to police officers where one was suspended was for the Crown simply to call the other witness. Because the prosecution declined to call the second police officer, the trial was halted. The issue was whether the magistrate was justified in exercising its discretion to dismiss the charges on the basis that letting the prosecution proceed was an abuse of process.

- 5.95. In the course of giving judgment in relation to that question, Stuart-Smith LJ observed the possible outcomes in a situation where the prosecution refuses to call a witness:

'Where in the exercise of their unfettered discretion the prosecution choose not to call a witness, such witnesses will fall into one of two categories.

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<sup>371</sup> *Seneviratne v R* [1936] 3 All ER 36, PC.

'First, there are those whose evidence is helpful to the defence and tends to contradict the Crown's case. On being notified of the existence of such a witness, the defence can make arrangements to call him.

'Secondly, there are those whose evidence supports the Crown's case but, for whatever reason, it is decided not to call him or her. In the ordinary way the defence will obviously not wish such a witness to be called. But there may be exceptional cases where the defence do wish such a witness to be called. The instant case was such a one. Rightly or wrongly the defence considered that they would have a better prospect of establishing their case, which was that the two police officers were out to harass and assault two young black men, if they could cross-examine both officers and no doubt try to exploit discrepancies between them to show that the evidence was fabricated. Where the witness is a police officer it is in my view unrealistic to require the defence to call him and I do not think it is in the interests of justice that they should be required to do so. The situation with other witnesses may well be different and each case will have to be considered in the light of its own facts.'<sup>372</sup>

5.96. In *Wheeldon*, given the Attorney-General's acknowledgement of 'Gordon' as a material witness who he nonetheless decided not to call for reasons he said were 'good', it appears that 'Gordon' would fall into Stuart-Smith LJ's second category. Further, like *Haringey*, *Wheeldon* is exceptional in that the defence did in fact wish the prosecution to exercise their discretion to call 'Gordon'.

5.97. The centrality of 'Gordon' to the incident that gave rise to the charges (soliciting, procuring and conspiracy to murder) and the most contentious issue in dispute – the intended use of the procured poison<sup>373</sup> – would effectively make 'Gordon', rather than Booth (who was on the record) the complainant in the *Haringey* sense. Again, as Stuart-Smith LJ explained:

'Where the witness's evidence is peripheral or merely corroborative of other evidence that is unlikely to be in dispute, there can be no possible objection to this approach [i.e the Crown Prosecution Service's policy]. But where, as here, the witness is effectively the complainant and on any basis is central to the incident which gave rise to the charge it is in my view unsatisfactory.'<sup>374</sup>

5.98. Further, in a situation where the jury had to decide which case theory to believe, as in *Wheeldon*, reliance on one prosecution witness for the grave charges would be unfair. This was also the situation in *R v Bradish* [2004], a conspiracy to murder case, in which Kay LJ, on giving judgment, approved the reasoning given nine years previously in *Haringey* by stating:

'That, so far as we can judge, is the only case where the court has given guidance in relation to any matter where what was at stake was a question of the Crown being compelled to call a witness who appeared to support their case and did not in any way advance the case of the defendant. As the Divisional Court made clear in that case, every such situation has to be considered in the light of its own facts.

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<sup>372</sup> *R v Haringey Justices Ex parte DPP* [1996] QB 351 at 357-8.

<sup>373</sup> 2nd Trial Third Day, Booth EIC, Thursday 8 March, L2896 in *Record* p. 141 [Held: Proceedings].

<sup>374</sup> *R v Haringey Justices Ex parte DPP* [1996] QB 351 at 359. In *Wheeldon*, the formal laying of complaint was by Inspector Parker. [Held: TNA > DPP 1-50 Parker complaint 26 December to 29 January 1917.

'In that case, without the officer who was the subject of some suspicion, the magistrates were going to be confronted with a single apparently honest witness saying one thing and the defence saying something different. The Crown would therefore be in a better position than if they had called both the two witnesses because they would have the unchallengeable evidence in terms of integrity of the one officer and not have the disadvantage of calling the second officer. We can well see why in those circumstances the justices thought that that was unfair unless they heard the second witness and why the court concluded that in those circumstances the court ought to have called the witness.'<sup>375</sup>

5.99. Subsequent cases also followed the *Haringey Justices* principle:

***R v Brown and Brown* [1997] 1 Cr App R 112**

In *Brown*, a Crown witness was not produced in the situation where the Crown knew the evidence was favourable to the defence.

'Counsel for the prosecution ought normally to call, or offer to call, all the witnesses who give direct evidence of the primary facts of the case unless the prosecutor regards the witness's evidence as unworthy of belief.' (proposition 4 at 114)

***R v Fleckney, Evelyn* [2002] EWCA Crim 992**

In *Fleckney* 2002 Mance LJ held that '... calling Clarke on limited points on which his testimony was believed to be credible was in accordance with the principles in cases such as *R v Haringey Justices, Ex parte Director of Public Prosecutions* [1996] QB 351, and *R v Brown and Brown* (1997) 1 Cr App R 112.'

***Grant v R*, 2006 UKPC 2 (16 January 2006)**

Para 25: 'The extent of the duty on a prosecutor to call witnesses named on the back of an indictment was fully reviewed in *R v Russell-Jones* [1995] 3 All ER 239. The principles there summarised were not criticised in argument, and provide authoritative guidance. That summary need not be repeated. Plainly the prosecutor has a discretion. It is a discretion to be exercised by the prosecutor acting as a minister of justice, in the interests of fairness. Thus the prosecutor need not call witnesses who are incapable of belief, or whose evidence is pure repetition (*R v Haringey Justices, Ex parte Director of Public Prosecutions* [1995] QB 351 at 356), or whose evidence is not material (*R v Harris* [1927] 2 KB 587; *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279, 307-308).'

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<sup>375</sup> [2004] EWCA Crim 1340 (2 April 2004) at 37.

*Skeleton Argument 5.4.1 – The failure to call 'Gordon', or make him available, prevented the defence from exploring:*

*... 'Gordon's personal involvement with investigating escapes from internment camps and his dealings with dogs in that context*

- 5.100. It was the defence case that the poison procured by Alice Wheeldon was intended for guard dogs at an internment camp and that all discussion about internment camps and guard dogs originated from 'Gordon'.
- 5.101. Had 'Gordon' been available in court, his evidence would have lent weight to the Defendants' account of what happened, particularly to the plausibility of Alice Wheeldon's reasons for procuring poison.
- 5.102. In particular, the absence of 'Gordon' as a witness prevented the defence from exploring:
- 5.102.1. 'Gordon's knowledge of political detainees held at internment camps; or his claim that he had assisted Ferdinand Kehrhahn, one escapee, in making his way from London to Liverpool; as well as 'Gordon's involvement in locating Arthur McManus, who had allegedly helped Kehrhahn to obtain passage from Liverpool to the USA using this established escape route.<sup>376</sup>
- 5.102.2. Whether 'Gordon' encouraged the Wheeldons to make use of this escape route for Will Wheeldon and others (Alexander Macdonald and Alf Mason) for 'getting across' to America; and whether he offered to introduce the principal Defendant to McManus and persuaded her to obtain poison for his ('Gordon's) use on guard dogs.
- 5.102.3. His conversation with the principal Defendant about obtaining poison and what he saw of the note to her daughter Winnie Mason requesting poison.
- 5.103. Neither 'Gordon's Police Statement nor PMS2 reports, including those from 'Gordon', were disclosed to the defence or at trial. This undisclosed material supports the testimony given by Alice and Hettie Wheeldon.

*Surveillance of political activists and knowledge of Arthur McManus'*

- 5.104. Gordon' as 'Vivian' (or 'V') worked in Liverpool under the Home Office's Douglas Straight (Officer-in-charge of PMS2) to try to locate McManus. On 11 December 1916, with the Liverpool police failing to locate McManus, Straight wrote a *Memorandum*:<sup>377</sup>

'As pre-arranged, I met 'V' ['Vivian' alias 'Gordon'] outside the Refreshment Rooms at the Central Railway Station at 6 pm...and had a long conversation with him, when he handed us ('B' and self) a memorandum...from which it will be seen that he has got in touch with McManus and the latter is at

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<sup>376</sup> Referring to Kehrhahn's recapture in New York harbour, 'many British subjects desirous of escaping service in the army had made their way to the United States in a similar manner': *New York Tribune*, 24 December 1916, p.4 col.4, 'Germans Flee Britain by Ruse'. [Not held].

<sup>377</sup> 'Memorandum,' by D.M.S[traight], 11 December 1916, f.48, p.2. [Held: Milner Papers].

present to be found at 46 Brook Rd., Bootle. McManus, moreover, gave 'V' a letter of introduction to one McLaine who lives at Hyndman Hall, Salford.'

- 5.104.1. In early December 1916, PMS2's Melville Lee instructed Booth to send his agent ('Gordon') to Derby 'to get in touch with revolutionaries and people likely to commit sabotage'.<sup>378</sup> Booth later volunteered<sup>379</sup> they had been given secret information about the meeting places of war resisters when they started work in a new town.
- 5.104.2. 'Gordon' later wrote that '[Booth] told me to go to Derby and get in touch with Willie Paul'.<sup>380</sup>
- 5.104.3. Willie Paul was a successful merchant, living in Derby,<sup>381</sup> who ran stalls at markets across the Midlands, was an organiser for the Socialist Labour Party, and opposed to the war and a CO, with exemption at that time. In September 1916, PMS2 had intercepted McManus's correspondence with Willie Paul of Derby.<sup>382</sup> By Christmas 1916, 'Gordon' had failed to find him and returned home to Leicester.
- 5.104.4. Back in Derby after Christmas, on 26 December 1916, 'Gordon' met Cyril East, a CO with exemption as an engineer at Rolls Royce, at the Clarion Club, a meeting place for engineers, members of the Amalgamated Society of Engineers and the SLP. Consistent with his *modus operandi*, 'Gordon' went to East's home, where he met his mother, after explaining he was a CO on the run. 'Gordon' told East that although he remained on the run, some of his Jewish anarchist colleagues had been arrested and put in an internment camp, and he was eager to get them out.<sup>383</sup>

### *Knowledge of the internment of political dissenters, the escape of Ferdinand Kehrhahn and the emigration scheme*

- 5.105. In October 1916, at the outset of their work for PMS2, Booth and 'Gordon' undertook surveillance of political and internationalist labour clubs in London in preparation for round-ups by police. Such clubs were meeting places for political suspects and 'aliens', particularly Jewish and Russian exiles.<sup>384</sup>

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<sup>378</sup> Melville Lee *Short Resume of the Wheeldon Story*, 5 January 1917, p.1. [Held: TNA > HO 144].

<sup>379</sup> *World's Pictorial News*, 2 April 1921, p.10 col.4, 'Tempting Bribes Offered to British Women.' [Held: Newspapers].

<sup>380</sup> William Rickard 'No.5': *The true story of 'Alex Gordon'*, November 1919, Part 2, p.16; Part 1 and 2, respectively pp.6 and 18. [Held: Mason Family Papers > Rimington papers 1919 > 11 - Alex Gordon Story > 2 versions > 13 - 1919 No. 5 True Story of Alex Gordon].

<sup>381</sup> Melville Lee *Short Resume of the Wheeldon Story*, 5 January 1917, p.1. [Held: TNA > HO 144-13338-331997].

<sup>382</sup> 'Mac' [McManus] to William Paul, 15 September 1916, f.25, written from Cassidy's house in Coventry f.24, 'Mac' to William Paul, dated 'Sunday', December 1916 c. [Held: Milner Papers].

Appendix IX Report by 'A.G.' [Held: Milner Papers].

<sup>383</sup> Dorothy Robinson recalled that Cyril East was one of a number of people in Derby whom Rickard 'approached with this story': London School of Economics, Women's Library, 8SUF/B/143, Brian Harrison's interview with Dorothy Groves (née Robinson), Derby, 30 March 1977, 23 mins onwards. [Not held].

<sup>384</sup> Russian exiles/refugees were threatened with repatriation or conscription to the British military.

*The Times*, 30 November 1916, 'Eligible Russians in London', p.12, col 4. Reported over 20,000 aliens of Russian nationality of military registered in London. [Held: Newspapers].

- 5.106. 'Gordon' later recalled a raid on the Communist Club.<sup>385</sup> Its intent was 'to secure the internment of German, Austrian and other anti-British members' (aliens).<sup>386</sup> At that time, this club was seen as a centre of resistance to conscription and association with Russian exiles,<sup>387</sup> especially through its support of the Foreign Jews Protection Committee against Deportation to Russia and Compulsion.<sup>388</sup>
- 5.107. The internment of Kehrhahn (with two companions) at the Islington Camp was well known, and their escape using the Liverpool–New York 'underground railway' (or the 'emigration scheme') was well-publicised.<sup>389</sup> Kehrhahn remained at large, after the re-capture of his companions. Special Branch circulated photos and details in the *Police Gazette*.<sup>390</sup>
- 5.108. Booth's (undisclosed) report of 3 January 1917 includes mention of both McManus and Kehrhahn:<sup>391</sup>

'I met V. ['Vivian'] tonight at 9 o'clock. I had instructed him to call at Mrs. Wheeldon's but he met Macdonald [to] whom he had given a letter of recommendation to Macmanus [in] Bootle Liverpool who detained him for some time. Macdonald told V. that he had seen Macmanus who told him that it was impossible for him to do anything because someone had given him away and he would not be able to do anything for six weeks or two months. During conversation Macmanus told Macdonald to tell V. to burn any letters he had from him. Also he (Macmanus) with a man named Messer at Messer's house had spent some time in rigging up Kehrhan's deformity to disguise him and get him aboard ship.'

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<sup>385</sup> South African National Archives Repository, Pretoria, vol 1/2/38, Interior Department file A148, William Rickard 'The Statement of W Rickard', May 1919, p. 2 [Held: South Africa National Archive].

<sup>386</sup> 'MI5 Historical Reports: 'G' Branch Report Vol.VII, Clubs, Associations, etc' (1921), f.89: TNA KV 1/45. [Not Held].

<sup>387</sup> *The Times*, 30 November 1916, 'Eligible Russians in London', p.12, col 4. Reported over 20,000 aliens of Russian nationality of military registered in London. [Held: Newspapers].

<sup>388</sup> Sascha Auerbach 'Negotiating Nationalism: Jewish Conscription and Russian Repatriation in London's East End, 1916–1918', *Journal of British Studies*, vol. 46 no. 3 (July 2007), pp.605-7.

Jonathan Hyman *Jews in Britain During the Great War, 1914-1918: How did the community react to the question of military service*, Manchester Papers in Economic and Social History, Paper N.51 (University of Manchester, Manchester, 2001), p.27.

<sup>389</sup> In April 1916, Kehrhahn's internment case was raised at the British Socialist Party Annual Conference in Salford: People's History Museum, Manchester, Labour Party Archives, LP/WNC/2/3/10/10(ib-iiib), F.L. Kehrhahn to J.S. Middleton, Assistant Secretary of the Labour Party, 27 February 1916.

*Liverpool Echo* 23 November 1916 p.4 cols 6&7 'Tracked!'. Recognised on board from photographs: *Liverpool Courier*, 5 January 1917, p.3 col.6, 'Hunchback's Story / Fugitive's Efforts to Reach America.' [Held: Newspapers].

<sup>390</sup> *Police Gazette*, 21 November 1916, p.3 col.1, 'Portraits of Persons Wanted' [Not Held].

*Daily Express* 22 November 1916, p.5 col.2, 'Three Hunted Men...:...one of the most persistent police hunts ever organised by Superintendent Quinn': *Daily Express*, 23 November 1916, p.3 col.7, 'Who is Hiding these Men?' [Not Held].

*Liverpool Echo* 23 November 1916 p.4 cols 6&7 'Tracked!'; [Held: Newspapers].

*Daily Mirror* 27 November 1916 p.2 col.2 'Hunchback in London?'. [Held: Newspapers].

Recognised on board from photographs: *Liverpool Courier*, 5 January 1917, p.3 col.6, 'Hunchback's Story / Fugitive's Efforts to Reach America.' [Held: Newspapers].

'Defence Security Case No.58: KEHRHAHN, Ferdinand Louis', p.2: TNA KV 4/113. [Not Held].

<sup>391</sup> Booth's 'No. 4' – report 3 January 1917. [Held: TNA > HO 144-13338-331997 – Transcription of Reports at p.12].

5.109. At trial,<sup>392</sup> Booth acknowledged that: 'the name of McManus was mentioned when the question of emigration was broached' in conversation between 'Gordon' and the principal Defendant. Further, Booth acknowledged that:

- He knew McManus was in Liverpool/Bootle
- 'Gordon' 'knew McManus fairly well' and that: 'the purport of the letter ['Gordon's letter of introduction] [was] for McManus to get these three fellows out of the country'
- McManus was involved with an emigration scheme:  
Defence counsel: 'McManus had a scheme on hand for sending people out of this country, in order to avoid military services...'  
Booth: 'My enquiries were such also that I knew he had helped Kieran, a German, who escaped this country. I know all about him.'

These points were also reported in *The Daily Chronicle* at the time.<sup>393</sup>

5.110. 'Gordon' had reported to Booth<sup>394</sup> that:

'He [Macdonald] is going to see Macmanus at Liverpool with a view to getting out of the country, and Mrs. Wheeldon's son is also going if Mcdonald's report is favourable. I gave Mcdonald a letter of introduction to Macmanus. The following is a copy from memory: -

Dear Comrade

This is to introduce comrade Macdonald of whom you have no doubt heard a great deal. He has been through the mill and is fed up. He will give you full particulars of other comrades.

Yours fraternally  
Alex. Gordon.

P.S. Cheer up.'

5.111. Had 'Gordon' been available in court, 'Gordon's claims of insider knowledge about raids on political and labour groups, as well as the emigration scheme and key individuals whose names he introduced - McManus, Kehrhahn and Paul - could have been tested.

### ***Poison and dogs - observations on the prosecution evidence***

5.112. On the first day of trial, Booth admitted he was not present when 'Gordon' and Alice Wheeldon had discussed some arrangement between them involving McManus 'getting three fellows out of the country'.<sup>395</sup> This line of examination was ended with the judge's intercession.

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<sup>392</sup> 1st trial, First Day, Booth XXN, L476-485. [Held: Proceedings]

<sup>393</sup> *The Daily Chronicle*, 7 March 1917, p. 5 col 2 'Poison plot trial opens'. [Held: Newspapers.]

<sup>394</sup> 'No. 5 First Report on the Wheeldon Case', c.30 December 1916. undated typescript 'Reports' p.5, [Held: TNA> HO 144-13338/331997 > Transcription Reports].

<sup>395</sup> 1st Trial First Day, Booth XXN L 464-485 in *Record* p. 253-254. [Held: Proceedings].



5.113. The prosecution led evidence from the War Office, the Director of Prisoners of War, to show that guard dogs were not used at internment camps.<sup>396</sup>

5.113.1. On 7 March, 1917, Bodkin received a reply from Special Branch:

'No dogs are used for guarding camps at Stratford or Cornwallis Road'.

'...and the Military Authorities know nothing about dogs being used for guarding camps containing military prisoners.'

'... some of the prisoners in the Military Camps are allowed to keep them, and they sometimes go outside the camps with working parties.'<sup>397</sup>

5.114. However, as stated above, the defence case was that any knowledge Alice Wheeldon had of guard dogs at internment camps had come only from 'Gordon' when they were alone.

5.115. Low J questioned the principal Defendant at length<sup>398</sup> about what she had said, or failed to say, when she was arrested – her not having explained the poison's purpose, 'to kill some dogs':

5.115.1. Alice Wheeldon replied that on arrest she was 'too taken aback to say anything'.<sup>399</sup> The warrant for arrest was 'to kill and murder' with no reference to poison.<sup>400</sup>

5.116. Counsel for the prosecution Sir Alexander Bodkin created a tabular comparison of 'The stories of No. 5 and Booth', including references to poison and dogs, as part of preparation for the trial.<sup>401</sup>

5.117. The principal Defendant's letter requesting the poison was not intercepted, nor ever found. The letter is referred to in contradictory accounts by 'Gordon' and Melville Lee:

'Gordon': *PMS2 No.5 1st Report* – 'In the box, among other things, were a letter in a sealed envelope and four mince pies. In the centre of one of the pies was a note addressed to Dear "A" and signed "Z," asking for the phial of poison to be sent at once, as a man had been found who would remove L. George if at all possible.'<sup>402</sup>

Melville Lee: 1st REPORT. 31 December 1916: 'A letter was placed in the box commencing "Dear A....." and signed "Yours Z." and another note was placed in one of the pies asking for the "old coat" [code for poison] to be sent her. No.5 ['Gordon'] was **not allowed to read this note** nor to see the address.' [emphasis added]<sup>403</sup>

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<sup>396</sup> 1st Trial Killen EIC & XXN L1878-1889 in *Record* p.324; 2nd Trial Major Kimber (Director of Prisoners of War), EIC L3615-3624 in *Record* p.410. [Held: Proceedings].

<sup>397</sup> R.H.B. to Archibald Bodkin, 7 March 1917. Special Branch, MEPO, page 3. [Held: TNA > MEPO 9356 > MEPO 9356-46-01].

<sup>398</sup> As below, L4577-4588, p.456.

<sup>399</sup> 2nd Trial, Fourth Day, Alice Wheeldon RX L4583 in *Record* p.456. [Held: Proceedings].

<sup>400</sup> Exhibit 6 Derby Assizes [Held: TNA > DPP 1-50].

<sup>401</sup> [Held: TNA > DPP 1-50 > Bodkin's Comparative stories No.5 & Booth]

<sup>402</sup> [Held: TNA > HO144-13338-3331997 > Transcription of reports]

<sup>403</sup> [Held: TNA > HO144-13338-3331997 > Transcription of reports]

'Gordon': 18 January Police Statement – '...and [she] put a note inside. She had previously shown me this note which commenced 'Dear A' and was signed 'Z'. **I read the note** and remember that it contained a definite request for the phial of poison to be sent at once as a man had been found who would remove Lloyd George is at all possible.'<sup>404</sup>

5.118. Similarly, when the poison parcel arrived, the only record of Alf Mason's accompanying instructions on using the poison was from Booth's notes. The principal Defendant had read the instructions to 'Gordon' and Booth, who were both present. Booth's notes were presented in court as Exhibit 40:<sup>405</sup>

'All four [phials] will probably leave a trace but if the bloke who own it does suspect it will be a job to prove it. As long as you have a chance to get at the dog I pity it.'

5.119. The parcel also contained a letter from Winnie Mason:<sup>406</sup> 'I do hope it all right abaht [about] them things for the dawg.'

5.120. These discrepancies and references to poison and dogs could have been explored with 'Gordon' at trial.

5.121. In his summing up, Low J put the defence case that 'Gordon' was supplied poison as if its use were not for 'Gordon's plan – for dogs blocking escape of his friends from a camp in London – but a mere ruse by Alice Wheeldon. His Honour:

'...for the purpose of poisoning some police dogs which were supposed to guard a camp near London where three or five (I forget which) Jews were supposed to be confined; and so the Jews might be liberated ...'.<sup>407</sup>

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<sup>404</sup> Statement Alex 'Gordon', 18 January 1917, p. 6. [Held: TNA > DPP 1-50 > DPP 1-50 Gordon Statement].

<sup>405</sup> Exhibit 40 in *Record* Chapter 4 p.98 [Held: Proceedings]. A marked-up copy is also available [Held: TNA > CRIM 1-166 - marked-up Ex 40 dog] At the end of his 3rd Report, Melville Lee included how Booth wrote down the instructions for use with the instructions, and these were omitted in Exhibit 40. [Held: DPP 1-50 > DPP 1-50 – Reports from PMS2 – Select > Melville Lee – all reports & instructions for poison – Sheet 202].

<sup>406</sup> [Held: TNA > CRIM 1-166 > CRIM 1-166 Marked-up Ex 57].

<sup>407</sup> Fifth Day, Judge's Summing Up in *Record* p. 547. [Held: Proceedings].

*Skeleton Argument 5.4.2 – The failure to call 'Gordon', or make him available, prevented the defence from exploring:*

*... The accuracy of Booth's notes alleging admissions by the principal Defendant at a time when 'Gordon' was present*

5.122. When testifying, Booth appeared to read and to rely heavily on his notes, particularly in the first trial: First day, Booth EIC L1-6 in *Record* p.230. Further, these were notes that had been transcribed.<sup>408</sup>

5.123. The transcript shows his use of notes and memory:

- Booth had been relying on his notes, after Low J suggested he refer to them: 1st Trial Booth EIC L158-175 in *Record* p.237
- Booth's vacillated about the content of the principal Defendant's conversation with him and 'Gordon', his memory and note-making: 2nd Trial Booth XXN L3104-3120 in *Record* p. 382-383.
- in cross-examination, Booth appeared uncertain about questions or comments he or 'Gordon' made about what he could remember, although he was adamant about 'her plan to murder Lloyd George' (L3099) : 2nd Trial Booth XXN L3068-3160 in *Record* p.381-384.

5.124. Hettie Wheeldon in June 1917 also wrote of Booth's reliance on his notes:

'...throughout the trial Booth read his replies from notes. At the very outset of his evidence, this fact was noted by the judge...'<sup>409</sup>

In particular, she commented how Booth had relied on his notes without first refreshing his memory:

'We find him admitting that [he] is:

- unable to swear to anything which is not in his notes,
- unable to say that the notes recording a conversation were made immediately after the conversation took place, and,
- unable to give other than evasive and non-committal answers to questions, the answers to which could not be supplied from his notes. What sort of an answer, for instance, is this to an important and definite question:

Q: Was this the first time that she talked about killing Lloyd George to you?

A: Pretty well.' Day 3, Booth XXN L3134 in *Record* p.383.'<sup>410</sup>

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<sup>408</sup> Observers at the trial commented on Booth who 'refreshed his memory' with 'a sheaf of typewritten notes': *Westminster Gazette*, 6 March 1917, p.7 col.1, 'Plot Charge'.

And upon Hettie Wheeldon who was observed following 'the evidence with especial attention, and took notes constantly', *Manchester Guardian*, 7 March 1917, p.5 col.5, 'Poison Plot Trial.' Similarly, 'Hetty got out her note-book and became very busy', *Evening Standard*, 6 March 1917, p. 7 col. 3 and p.1 col.1. [Held: Newspapers].

<sup>409</sup> Hettie's Report, page 2 [Held: Mason Family Papers].

<sup>410</sup> Hettie's Report, pp.5-6 [Held: Mason Family Papers].

- 5.125. Despite his equivocation, Booth was adamant that he could rely on his memory stating that the principal Defendant was:
- wanting the murder of Lloyd George and Henderson (L3117) by her words 'shall be killed' (L3130); and
  - giving him various methods to administer the poison to kill Lloyd George [similar to methods listed by 'Gordon' in his Police Statement].
- 5.126. Low J acquiesced eventually to the defence counsel's multiple requests for Booth to produce his notes: Booth XXN L344-349 in *Record* p.247; 2nd Trial, Day 3, Booth EIC L2897-2900 in *Record* p.372; 2nd Trial, Day 3, Booth XXN L3123-3125 in *Record* p.383.
- 5.127. Low J also appeared satisfied about the contemporaneity of Booth's note-making and acceded to the Prosecutor's request for Booth to continue to using his notes to 'refresh his memory'. No suggestion was made that Booth was required, for each point, to first exhaust his memory before referring to his notes. By 1917 Low J could have been expected to apply the law by then it had developed for more stringent reporting.
- 5.128. On 11 March 1917, on conclusion of the trial the *The New York Times* reported:<sup>411</sup>
- 'Why wasn't it possible for Gordon to come into court and face the jury?' asked the lawyer. 'Because from him the jury would have drawn a very different version of the case. The case rests wholly on the evidence of Booth who, moreover, was allowed to read the whole of his evidence. In the absence of this mysterious Gordon this trial is not a trial.' [emphasis added]
- 5.129. Notwithstanding that 'Gordon' was not called or defence claims about Booth's faulty memory, Low J put the issue of Booth's notes as one of intrinsic honesty:
- '...the value of the notes depends upon the opinion you form of Booth's reliability... with regard to Booth ...it is for you, applying such care and intelligence as you would apply to the ordinary affairs of your business life, to come to a conclusion whether Booth is the witness of truth, or the witness of falsehood...: page 544-545.
- 5.130. However, Booth's use of notes effectively blunted the capacity of the defence. It misled the Jury as to Booth's credit on the one hand and the necessity for the prosecution to produce 'Gordon', thereby failing to ensure a fair trial.

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<sup>411</sup> [Held: Newspapers].

## Ground A(3) Failure to disclose 'Gordon''s background

### Skeleton Argument

- 5.5 The decision not to call 'Gordon' was not a legitimate decision, nor made in good faith. It was a deliberate (and successful) attempt to suppress from the defence and from the jury that in truth 'Gordon' was a man both of mental instability and serious criminal background, called William Rickard.
- 5.5.1 The fact that 'Alex Gordon' was in truth William Rickard is demonstrated by contemporaneous sources – photographs, handwriting, official registers, etc. and supported further by recorded admissions by Rickard made personally under one or other aliases.
- > **Supporting material: page 126, including graphical summary of evidence identifying 'Alex Gordon' as William Rickard (Figure 5-3)**
- 5.5.2 Rickard had been in mental institutions and had criminal convictions including for blackmail. None of this was disclosed to the defence.
- > **Supporting material: page 143**
- 5.5.3 Prosecution confirmed its awareness of 'Gordon''s antecedents immediately before his withdrawal as a witness.
- > **Supporting material: page 150**
- 5.6 'Gordon' was kept out of the way by Sir Charles Matthews, the DPP, during the trial and then deliberately sent to South Africa shortly afterwards to remove all risk of his antecedents being exposed.
- > **Supporting material: page 154**
- 5.7 In the circumstances the defence were denied any opportunity to cross-examine any prosecution witness on 'Gordon''s criminal antecedents and mental history. The relevance of this is that Booth acted on information provided by 'Gordon' and disclosure would have exposed Booth to cross-examination on both his competence and reliability in acting on the word of such a man.
- > **Supporting material: page 157**

## Supporting material: Failure to disclose 'Gordon's' background

### *Skeleton Argument 5.5 - The decision not to call 'Gordon' was not a legitimate decision, nor made in good faith.*

5.131. The decision not to call 'Gordon' was a deliberate (and successful) attempt to suppress from the defence and from the jury that in truth 'Gordon' was a man both of mental instability and serious criminal background, called William Rickard.

### *Skeleton Argument 5.5.1 - 'Gordon' was in fact William Rickard*

5.132. Available records demonstrate to a high degree of certainty that William Rickard (1887-1963) was 'Alex Gordon' (and not an imposter). There is no evidence inconsistent with this conclusion.

5.133. The evidence of 'Gordon' being in truth William Rickard is presented below.

#### *'Alex Gordon' as an alias*

5.134. In 1916 the name 'Alex Gordon' was adopted as an alias by 'Francis Vivian' the man hired by Herbert Booth to work as an undercover agent for PMS2, a unit of the Ministry of Munitions. 'Francis Vivian', in fact, was another (and the main) alias for William Rickard, his true name.

5.135. William Rickard himself did not want even the alias 'Alex Gordon' divulged.<sup>412</sup>

5.136. The Attorney-General, at the Derby Assizes on 3 February and again at trial on 6 March 1917, stated that 'Alex Gordon' was not his true name.

5.137. At the time, especially pre-First World War, aliases were sufficiently widely used for the 1910 Register of Habitual Criminals to include recognised aliases.

5.138. William Rickard (1887-1963) used numerous aliases and stage-names over his lifetime. These include: 'Francis Carrington'; 'F.V. Rickard'; 'Vivian Rickards'; 'Delamere Carrington' and 'Francis Delamere Carrington'; 'Francis Vivian' and 'V' or 'Vivi' for 'Vivian'; 'Vivid'; 'No. 5'; 'Alex Gordon'/'Alec Gordon'/'Alexander Gordon'/'A.G.'; 'Cyril Wake'; 'Cosmo'/'Cosmo, the Mystic'. There is no, single unique record available to reveal Rickard as the true identity of 'Alex Gordon'. Instead these aliases form an identity chain of a single person, connecting Rickard to 'Alex Gordon'.

#### *Linking 'Alex Gordon' to William Rickard*

5.139. To follow the chain of aliases necessary to support the proposition that 'Alex Gordon' was in truth William Rickard, names of his relatives are important to know, as evident from marriage and birth certificates:<sup>413</sup>

- his parents, Caroline<sup>414</sup> and Alfred Rickard

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<sup>412</sup> For example, letter from PMS2's Melville Lee to S. Pearce, Office of the DPP, 24 February 1917 - DPP 1-50 Sheet 400 [Held: TNA> DPP 1-50]

<sup>413</sup> [Held: Register Office].

- his wife, Lily Rickard (née Quinton)
  - his daughter, Mavis Rickard and her marriage and employment as Mavis Jones.
- 5.140. Records significant to identifying 'Gordon' as William Rickard refer to Rickard's family by name, his aliases, photographs, age and description of physical characteristics (such as height).
- 5.141. Five principal records link 'Alex Gordon' to William Rickard:
- Wiltshire County Mental Hospital patient record, 1929
  - Papers of J. Ramsay MacDonald, MP for Leicester, 1917, including correspondence and questions to the Home Secretary in the House of Commons
  - Rimington meeting record in Mason Family Papers, 1919
  - Papers associated with Rickard's travel to South Africa 1917 and Office of the Governor General of South Africa, Rickard's papers 1919
  - Mavis Jones' (William Rickard's daughter) papers, 1983-1987.

The contribution of each of these sources is summarised in Table 5-3, and discussed further below.

A graphical summary of the principal evidence is at Figure 5-3, page 143.

*Table 5-3. Significant sources for the identification of 'Alex Gordon' as William Rickard*

<p>Wiltshire County Mental Hospital patient record, 1929 (see page 129)</p>	<p>A man was transferred to Wiltshire County Mental Hospital in 1929 as 'Delamere Carrington'. The hospital's enquiries into his history provide external corroboration of his true identity and his use of many aliases.</p> <p>He claimed to be:</p> <ul style="list-style-type: none"> <li>• the agent 'No. 5' who was 'Alex Gordon' from the Wheeldon case</li> <li>• 'Francis Vivian', 'Vivian', Vivid.</li> </ul> <p>The hospital's investigation, including through correspondence with his mother (Mrs A Rickard) and wife (Mrs Lily Rickard), established that he was in fact William Rickard.</p> <p>The hospital confirmed he was married with baby daughter 'Mavis'; his relatives: mother Caroline Rickard, father Alfred Rickard, wife Lily Rickard. His prior occupation as journalist on a Leicester paper, was confirmed by the editor who had written that he had worked as 'Francis Vivian'. His wife volunteered that he had toured South Africa as 'Vivid, the Magnetic Man' from May 1917 to August 1919.</p>
<p>J. Ramsay MacDonald MP papers, 1917 (see page 131)</p>	<p>In early 1917, J. Ramsay MacDonald, Independent Labour Member for Leicester, became concerned about the impact on his constituents, particularly those involved in organisations such as unions and suffrage groups, of the practice of some undercover agents to attribute violent intent to relatively innocent words. Constituents expressed concern about a government agent calling himself 'Alec Gordon', whose conduct they recognised from the Wheeldon trial.</p> <p>MacDonald obtained a detailed description of this man, and reached the conclusion that his name was 'Francis Vivian', a man who had lived in Leicester, but who had disappeared in March 1917.</p> <p>Further, Ramsay MacDonald named two men to the Home Secretary – McManus and Cassidy</p>

<sup>414</sup> In 1899 Caroline Rickard gave her son's medical history at the London County Lunatic Asylum at Colney Hatch, Casebook [Held: Colney Hatch Asylum> Casebook]

	<p>– as men who could identify 'Francis Vivian' as 'Alex Gordon' in the Wheeldon case.</p> <p>Their knowledge came from direct experience of 'Gordon' in separate documented situations, before the arrest of the Wheeldons and Masons.</p> <p>Claims of equating 'Gordon' to 'Vivian' made to MacDonald were supported by PMS2 surveillance whose reports were known to Lord Milner in the war cabinet. Further, these materials lend weight to the identification exercise in 1919, reported in the Rimington meeting record below.</p>
<p><b>Rimington meeting record in Mason Family Papers, 1919</b> (see page 134)</p>	<p>In 1919, a man from Leicester calling himself 'F. Vivian', claiming to be 'Alex Gordon' presented himself to Francis Rimington (Secretary of the Leicester branch of the Socialist Labour Party) offering to tell the inside story behind his undercover work.</p> <p>Wanting to confirm that this person was in fact 'Alex Gordon' and not an imposter, Rimington gathered a group of people, including McManus and Cassidy (named by Ramsay MacDonald in 1917 to the Home Secretary) who had known a man called 'Gordon' or 'Vivian' as well as Alexander Macdonald.</p> <p>They arranged to give 'Vivian' money and ask him to sign a witnessed receipt. The man signed 'Francis Vivian as Alex Gordon'. They also secured a handwritten note to transmit the money from V Rickard in Leicester to Mrs L Rickard in Dorchester.</p> <p>Further, they recognised him as the man they had known as 'Alex Gordon' or 'Vivian' in December 1916 – January 1917 and concluded that there was one person whose true name was W. Rickard whose aliases included 'Alex Gordon', 'Francis Vivian'.</p> <p>They also secured from him two handwritten stories, one untitled and the other titled 'No. 5, the True Story of 'Alex Gordon''. No. 5 was his PMS2 codename.</p>
<p><b>Rickard and South Africa, 1917-1919</b> (see page 135)</p>	<p>Shipping records show passages to South Africa for William Rickard and wife Lily (aged 29 and 25) in 1917.</p> <p>In 1919, the Office of the Governor General of South Africa received handwritten documents, signed by W. Rickard and F.V [?] Rickard constituting an application for repatriation.</p> <p>In these documents Rickard stated that as 'Francis Vivian' he had been 'Alex Gordon' in the Wheeldon case; as a result, he and his wife had been exiled to South Africa, and that she was now pregnant.</p> <p>Shipping records show passage from South Africa to London in 1919, for William Rickard (aged 31), his wife Lily (aged 27) and baby Mavis (aged 1).</p> <p>Both journeys were paid for by the British government.</p>
<p><b>Mavis Jones' (Rickard's daughter) papers 1983-1987</b> (see page 136)</p>	<p>A woman called Mavis Jones contacted the BBC after it had broadcast a documentary called 'A plot to kill Lloyd George', which portrayed 'Alex Gordon'.</p> <p>She claimed to be Rickard's daughter, Mavis Jones, and that she had been born in South Africa and brought to England as a baby. Her identity was confirmed through advice from the BBC's historical consultant Nicholas Hiley, including evidence that 'Quinton' (which she said was her mother's maiden name) was the maiden name of Rickard's wife according to his marriage certificate.</p> <p>Mavis corroborated that her father used many other aliases during her life with him, particularly 'Francis Vivian', and had claimed to be 'Alex Gordon' in the Wheeldon case. She recalled use of the name 'Delamere Carrington' but 'he only used that once to my knowledge'.<sup>415</sup></p>

<sup>415</sup> Mavis Jones to Hiley, 1987 and 21 June 1986, Mavis Jones (daughter of William Rickard) authorised Nick Hiley to obtain her father's records later being '...perfectly happy for you to use any information you gather, as you wish', 21 February 1987: [Held: Hiley Papers > 1987 Jones authorisation]



*Wiltshire County Mental Hospital patient record, 1929 [Held: Wiltshire 1929]*

- 5.142. The hospital sought to establish the true identity of their patient who, while presenting as 'Delamere Carrington', said it was not his true name. The Hospital obtained external corroboration for the patient's true identity, his use of many aliases and claims of being agent 'Alex Gordon' ('No. 5') in the Wheeldon case.<sup>416</sup>
- 5.143. The patient record (page 1) described his physical characteristics on admission and contains two photographs.
- 5.144. The first page begins a typed report to the Board of Control on 16 June 1929, continued in the middle of page 2. On his identity, Rickard stated that 'Carrington is not his real name, but he declines to tell what his real name is... his stage name is 'Cosmo'... he has a mother living, but will not tell her name and address. He has written to a Mrs A. Rickard at Dartford...'
- 5.144.1. This report included Rickard's complaint that '...in a recent number of the *Sunday Chronicle* a Major F. Douglas (really he says a Major Douglas Straight) published this coup as his own.'<sup>417</sup> By 1929, Straight's part in PMS2 was not published and would have been known by few people,<sup>418</sup> thereby lending veracity to the true identity of 'Alex Gordon' as William Rickard.
- 5.145. The medical notes, for 14 and 15 June 1929, transcribed the contents of letters Rickard wrote:
- to Mrs A. Rickard, himself to be described as 'A.G.' and referring to 'C.' and 'L.' – his relatives, respectively mother Caroline and wife Lily.
  - to Mr Blake he referred to his scrapbook of newspaper clippings, and signed himself 'Cosmo'. On 16 June 1929, Rickard had said that 'before the war he was a leader-writer and reporter for the *Leicester Advertiser* and *Leicester Mail*.'<sup>419</sup>
- 5.145.1. On 20 July 1929, the medical notes recorded receipt of a letter from 'a Mrs Rickard of Newton Abbott, Devon... that this patient is her husband, and that his name is William Rickard'; and quoted her description of '...employed by the Secret Service during part of the war...The Liberal Government paid Mr Rickard the sum of 100£ and our expenses to Africa...He has been as star-turn on the stage...Delamere Carrington was a pet name of long ago.' [page 2.7]
- 5.145.2. On 24 July 1929, the notes record that Rickard was 'questioned at length...he tells me he married in 1912 and has one child, a girl 'Mavis', born June 22,

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<sup>416</sup> The National Archives catalogued the 1929 patient register for Wiltshire County Mental Hospital as MH 94/64, 1929 Register No.39478, 'Carrington (Delamere) properly Wm. Rickard'. The Wiltshire and Swindon Record Office retained the patient record 'Delamere Carrington' (no.11,668), admitted on 12 June 1929, aged 39 years, and discharged September 1929.

<sup>417</sup> *Sunday Chronicle* 2 June 1929, p.7, Frederick Douglas' [F. de Valda] 'Amazing Plot to Poison Lloyd George'. [Held: Newspapers].

<sup>418</sup> Advised by Dr Hiley, personal communication.

<sup>419</sup> *Leicester Mail* 1916 'Fortune Telling. Special to the Leicester Mail', 25 October, p.5 c2; 28 October p5 c3; 4 November p.4 c3; 11 November p5 c4; 15 November p 3 c3. [Held: Newspapers]

1919. [page 2.8] ...His wife is with her people at Newton Abbot. He last saw her, at Newton Abbott, about a week before his admission to this hospital.' [page 3.1] And on 9 August 1929, about his marriage: 'Patient says he married at Registry Office, Plymouth in March 1913.' [page 3.10]

5.145.3. Rickard's marriage to Lily and the birth of his daughter are confirmed by the marriage and birth certificates.<sup>420</sup>

5.145.4. At the 24 July interview, Rickard also described his work and his use of aliases, his central role in discovering 'a plot at Derby' although 'not called as a witness, but kept out of the way', and that he had received money and passage for himself and his wife to South Africa where he was from May 1917 to August 1919. [page 2.8]

5.145.5. On aliases, the medical notes recorded:<sup>421</sup>

'During the war he was in the Secret Service under the name of Alex. Gordon, 'No.5'. 'Alexander' was to give a Russian suggestion, and 'Gordon' to suggest possible association with the Glasgow malcontents<sup>422</sup>.... Under his true name of William Rickard... In 1920 he says the *Daily Herald* libeled Booth and himself...' [page 2.9] <sup>423</sup>

5.145.6. Mention of 'No. 5' is of particular interest because it was not published, or known as his PMS2 name for 'Alex Gordon' until 1919 (in the Mason Family papers of the Rimington Meeting).<sup>424</sup>

5.146. At the 24 July interview, given their assessment of his 'delusional insanity' the hospital sought his cooperation to corroborate the truth of his story:

'...and if I could get authoritative corroboration of his story as regards them, I might get him discharged as 'not insane'. I suggest that the Police could give me confirmation of his story. He begs me not to tell them about him, and he says there has always been jealousy between the Police and the Secret Service, and the Police give information to the press.

'Moreover, the Police are now under a Labour Government, and secret service methods are repugnant to the Labour Party. Asked how that could affect him, he says the extremists would get to know his identity, and his being in a mental hospital, and would pass the word around and queer his pitch professionally.'

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<sup>420</sup> [Held: Register Office].

<sup>421</sup> [Held: Wiltshire County Hospital].

<sup>422</sup> In 1919 Rickard described his choice of alias 'Alex Gordon' with its Russian and Glaswegian connotations: 'No. 5. True Story of Alex Gordon'. [Held: Mason Family Papers > Rimington papers 1919 > 11 - Alex Gordon Story > 2 versions > 13 - 1919 No. 5 True Story of Alex Gordon].

<sup>423</sup> This reference in the medical notes is confirmed by *Daily Herald* 8 February 1921, p.1-2 'Daily Herald sued for libel. £500 Damages to ex-Government Secret Service Agent. Ten witnesses ruled out.' [Held: Newspapers].

<sup>424</sup> 'No. 5. True Story of Alex Gordon' [21 pages] [Held: Mason Family Papers > Rimington papers 1919 > 11 - Alex Gordon Story > 2 versions > 13 - 1919 No. 5 True Story of Alex Gordon].

- 5.147. The hospital obtained external assistance to identify their patient and verify his The Receiving Officer ('R.O.') visited his mother [Mrs Caroline Rickard] at Dartford, Kent and found that she knew nothing of his Secret Service work. (page 3.9)
- On 1 July, the Hospital wrote to Mrs Lily Rickard regarding 'my husband William Rickard', and transcribed her two replies, 5 July and 19 July, into the notes. [page 2.7 and 3.8]
  - The 'Editor of *Leicester Advertiser* says in 1914 'Francis Vivian' was temporarily employed on that paper for a few weeks only'. [page 3.9]
  - The 24 July 1929 notes include the transcription of a cutting from the *Weston-Super-Mare Gazette* (N.D.) from scrapbooks found in Rickard's bag, about which he had written to Mr Blake. The cutting reported an interview with 'Alex Gordon' relating 'a thrilling story ... and it was due to his investigations that the plot was discovered and the accused brought to trial.' [page 3.4].
- 5.148. In 1920 a photograph of 'Alex Gordon' was carried in *Weston-Super-Mare Gazette* with an article about 'the mysterious witness who was not called in the celebrated trial...It was due to his investigations that the plot was discovered.'<sup>425</sup> He had visited the newspaper offices to tell, or perhaps sell his story.

J. Ramsay MacDonald MP papers from 1917

- 5.149. Ramsay MacDonald was a member of the Independent Labour Party (ILP). Like his Leicester constituents, unions and suffrage groups, he was concerned about the prevalence of spies in 'our workshops and some of our political organisations', and the activity of 'Vivian', resident in Leicester. This was crystallised by the failure to produce 'Gordon' in the Wheeldon trial.
- 5.150. The contribution of this contemporaneous record to the question of identity is that J. Ramsay MacDonald, as the Member for Leicester, in early 1917, obtained a detailed description (appearance and activity) of a man known as 'Alec Gordon' whose proper name, he believed was 'Francis Vivian' who was living in Leicester, but who then disappeared.
- 5.151. Further, Ramsay MacDonald named men, McManus and Cassidy, to the Home Secretary as men who could identify 'Francis Vivian' as 'Alex Gordon' in the Wheeldon case. Claims of equating 'Gordon' to 'Vivian' made to MacDonald were supported by PMS2 surveillance whose reports were known to Lord Milner in the war cabinet.<sup>426</sup> Further, these materials lend weight to the identity exercise undertaken in 1919, by members of the family and friends, as reported below in the Rimington Papers.

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<sup>425</sup> *Weston-Super-Mare Gazette* 20 March 1920, p.12 col 2 'The mystery man. Poet, mystic actor and diviner of criminals. Visit to Weston.' [Held: Newspapers].

<sup>426</sup> Extracts from Milner Papers, Dep.377, Appendix IX; 1916 Straight's Memo. [Held: Milner papers - 04, 09]

5.152. In the House of Commons, 8 March 1917,<sup>427</sup> during debate on the increased vote of expenditure for the secret service J. Ramsay MacDonald stated:

'I have had several cases brought to my attention. I had one case the other day from a committee, a case of an absolutely grotesque and unreasonable character, that of a spy reporting upon a man of very great honour and worth. These men have got to earn their money, and unless they produce sensational statements - I say nine cases out of ten are absolute lies, exaggerations, and misrepresentations they are not acceptable to the Department that employs them. That is one type.'

'that Secret Service money must really be spent in the interests of the State, and not for the purpose of marking down men and women who have no intention whatever to commit crime, but who inadvertently, and without thinking, say, perhaps, what they ought not, and without knowing to whom they are speaking - unless they have a tremendous amount of suspicion in their nature.'

5.153. J. Ramsay MacDonald wrote to the Home Secretary, Sir George Cave,<sup>428</sup> on 16 March 1917 expressing his concerns about the 'suspicious actions of a man named Vivian' giving his Leicester address, and a detailed description of his appearance. He named two men, labour leaders, Arthur McManus and Cassidy from Coventry who were capable, he wrote, were of identifying him. The letter was logged at the Home Office on 19 March 1917 and registered as correspondence 'miscellaneous (criminal)'.<sup>429</sup> It was referred to Special Branch.

5.154. Around the same time, he wrote a letter to the *Labour Leader*,<sup>430</sup> the publication of the Independent Labour Party (ILP), that warned of an unnamed man, described his physical appearance, and requested information from readers:

'Height about 5ft.6½ins. to 5ft. 7½ins., long jet black hair, black eyes, with a bloodshot speck in one of them, rather hollow cheeks with dark sallow complexion, wears in india rubber collar without a tie, but with a muffler rather threadbare in appearance.' He claims to be a member of the I.L.P., and to have an acquaintance with myself and other people prominent in the Labour movement. He is said to have appeared at Sheffield and at Coventry on the eve of industrial troubles in these towns.'

5.155. The Home Secretary did not reply to Ramsay MacDonald's March letter until after 29 October 1917 when MacDonald complained in the House of Commons:

'beyond a mere acknowledgment of my letter, the right hon. Gentleman [Home Secretary Cave] took no action, and when I took the precaution of asking my friends a little later on what had happened to the gentleman, who was in the Government's pay, I was informed that he had changed his address and disappeared. ...It was the case of Alec Gordon.'<sup>431</sup>

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<sup>427</sup> Ramsay MacDonald MP (Member for Leicester); Hansard, House of Commons, 8 March 1917, cols 654-657. [Held: Hansard].

<sup>428</sup> The March letter was mislaid, although its contents are understood from the eventual reply G.Cave (Home Secretary) to J.R.MacDonald, 6 November, 1917 in response to letter received in March. [Held: Ramsay MacDonald papers]

<sup>429</sup> [Held: TNA > HO 46-205].

<sup>430</sup> *Labour Leader*, 22 March 1917, p. 2 col. 4, correspondence from J.Ramsay MacDonald MP [Held: Newspapers].

<sup>431</sup> *Hansard*, House of Commons, 29 October 1917, col. 1280-81. [Held: Hansard]

5.156. The Home Secretary replied to Ramsay MacDonald<sup>432</sup> on 6 November 1917, acknowledging receipt of his March letter regarding a man:

'...called Vivian who was then living at Leicester. There was nothing in your letter to connect Vivian with Gordon. I asked that inquiry should be made, and some time afterwards I received a report from New Scotland Yard saying that nothing was known of Vivian and no such person had been employed by the Metropolitan Police. I am sorry that no reply was sent to your letter; but you did not ask for a reply or put any question.

'I think it quite possible that 'Vivian' was Gordon; but, as I stated in the House in June last and again in the course of the debate on the 29th October, Gordon was never employed by the Home Office or any department under the Home Office.'

5.156.1. The Home Secretary denied that 'Vivian' was one of their agents. It is correct that 'Vivian' was not a Home Office agent. He was in fact in the Ministry of Defence's unit PMS2.

5.156.2. To prepare a reply for the Home Secretary to MacDonald's March letter, Special Branch (Inspector Parker) briefed Under Secretary Troup.<sup>433</sup> The briefing stated that David Ramsay was MacDonald's informant, referred to McManus and Cassidy, and advised that 'Gordon' had departed between March and May 1917'.

5.157. The following day, 7 November 1917, Ramsay MacDonald<sup>434</sup> complained further, pointing out that he had intervened because nothing had been done to protect the public against this 'scoundrel'. His March letter, to put the record straight, gave quite sufficient information:

- 'to identify a man who happened to be best known as 'Alec Gordon' but whose proper name, I believe, is Vivian'
- 'a man going around Munitions works both in Sheffield and Coventry'
- 'I gave you the names and addresses of the people who would give evidence about him' [McManus and Cassidy]
- 'I gave you the exact place in Leicester where the man was staying'.
- 'I took the trouble to have the man kept under observation for several days after I wrote you.'

Ramsay MacDonald concluded: 'He was allowed, probably told, to escape.'

5.158. In 1919, McManus obtained Cassidy's assistance, through Rimington's initiative, to discover the identity of 'Francis Vivian' and 'Gordon', as one in the same man, and that his true name was Rickard.

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<sup>432</sup> G. Cave to J.R. MacDonald, 6 November 1917 [Held: Ramsay MacDonald Papers].

<sup>433</sup> Report by Insp. Parker, 13 November 1917 "Re: whereabouts of persons implicated in the Wheeldon case" for response to Ramsay MacDonald's March letter. [Held: TNA > MEPO 9356 > MEPO 9356-73].

<sup>434</sup> J.R. MacDonald to G. Cave, 7 November 1917 PRO 30/69/1169. [Held: Ramsay MacDonald Papers].

*Rimington meeting record in Mason Family Papers, 1919 [Held: Mason Family Papers > Rimington]*

- 5.159. This record documents 'Gordon''s identity as the man from Leicester calling himself 'F. Vivian', claiming to be 'Alex Gordon', who presented himself to a group of people gathered for the purpose of identifying him. They sought to exclude the risk that he was an imposter. They recognised him and concluded that he was W. Rickard whose aliases included 'Alex Gordon', 'Francis Vivian' and who also gave his PMS2 codename 'No 5' in his 'True Story' written at that gathering
- 5.160. The records about this gathering were preserved by Winnie Mason and then by her son, Peter Mason, before being handed to the Applicant and her sister, Deirdre.
- 5.161. In November 1919, Rimington had contacted McManus about an approach by 'Francis Vivian', a resident of Leicester.
- 5.161.1. McManus' diary entry, dated 24 November 1919, recorded how 'Vivian' (claiming to be 'Gordon') had contacted Rimington to sell his story about the Wheeldon 'plot'.
- 5.161.2. Rimington's correspondence with McManus, dated 27 November 1919, including copies of his letter to 'V' and wires between Rimington and 'V', commissioned an account from 'Alex Gordon'.
- 5.161.3. McManus' diary set out the response plan to verify 'Vivian''s identity.
- 5.162. McManus arranged for the presence of 'Francis Vivian'/'Alex Gordon' to be witnessed by other people who also knew him:
- Neil Cassidy of Coventry
  - Alexander Macdonald, who had been living at the Wheeldon household when 'Alex Gordon' visited and stayed overnight
  - William Marshall Wheeldon, Alice's son, who had seen 'Gordon''s handwriting left at the Wheeldon household.
- 5.163. McManus and Cassidy already had cause to believe that 'Francis Vivian' was 'Alex Gordon' because:
- McManus had met 'Gordon' in December 1916
  - Macdonald had shown McManus in January 1917 the letter of introduction, from 'Gordon', when he had come to Liverpool from the Wheeldon household where he was known only as 'Alex Gordon'
  - Cassidy had been under investigation by Booth and 'Gordon' and on 4 March 1917 by other PMS2 officers who reported on the Birmingham conference, described above.
- 5.164. The plan entailed observing 'Gordon' arrive for the meeting, listening to his story, and offering him money for a signed, witnessed receipt. From him, they obtained:
- 5.164.1. A handwritten note signed by 'F. Vivian ("Alex Gordon")', dated 24 November 1919, witnessed by Rimington and Macdonald as planned.
- 5.164.2. Two undated, handwritten accounts written by 'Francis Vivian':
- No. 5. True Story of Alex Gordon (21 pages), in which he explained that, before leaving Leicester (where he was hired), they agreed upon his

alias 'Alex (ander) Gordon' being redolent of Russian and Scottish names, while Booth adopted 'Comrade Bert', for 'Bert Norton'.

- No title (14 pages).
- 5.164.3. An undated note in 'Francis Vivian''s handwriting, which was a copy of a wire from 'V. Rickard' in Leicester for £3 to Mrs L. Rickard in Dorchester.
- 5.164.4. A sample of his handwriting, which McManus intended to compare with writing they already had in Derby at the Wheeldon home.<sup>435</sup>
- 5.165. In addition, another note of a visit to the British Museum dated 31 December 1919,<sup>436</sup> handwritten by McManus, lists and quotes from a series of 1913 articles entitled 'Broadmoor' published in *Ideas*, a widely-circulating magazine.<sup>437</sup> With references to prisons, asylums and workhouses, it became possible to locate records for William Rickard as an inmate. By and large, these articles are autobiographical for Rickard's experience as an inmate.

*Papers relating to Rickard and South Africa, 1917-1919 supporting identification of 'Alex Gordon'*

- 5.166. The contribution of this record to the question of 'Gordon''s identification is that:
- 5.166.1. Shipping records show passages to and from South Africa for William Rickard and his family, with their ages, for 1917 and 1919.
- 5.166.2. The Office of the Governor General of South Africa received handwritten documents, signed by W. Rickard and F.V [?] Rickard. In an application for repatriation, Rickard had stated that as 'Francis Vivian' he had been 'Alex Gordon' in the Wheeldon case; as a result, he and his wife had been exiled to South Africa, and that she was now pregnant.
- 5.167. On 16 March 1917, a passport was issued for 'Wm. Rickard' for South Africa, 'Gratis Govt. Service'.<sup>438</sup>
- 5.168. The TNA catalogue entries on shipping,<sup>439</sup> and the original lists under the Merchant Shipping Act 1905 and the Aliens Act 1906 show:
- Mr W. Rickard, aged 29 and his wife Mrs Rickard aged 25, as passengers with Contract Ticket No. 1630, as sailing on SS Athenic from Plymouth to South Africa on 5 April 1917
  - William Rickard aged 31, journalist; Lily Rickard aged 27 wife; and Mavis Rickard aged 1, listed as passengers 192 who from SS Durham Castle were landed in London on 11 September 1919.

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<sup>435</sup> [Arthur McManus] "Alec'[sic] Gordon Diary', undated, pp.[ii]-[iii]. [Held: Mason Family Papers > Rimington].

<sup>436</sup> Museum Ideas search note, 31 December 1919. [Held: Mason Family Papers > Rimington Papers > 10-19191231].

<sup>437</sup> *Ideas*, 1913 August-September, 'Broadmoor', seven weekly instalment. [Held: Newspapers > Ideas].

<sup>438</sup> Register of passports 18 December 1916 - 10 July 1917, No.151064. FO 610/134, [Held: TNA > FO].

<sup>439</sup> Held: Shipping.

- 5.169. The equivalence of the man who was 'Alex Gordon' and this William Rickard who spent two years in South Africa with his family was corroborated by Lily Rickard in 1929 (as above) and by Mavis Jones (née Rickard) in 1983 (as below).
- 5.170. In May 1919 in South Africa, 'F.W. Rickard' revealed his identity (name and aliases 'Vivian' and 'Alex Gordon', age, family relations). He had handwritten an application to the Governor-General of South Africa for a grant of assistance and passages for his family to be 'repatriated' (to England).<sup>440</sup>
- 5.170.1. Rickard claimed that he was 'the man who gave information leading to the discovery of the plot against Mr. Lloyd George'. On being asked to furnish proof, he produced a 6-page statement that described that
- his 'assumed name Alex Gordon' was revealed at trial
  - the British government has sent him and his wife to South Africa in April 1917, arriving on *SS Athenic*
  - his wife was pregnant and that it was time to return to England.
- 5.170.2. Despite his statement being rejected, Rickard persisted.
- 5.170.3. Four days later, Jan Smuts, Minister of the Interior to the Assistant Secretary of the Ministry of the Interior minuted 'to get this person out of the country + get rid of him'.
- 5.170.4. Rickard, together with his wife Lily and baby daughter Mavis Rickard, were registered as British passengers on *SS Durham Castle* that landed in London in September 1919.

Mavis Jones' (Rickard's daughter) papers 1983-1987 [Held: Hiley Papers]

- 5.171. Rickard's daughter, Mavis Jones corroborated that her father was 'Alex Gordon' in the Wheeldon case, and used many other aliases, particularly 'Francis Vivian' and, possibly only once 'Delamere Carrington'; that Quinton was the surname of his mother-in-law; and that Mavis had been born in South Africa on 22 June 1919 and brought to England as a baby.
- 5.172. Relevant documents to establishing his identity are:<sup>441</sup>

- 5.172.1. Letter from Mavis Jones (née Rickard) to the BBC, 26 April 1983, in response to their March 1983 broadcast of the BBC drama-documentary 'The Plot to Kill Lloyd George': 'My father was the William Rickard portrayed. I was born in South Africa and returned with my parents when I was a few months old...'

On 12 May 1983, the BBC's Will Wyatt, Head of Documentary Features TV replied apologizing for her distress, and continued: 'I was very interested to hear more about Gordon, or William Rickard. You do not say how you know that William Rickard, your father was the same man as Alex Gordon, but as it

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<sup>440</sup> Rickard Statement 15 May 1919; Office of the Governor General, Minute 41/371 16 May 1919. [Held: South African National Archive].

<sup>441</sup> [Held: Hiley Papers > 1983 BBC Correspondence].



does seem very possible that they were the same I asked the researcher on the program, Nicholas Hiley, to verify the facts as far as he could.'

5.172.2. 21 May 1983 Mavis Jones (née Rickard) letter to Nicholas Hiley:<sup>442</sup>

'I would have expected the alias 'Francis Vivian' to be used rather than William Rickard. It was my father's favoured alias for a long period, thought others were adopted. Such changes of name - of addresses also - made tracing his movements as difficult for me later as I am sure they were for you in compiling your research.'

5.172.3. On 1 June 1983, Mavis Jones (née Rickard) handwrote a few facts<sup>443</sup> about her parents; her father had been an investigate journalist prior to being hired by two men from government information when he was 'involved in discovering plot to kill Lloyd George - curare in shoe'; afterwards, her parents were sent to South Africa in 1917, and returned with her in autumn 1919; and that her father used aliases 'Francis Vivian', 'Delamere' etc.

5.172.4. On 1 June 1983, Hiley interviewed Mavis Jones (née Rickard) who recounted what she knew or remembered of her father William Rickard.<sup>444</sup>

- He wrote investigative articles on fortune-telling; he was approached by two men from government information and he worked for them [p.1]
- The government paid her parents' passage to South Africa, and her mother said that the government also paid their return passage in 1919 when she was 3 to 4 months old and 'also mentioned that it was getting cold...autumn' [p.2]
- Quinton was her mother's maiden name.<sup>445</sup>
- Rickard had written a letter using Delamere Carrington '... he only used that once, to my knowledge, and when that letter came it was very funny, because I remember saying to my mother - and I must have been old enough ... to be taking a bit of notice - and I said to her, 'he's never used that name before.' 'Oh', she said, 'I don't know, he's always changing names.'
- In the 1920s, he was 'very dark-looking, dark eyes, black hair'. [p.6]
- Mavis Jones was with her mother living at Newton Abbott last time she saw her father about 1930. She mentioned seeing a newspaper cutting, *Empire News* from around 1935 in which he was referred to as 'Cosmo, the Mystic' [p.7] and, in fact, by his own admission declared he had been 'Alex Gordon'.<sup>446</sup> While he used 'Cosmo' a lot in his writing, she said, 'Francis Vivian' he used more than anything else, though.' [p.11]

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<sup>442</sup> Jones reply to Hiley, 21 May 1983. [Held: Hiley Papers > Jones Correspondence].

<sup>443</sup> Mavis Jones notes for Hiley. [Held: Hiley Papers > Jones Correspondence].

<sup>444</sup> Hiley interview with Mavis Jones. [Held: Hiley Papers > Jones Interview].

<sup>445</sup> Held: Register Office.

<sup>446</sup> 1936 *Empire News* ['Alex Gordon' as 'Cosmo, the Mystic']. [Held: Newspapers].

Further corroborations of Rickard's use of aliases

- 5.173. **William Rickard = Francis Carrington:** In 1909, the calendar of prisons for the Central Criminal Court registered William Rickard as alias 'Francis Carrington'.<sup>447</sup>
- 5.174. **Alex Gordon = No. 5:** On 18 January 1917, in preparation for the trial and before witnesses, Inspector Parker and Sergeant Hallett, 'Alex Gordon' made a police statement. 'Gordon' wrote that he was 'known to Mr Booth as 'No. 5', and the DPP transmitted his statement to the Attorney-General as from 'No. 5'.<sup>448</sup> A further source is the PMS2 first report of Melville Lee, of 31 December 1916:
- 'Friday evening 8-30 No. 5 (accompanied by No. 4) again called at Pear Tree Street [i.e. the Wheeldon household]'.<sup>449</sup>
- Melville Lee's description corresponded to Booth's evidence for his activity with 'Gordon' that evening, as shown in Table 5-1, page 87.
- 5.175. **Alex Gordon = Francis Vivian:** In December 1916, PMS2's Straight wrote in his Memo of being in Liverpool with 'V' and 'B'.<sup>450</sup> Similarly, Booth as 'No.4' wrote of operating with 'V'. In 1919 December, the *Daily Herald* published story 'Alex Gordon's own story, as the 'mysterious uncalled witness in the Wheeldon case' and an interview with 'Alex Gordon' or 'Francis Vivian' with a signed photograph.<sup>451</sup>
- 5.176. **Alex Gordon = Vivid:** At trial, Booth referred to the telegram sent by 'Alex Gordon' to him from Derby. This telegram was not disclosed at trial. The text of the telegram survives, simply: 'Am busy. VIVID'.<sup>452</sup> In 1926, *John Bull* reported an interview with 'Cosmo, the Snooze King':<sup>453</sup>
- 'As a matter of fact Cosmo, the Mystic is no stranger to us. He was previously known as Vivid, the Magnetic Man and in the course of a chequered career has passed under a variety of aliases including Francis Vivian and Alex Gordon.'

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<sup>447</sup> Calendar Page 11. [Held: TNA > CRIM 9-055 Calendar.pdf].

<sup>448</sup> Parker Minute & Report dated 18 January 1917, 3 pages [Held: TNA > MEPO 9356 > MEPO 9356-05 > MEPO 9356-05-01] covering Statement of Alex. Gordon, handwritten & signed, and witnessed by Insp. Parker [Held: TNA > MEPO 9356-05 > MEPO 9356-05-2&3 - Gordon Handwritten Statement].

DPP archive also holds Gordon's statement with DPP's transmission notes to Attorney-General, 13 and 20 January 1917 [Held: TNA > DPP 1-50 > DPP 1-50 Gordon Statement with transmission notes].

<sup>449</sup> Transcription of Reports, page 6. [Held: TNA > HO 144 - 13338-331997 > Transcription of Reports].

<sup>450</sup> 'Memorandum' by D.M.S[traight], 11 December 1916, f.48, p.2. [Held: Milner Papers > 04- Straight Memo].

<sup>451</sup> *Daily Herald*, 27 December 1919, p.1 col 1; and col.3, "Alex Gordon". How I got mystery witness of Wheeldon case to talk'. [Held: Newspapers].

<sup>452</sup> [Held: TNA > DPP 1-50 > DPP 1-50 Telegrams].

<sup>453</sup> *John Bull*, 20 November 1926. [Held: Newspapers].

*Physical and other characteristics*

5.177. Alongside the use of aliases, the man serving as 'Alex Gordon' in the Wheeldon trial being in fact William Rickard is supported by evidence of:

- physical characteristics of age and family relations, physical appearance (images), height, level of education, handwriting and signature of 'Alex Gordon' (with 'Francis Vivian' or 'Francis Carrington'); and
- occupational description of journalist and, on occasions a stage performer as a hypnotist/mystic.

5.178. This evidence is discussed below, as well as summarised in Figure 5-3.

5.179. Images of William Rickard 1887-1963 bear a close resemblance between those taken as a child, aged 11 and 12, and several photos taken in his 30s. He would have been aged 29 at the time of the Wheeldon investigation.<sup>454</sup>

5.180. Height measurements/estimates and ages are consistent across three sources:

- 5ft 6 inches (without shoes) *Register of Habitual Criminals*, 1910, January to June p. xix.<sup>455</sup>
- 5ft 6½ inches to 5ft 7½ inches: *Labour Leader*, 22 March 1917, p.2, col. 4 letter from J. Ramsay MacDonald MP.<sup>456</sup>
- 5ft 7 inches: Wiltshire County Mental Hospital, Devizes. No. 11, 668, Patient record 12 June 1929, page 1.<sup>457</sup>

5.181. Sources for his date of birth, age and family relations are consistent:

- Birth certificate gives birth year 1887, father's name as Alfred Rickard.<sup>458</sup>
- For 1896 and 1900, both school admission records (no. 1170, 5396 respectively) put William Rickard's year of birth as 1887, parent Alfred Rickard.<sup>459</sup>
- For late 1903, William Rickard was recorded as 15 years old by Barming Heath Asylum with Mr A. Rickard as his father.<sup>460</sup>
- For 1908, as alias 'Francis Carrington', Rickard recorded as being 20 years old.<sup>461</sup>
- 1914 Marriage Certificate – William age 25, journalist, wife Lily age 22.<sup>462</sup>
- Shipping records: in 1917 passages to South Africa for William Rickard and wife Lily (aged 29 and 25); and in 1919 passages from South Africa to London were recorded for William Rickard (aged 31), his wife Lily (aged 27) and baby Mavis (aged 1).<sup>463</sup>
- in 1917, time of trial, Alice Wheeldon estimated his age as 'about 25 or 6'; he would have been aged 29 years.

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<sup>454</sup> [Held: PHOTOGRAPHS]

<sup>455</sup> [Held: TNA > MEPO > MEPO 6-21].

<sup>456</sup> [Held: Newspapers].

<sup>457</sup> [Held: Wiltshire].

<sup>458</sup> [Held: Register Office].

<sup>459</sup> [Held: Islington > School Admissions].

<sup>460</sup> [Held: Barming Heath Asylum > 04 – Admission William Rickard, 10 October 1903.]

<sup>461</sup> [Held: Dover Quarter Sessions > 19 – 19080804 Carrington sentence p.1.]

<sup>462</sup> [Held: Register Office].

<sup>463</sup> [Held: Shipping].

- By 1929, Rickard would have been 41 years, Wiltshire County Mental Hospital patient record put it at 39 years.<sup>464</sup>
- 5.182. On William Rickard's 1914 marriage certificate, his occupation is given as 'journalist', and his father as Alfred Rickard, 'political lecturer'. In 1914, the *Leicester Mail* published a series of articles investigating 'fake mediums of seances', which Rickard undertook with his wife, Lily Rickard.<sup>465</sup>
- 5.182.1. In his 1917 Police Statement, 'Gordon' wrote: 'I am a journalist by profession'.<sup>466</sup>
- 5.182.2. Between 1917-1919, for his stage performances, in South Africa and later, Rickard performed as 'Vivid, the Magnetic Man', 'Cosmo a mystic' and 'lecturer in mesmerism'.<sup>467</sup>
- 5.182.3. In 1939, aged 52 years, William Rickard was performing as 'Cosmo, the Mystic' in Child's Hill, London where his well-known grandfather Rev. William Rickard was the former pastor at Child's Hill Baptist Church. In an interview with the local paper, the *Hendon and Finchley Times*, he said:  
'...instead of the church I took to the stage and journalism'. , author, poet and editor of two papers in South Africa'.<sup>468</sup>
- 5.183. Samples of handwriting, signatures, and prose style for 'Alex Gordon', 'Francis Vivian' and William Rickard appear to be similar. These have been discovered for the years 1908, 1913, 1916, 1917, and 1919.

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<sup>464</sup> [Held: Wiltshire].

<sup>465</sup> [Held: Newspapers > Leicester Mail]. No by-line is given, yet its style and timing fits with other evidence.

<sup>466</sup> Gordon's Statement, 18 January 1917. [Held: TNA > DPP 1-50 > DPP 1-50 Gordon Statement].

<sup>467</sup> *John Bull* 20 November 1926, 'Cosmo the Snooze King'. [Held: Newspapers].

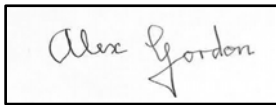
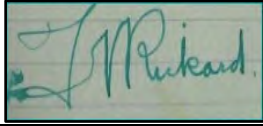
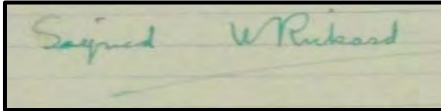
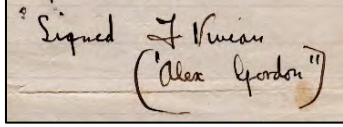


Cosmo (1925) [Held: Articles].

Michael Wood (Professor of Public History) commented that being a medium or teacher of mesmerism, self-proclaimed mystic and publisher on magic, a practitioner is understood as inviting people into illusions and doesn't let them go: Michael Wood, *London Review of Books*, 22 September 2016. <https://www.lrb.co.uk/v38/n18/michael-wood/at-the-movies> Conceivably, Alex Gordon's initiative and his Police Deposition can be read as having drawn Alice Wheeldon, and then Herbert Booth into his illusion of conspiracy to murder Lloyd George.

<sup>468</sup> *Hendon & Finchley Times*, 19 May 1939 p. 18 col. 6, "Child's Hill. 'Cosmo' revisits birthplace. Grandson of former pastor of Baptist Church"; and col. 1 'Mystery and Magic'. [Held: Newspapers].

He was born at Bow, not Child's Hill, but as a child was in care of his uncle, Alfred and his grandfather; in 1905, at aged 18 years, he was admitted to the Hendon Union Workhouse.

5.184. Signatures are consistent:

<p>1917 Police Statement (last page) witnessed by Inspector Parker:                  [Held: TNA &gt; MEPO 9356 &gt; MEPO 9356-05-02&amp;03 Gordon handwritten statement]</p>	
<p>1919 May, letter to Governor General, South Africa, dated 15.5.1919                  [Held: South African National Archive 1919]</p>	
<p>1919 May, statement dated 16.5.1919, for Imperial Secretary's Office, South Africa (from South Africa National Archive, Interior Department file Secretary Home Affairs, discovered September 2016.                  [Held: South African National Archive 1919]</p>	
<p>1919 November, witnessed statement, Rimington meeting, Rimington Papers                  [Held: Mason Family Papers &gt; Rimington Papers Sheet 05]</p>	
<p>1919 November, wire to wife Mrs L Rickard, Rimington meeting (Rickard was present at the meeting as Francis Vivian, see above), Rimington Papers                  [Held: Mason Family Papers &gt; Rimington Papers Sheet 07]</p>	
<p>In December 1919, the <i>Daily Herald</i> published his photograph with a caption showing his signatures for both 'Alex Gordon' and 'Francis Vivian':  <i>Daily Herald</i>, 27 December 1919, p. 8 'Alex. Gordon's Own Story'.                  [Held: Newspapers]</p>	

5.185. Handwriting is also similar across Rickard and his various aliases.

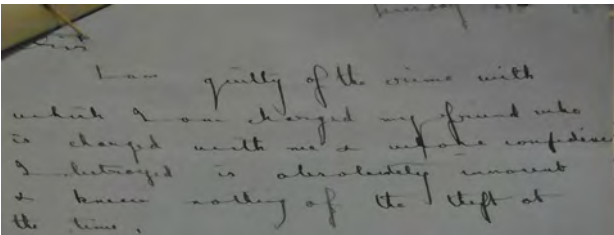
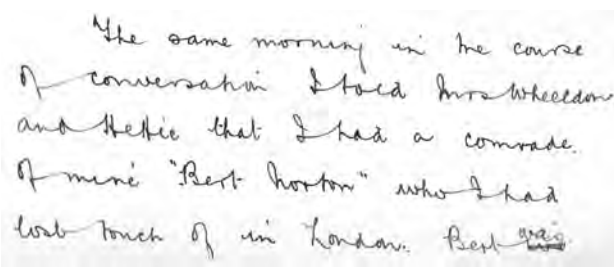
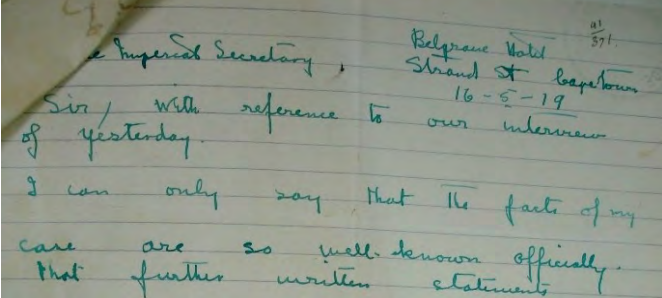
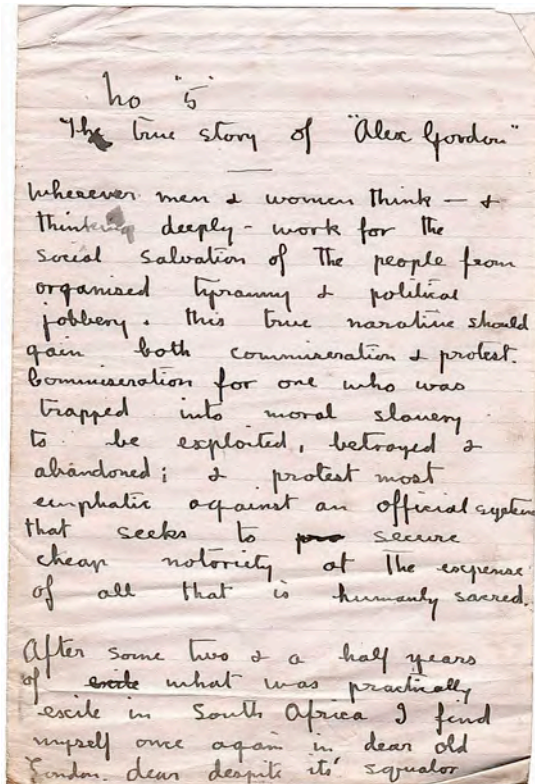
<p>As Francis Carrington, 7 April 1908 [Held: Dover Q Sessions Sheet 06]</p>	
<p>As Alex Gordon, No. 5 and Francis Vivian, 1917 Police Statement, witnessed by Inspector Parker [Held: TNA &gt; MEPO 9356 &gt; MEPO 9356-05-02&amp;03 Gordon handwritten statement, Sheet 11 of 20]</p>	
<p>As William Rickard, 16 May 1919 Extract from Rickard's letter to the Imperial Secretary, signed F.V. Rickard. [Held: South African National Archive 1919]</p>	
<p>As Francis Vivian, November 1919 AG story - 2 versions/1919 TrueStory Pt1p1 (page 1 of 21pp.) [Held: Mason Family Papers &gt; Rimington Papers &gt; 11 - Alex Gordon story - 13 No.5 True Story]</p>	

Figure 5-3. Graphical summary of evidence identifying 'Alex Gordon' as William Rickard



### *Skeleton Argument 5.5.2 – William Rickard had been in mental institutions and had a criminal history including blackmail*

5.186. By 1917, William Rickard (1887-1963) at age 30, had the following record:

- 3 criminal convictions - 1898, 1908 and 1909 (Royal Pardon 1911)
- other criminal activity (at Southport and Bolton) for which he had been charged but there is no confirmation of conviction
- 5 admissions to asylums (including as a Criminal Lunatic to Broadmoor, and later in 1929 to Wiltshire County Mental Hospital, Devizes)
- several admissions to three workhouses.<sup>469</sup>

#### *Three criminal convictions*

##### Conviction 1: Malicious wounding

5.187. In September 1898 William Rickard, aged 10 years, was charged with the offence of 'maliciously wounding Alexander Fein' with an axe, and taken into custody and found incapable of pleading on account of 'insanity', and declared a Criminal Lunatic.

5.188. Newspapers reported on this serious charge for a young boy:<sup>470</sup>

- *The Standard* [London], 7 October 1898, p.7 col.4, 'County of London Sessions: 'More or Less Insane'.
- *Reynolds's Newspaper*, 9 October 1898, p.4 col.5, 'In the Dock at Ten Years'.
- *Ballymena Observer* - Friday 14 October 1898, p. 2 col 4.

5.189. On 8 October 1898, a warrant was issued for his removal from Holloway Prison to London County Lunatic Asylum at Colney Hatch, detained during Her Majesty's pleasure.<sup>471</sup> The transfer to the Asylum was actually for six months, from October 1898 to April 1899.<sup>472</sup>

5.190. Records of the Central Criminal Court, from The National Archives ('TNA') in Home Office files, show the charge and judgment.<sup>473</sup>

5.190.1. At the General Sessions at Saint Mary, Newington, in September his trial was postponed to 4 October 1898 at Clerkenwell Sessions where he was found to be 'incapable of pleading on account of insanity', and declared a Criminal Lunatic.

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<sup>469</sup> Established under the Poor Law, workhouses provided indoor relief for pauperism, the inability of an individual to maintain themselves, and a means of avoiding vagrancy. Conditions were intentionally harsh, although more than half the inmates were children.

<sup>470</sup> [Held: Newspapers].

<sup>471</sup> [Held: TNA > HO 145] also handwritten index of transfers [Held: TNA > CCC HO 140 > 08].

<sup>472</sup> Records From the London Metropolitan Archives show the Register and Casebook. William Rickard was admitted as Patient 12945 in the Register.[Held: Colney Hatch Asylum].

<sup>473</sup> [Held: TNA > CCC HO 140].



5.190.2. The Asylum Casebook gives Rickard's condition, and his discharge on remand to special school, including:

- his patient record in which he is described as physically 'Impaired' and insane due to 'Mania and Epilepsy'.
- photographs of William Rickard on admission, aged 10 years and on discharge, aged 11 years.
- a clipping from the *News of the World* 9 October 1898 'Criminal Lunatic Aged Ten.'
- Entries by Dr Tizard for 12 April 1899: '...has fits from time to time and at those times is sullen, apathetic..'. For 13 April, was discharged and remanded to the Darenth Schools in Kent, run by the London Metropolitan Asylums Board.

Conviction 2: Theft

5.191. On 7 April 1908<sup>474</sup> at Dover Quarter Sessions 'Francis Carrington' [alias for William Rickard], aged 20, made a handwritten deposition claiming he had 'never been in trouble before' and seeking to '...make this the turning point of my life', admitting guilt to theft.<sup>475</sup> He was convicted.

5.192. On 13 April 1908, the prisoner appeared before Recorder Archibald Bodkin, who remanded him in custody until the next session. On 4 August 1908, 'Carrington' appeared again before Recorder Bodkin<sup>476</sup> who bound him over on surety of £10', of himself and 'his uncle',<sup>477</sup> 'Mr Alfred Rickard of 329 Hornsey Road, London.'<sup>478</sup>

5.193. The local newspapers reported and noted he was held on remand in Canterbury Prison for four months.<sup>479</sup>

5.194. By representing his guardian as 'uncle' Alfred Rickard to the Court, William Rickard retained the cover of his alias 'Francis Carrington'; naming his father would have revealed his true name.

<sup>474</sup> The National Archives are for his admission, conviction, and sentencing. [Held: Dover Quarter Sessions].

<sup>475</sup> [Held: Dover Quarter Sessions > 12 - Deposition: Francis Carrington handwritten signed statement of guilt, 7 April 1908].

<sup>476</sup> [Held: Dover Quarter Sessions > 02 - Notice of April 1908 Sessions; 17 - Notice of August 1908 Sessions].

Sir Archibald Bodkin, Senior Treasury Counsel, prosecuted for the DPP in the Wheeldon trial.

<sup>477</sup> Alfred Rickard was not the name of his uncle, rather the name of his father [Held: Register Office].

<sup>478</sup> [Held: Dover Quarter Sessions > 20 - Carrington - verdict, 4 August 1908, page 2; and 21 - Carrington - verdict, 4 August 1908, page 2, enlargement].

<sup>479</sup> *Dover Express and East Kent News*, 17 April 1908, 'Dover Quarter Sessions. The Jewel Robbery, p.7 col.2. 'The Recorder said that he had decided to postpone sentence till next Session. The prisoner said that he would like to be dealt with at once. The Recorder said that he dare say the prisoner would, but he knew better. He thought it desirable from many points of view that he should have proper food and medical attention, and healthy surroundings.'

*Dover Express and East Kent News*, 7 August 1908, 'Dover Quarter Sessions . Young Man's Folly', p.2 col.3. Recorder Bodkin was reported as stating that he was satisfied that 'Carrington' had been: 'suffering from bad health and suffering from depression which was probably accountable for his actions'.

[Held:Newspapers].

Conviction 3: sending a letter and demanding money with menaces (blackmail)

5.195. On 20 July 1909, at the Central Criminal Court (Old Bailey), William Rickard was listed for three indictments.<sup>480</sup> He confessed to the previous conviction at Dover, 4 August 1908 (recorded as alias 'Francis Carrington'). He was sentenced to 18 months hard labour in Wandsworth Prison for:

'Feloniously sending to and causing to be received by William Prince a certain letter and writing knowing the contents thereof, demanding of him £2, with menaces, and without any reasonable or probable cause, and feloniously uttering said letter.'<sup>481</sup>

5.196. The Sessions Clerk from Scotland Yard had written on 9 July to the court in Dover to obtain the certificate of conviction of 'Francis Carrington'.<sup>482</sup>

5.197. Local newspapers reported the evidence against Rickard by which he obtained money by menaces<sup>483</sup> and the *Morning Advertiser* described Rickard's performance and pretence of deafness.<sup>484</sup> The *Morning Advertiser* report quoted the arresting Detective-Sergeant Bedford:

'when previously convicted [1908 at Dover] the prisoner pretended, as he had done during the trial, that he was deaf, but the prosecutor said that he heard well enough when he was speaking to him. The prisoner complained that he had not heard what was going on. The Lord Chief Justice said that the prisoner was far too cunning, and knew well what was going on. He sentenced him to 18 months hard labour.'

5.198. With this offence Rickard was then registered by Scotland Yard on the national Habitual Criminals Register, held at the Criminal Record Office.<sup>485</sup> The Register lists 'William Rickard, alias Francis Carrington 16682, Wandsworth' discharged to Broadmoor asylum as shown:

Offence No.	Name, alias, Prison, and Date of Birth	Date and Place of Birth	Height	Complexion	Hair	Eyes	Marks	Offence (in full), place of Conviction, and Officer in Charge, or Name of Committed	Punishment and date of Conviction	Date when Penal Servitude expires or Asylum recommended	Date of Expiration, Interval Address, and Occupations	Remarks
51-10	William Rickard, alias Francis Carrington 16682, Wandsworth	1888 Penzance	5 5½	pl	bn	bn	sc. r. side of forehead; burn sc. r. forearm	Demanding money by menaces - C.C.C. (P.S. Bedford, C.I.D.-R)	18 mos. 19-7-1909	—	3-1-1910 Broadmoor Asylum Artist	See S 95779

<sup>480</sup> Indictments, Central Criminal Court, July 1909, pp.414-5, for 'William Rickards' [Held: CRIM > 10-99].

<sup>481</sup> Verdict and sentence, Calendar of Prisoners, p.11. [Held: CRIM > 9-055 > CRIM 9-055 Calendar of Prisoners 1909 Sheet 5].

<sup>482</sup> [Held: Dover Quarter Sessions > 22 - Letter from Scotland Yard, 9 July 1909].

<sup>483</sup> *Kentish Mercury*, 9 July 1909, p.6 col 7 'Extraordinary Story'; *Woolwich Gazette*, 9 July 1909, p.2 col 4, 'Money by Menaces'.

*Kentish Independent*, 23 July 1909, p.7 col 5, 'A Scamp Sentenced'. [Held: Newspapers].

<sup>484</sup> *Morning Advertiser* 21 July 1909 'Demanding Money' [Held: Newspapers].

<sup>485</sup> Half Yearly Index, Habitual Criminals Register and listing of discharges, Sheets 05 and 07. [Held: TNA > MEPO 6-21 1910].

- 5.198.1. The archive does not hold a file for Rickard.<sup>486</sup>
- 5.198.2. He was not tried on the other two counts: extortion with menaces, and theft.
- 5.198.3. the Calendar of Prisoners gives the verdict and sentence.
- 5.199. In December 1909 in Wandsworth Prison, Rickard was certified insane. Warrants show his transfer to Broadmoor Criminal Lunatic Asylum, and his return to Reading Prison in 1911, prior to discharge.<sup>487</sup>
- 5.200. In 1913, Rickard published a series of autobiographical accounts. One was of his first conviction, the treatment of epileptics in prisons and asylums.<sup>488</sup> Another was of the demand-with-menaces episode.<sup>489</sup> Of this episode he claimed he was 'an innocent man, convicted on perjured evidence'. A third account described the use of begging letters to 'work the deaf and dumb dodge', conning money from police, accommodation from the Bolton Deaf Missioner, and 'bluffing doctors' and the rewards of using false pretence'. Rickard noted the fact that Bolton Police categorised him as deaf-mute 'put the London people off the scent'; consequently, their link to the earlier conviction (in the name of 'Francis Carrington') was not then made.<sup>490</sup>
- 5.201. In 1920, Rickard (in the name of 'Alex Gordon') told a similar story reported as an interview with him (and photograph) by *Weston-Super-Mare Gazette*.<sup>491</sup>

#### Other criminal activity

- 5.202. This third account (in *Ideas*) appears to be a reference to Rickard's attempt in October 1908 to obtain money on false pretences. For 26 October 1908, the Southport Police Court Book, records William Rickard charged and adjourned in relation to the offence of 'begging alms'. He was remanded in custody to be handed over to Bolton Police.<sup>492</sup> It appears he was released because the next day, again apparently posing as deaf-mute, William Rickard was arrested in Bolton:<sup>493</sup>

<sup>486</sup> On these files generally, Dilnot George (1915), *Scotland Yard: The Methods and Organisation of the Metropolitan Police*, London: Percival Marshall, Extracts describe registration (including photographs & finger prints) of Habitual Criminals, and use of information distributed across police forces, between police and prison officials, and Scotland Yard. [Held: Articles].

Examples of descriptions issued by the Registrar of Habitual Criminals, published in the *Police Gazette*s (formerly *Illustrated Circular of Travelling Criminals*): [Held: TNA > Pol-WS Police Gazette].

<sup>487</sup> Warrants for transfer. [Held: TNA > HO 145 > HO 145-19 p.486 and HO 145-20 p. 662].

<sup>488</sup> In the wide-circulation magazine *Ideas*, 9 August 1913, Series 'Broadmoor', p. 9 col. 2 & 3. Rickard reported as having several epileptic fits at Colney Hatch Asylum. [Held: Colney Hatch > Casebook - 09 - page 2 foot of page].

<sup>489</sup> *Ideas*, 2 August 1913, 'Broadmoor', p. 3 cols. 1-2. [Held: Newspapers].

<sup>490</sup> *Ideas* 16 August, p. 6 col. 1. 'Broadmoor' series attributed to William Rickard. [Held: Newspapers].

<sup>491</sup> *Weston-Super-Mare Gazette* 20 March 1920, 'The 'Mystery Man'', p.12. [Held: Newspapers].

<sup>492</sup> Southport Police Court Book, 26 October 1908, p. 96, CBSO 1/4/7 [Held: Southport & Bolton].

This was also reported in the *Lancashire Evening Post*: 'young fellow who was deaf and dumb, and for whom Mr G.G. Bridge, of the Southport Deaf and Dumb Institute acted as as interpreter, was charged with begging alms. In a written statement said he was well connected, and he distinctly declined to allow his relatives to know of the position he now occupied. ...if he had been allowed to write to his relatives, all would have been right. He confessed he lost his temper when the officers took him to the vitiated atmosphere of a prison cell. He promised to go to a deaf and dumb institution at Bolton.' *Lancashire Evening Post*, 26 October 1908, 'Deaf and dumb beggar at Southport' p. 3 col 2. [Held: Newspapers].

<sup>493</sup> The Bolton Court Register is now fragile. The archivist transcribed entries for William Rickard and advised Rickard was discharged on account of 'non-appearance'. Bolton Court Register, 27 October 1908, JBO/1/20. [Held: Southport & Bolton].

'that he had been brought before the court on Tuesday 27 October 1908, from Bolton police station the evening before, at 8.15pm. Two charges were listed: stealing a purse and money from a house. The other charge was for unlawfully obtaining money from Ernest Ayliffe, Superintendent, Bolton and District Deaf and Dumb Society by false pretences with intent to defraud.'

- 5.203. It appears Rickard successfully obtained money, food, accommodation and clothes.<sup>494</sup> The magistrates bound him over on sureties of £15 in the care of Ayliffe (his victim), the 'kind act'.<sup>495</sup>
- 5.204. The 2015 discovery of this autobiographical series led to the uncovering of records for Rickard's admissions to mental institutions (Barming Heath, Leavesden, and Colney Hatch) and workhouses.

### *Admissions to five asylums*

- 5.205. Between 1898 and 1909, Rickard had five admissions to asylums. These were certified from either prisons, workhouses or a general hospital.
- 5.206. His five certified admissions are recorded:
- 5.206.1. 1898 London County Mental Asylum at Colney Hatch.<sup>496</sup>
- 5.206.2. 1899-1900 Islington Workhouse from then the Ishmael Ward of the Infirmary.<sup>497</sup>
- 5.206.3. 1903 Kent County Asylum, Barming Heath, Maidstone.<sup>498</sup> On admission, he was recorded as having some 'form of mental disorder: demented'; 'bodily condition: very weak', that had precipitated his being certified and discharged from the Gravesend & Milton Union Workhouse.<sup>499</sup>
- 5.206.4. 1910 Broadmoor Criminal Lunatic Asylum. Rickard was certified on 29 December 1909, shown on the warrant for his removal from Wandsworth Prison to Broadmoor.<sup>500</sup> In August 1910, his application to return to prison

<sup>494</sup> Two newspapers reported on these appearances the *Bolton Evening News* 27 October 1908, p.3 col 5, 'Borough Police Court/Today.. a Deaf Mute in Trouble'; 28 October 1908, p.3 col 4., 'Borough Police Court/Today...A Kind Act'. [Not held].

*Southern Echo*, 29 October 1908, p. 2 col. 5 'Court in a Quandary'. [Held: Newspapers].

<sup>495</sup> His daughter, Mavis Jones, later recalled him getting money this way. Interview with Mavis Jones, 1 June 1983, transcript p.3. [Held: Hiley Papers > Interview Jones].

<sup>496</sup> The Admission Register Male Patients and Casebook Maleside, p.107 [Held: Colney Hatch Asylum].

<sup>497</sup> Registers of admissions and discharge. [Held: Islington> Workhouse, Infirmary & Ishmael Lunatic Ward].

<sup>498</sup> Shown in the Register and Admission & Discharge Book [Held: Barming Heath Asylum].

<sup>499</sup> On 7 November 1903, he was discharged from this Asylum with the observation that he had previously been in Leavesden and Colney Hatch, both London County asylums. The Register for Leavesden Asylum is severely damaged, no primary records were copied. [Held: Leavesden Asylum].

<sup>500</sup> Berkshire Record Office, Reading, Records of Broadmoor Hospital, Catalogue entry gives a Case File number for William Rickard: D/H14/D2/2/1/2258 - marked as closed until 2040. [Held: Reading Prison & Broadmoor > 01 - Description of Documents with scan copy Catalogue Patient Case File for William Rickard].

A Section 17 application requesting access to this file has been submitted by the Applicant concurrently with this application for CCRC review.

was refused. On being declared sane in 1911, he was remitted from Broadmoor to Reading Prison on 5 January 1911.<sup>501</sup>

- 5.206.5. 1929 as 'Delamere Carrington', transferred from The Cottage Hospital, Trowbridge to Wiltshire County Mental Hospital in Devizes where he was identified as William Rickard.<sup>502</sup>

### *Workhouses*

- 5.207. From 1899-1905 William Rickard was recorded as being admitted to several workhouses:

5.207.1. 1899-1901 admissions to Islington Workhouse.<sup>503</sup>

5.207.2. 1903 Gravesend & Milton Union Workhouse.<sup>504</sup> The Register shows Rickard was brought in by police on 6 September 1903. On 13 September he was moved from the 'House' to the Infirmary where he was certified, on 9 October and discharged to Barming Heath Asylum.

5.207.3. 1905 Hendon Union Workhouse.<sup>505</sup>

### *Conclusion*

- 5.208. The record shows 'Gordon' had a pattern of dishonest conduct associated with repeated criminal convictions and committals to mental hospitals. Early in his life, his mental condition had been described early as 'mania and epilepsy', and this description was repeated in subsequent medical examinations on record.
- 5.209. His pattern of conduct was sophisticated, imaginative and involved performance that was sometimes persuasive.
- 5.210. Nothing of 'Alex Gordon' antecedents was disclosed to the defence or to the court.

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<sup>501</sup> [Held: TNA > HO 145 & HO 147 Warrants> HO 145-20 Broadmoor to Reading Prison].

Rickard's name is recorded on the Reading Prison Register as having been transferred from Broadmoor. Reading Prison [Held: Reading Prison & Broadmoor].

<sup>502</sup> [Held: Wiltshire County Mental Hospital]. The National Archives catalogued the 1929 patient register for Wiltshire County Mental Hospital as MH 94/64, 1929 Register No.39478, 'Carrington (Delamere) properly Wm. Rickard'. The Wiltshire and Swindon Record Office retained the patient record 'Delamere Carrington' (no.11,668), admitted on 12 June 1929, aged 39 years, and discharged September 1929.

For further discussion of the contents and significance of this record, see page 138.

<sup>503</sup> [Held: Islington > Islington Workhouse, Infirmary & Ishmael Lunatic Ward].

<sup>504</sup> [Held: Gravesend & Milton Union Workhouse].

<sup>505</sup> [Held: Hendon Union Workhouse].

### *Skeleton Argument 5.5.3 – The prosecution confirmed its awareness of 'Gordon's antecedents immediately before his withdrawal as a witness*

5.211. The prosecution intended to call 'Gordon' as a principal witness (as set out in the supporting material for Skeleton Argument 5.3.1, page 110).

5.212. However, the Assistant Commissioner Metropolitan Police managing the Wheeldon case, Sir Basil Thomson, was unconvinced by the PMS2 evidence and generally disparaging of this unit.<sup>506</sup> At first, he had reportedly refused to make arrests.<sup>507</sup>

5.213. Thomson later recounted the dilemma:<sup>508</sup>

'From the police point of view, the whole business was unsatisfactory. There could be no question, of course, that the Wheeldons and the Masons were guilty of conspiracy to murder, but the person whom they had commissioned to commit the crime was employed by a Government department and it might be argued that if he had not expressed sympathy with the plot, the poison might not have been sent at all.

'I was unable to judge how far he had involved himself in the plot unless I questioned him, and, for one reason or another, an interview was always postponed. I did not even know his name; all I knew was that he wrote poetry, and it was not good poetry.'

5.214. Thomson's memoirs refer to PMS2's refusal to allow him to meet with 'Gordon':

'That set me thinking; either the agent was a person with a criminal history, or he had invented the whole story to get money and credit from his employer. But I did not confide my misgivings.... as if I believed in this fantastic plot.'<sup>509</sup>

5.215. Thomson told Douglas Straight of the Home Office 'that whether his agent liked it or not, he would have to come to London to be at hand if required'.<sup>510</sup>

5.216. Ultimately the DPP, Sir Charles Mathews, convened a case conference on **6 January 1917** at the DPP offices, with Straight and Thomson, along with PMS2's Labouchere.

5.217. 'Gordon' was recognised by police at this conference and identified as having a criminal record. Thomson's memoirs give a detailed account:<sup>511</sup>

'My friend the colonel [Straight] was present, with his agent ['Gordon'] waiting downstairs. I had taken with me as a precaution the superintendent of the Criminal Investigation Department and the superintendent of the Fingerprint Department,

<sup>506</sup> Basil Thomson had responsibility for the Metropolitan Police's Criminal Investigation Department, and was Head of Special Branch. He saw Labouchere's PMS2 unit as 'amateur service'. In his diary entry for 1 December 1916 he says: 'This service is very expensive. It has a host of private agents who produce little that cannot be found in the local press. I was asked to formulate a scheme.' Basil Thomson (1939) *The scene changes* London: Collins: London, p.312.

<sup>507</sup> Frederick Douglas' [F. de Valda] 'Amazing Plot to Poison Lloyd George', *Sunday Chronicle*, 2 June 1929, p.7. [Held: Newspapers].

<sup>508</sup> Basil Thomson 'The Plot to Poison Mr. Asquith and Mr. Lloyd George', *English Life*, November 1924, p.378.[Held: Newspapers]; and repeated in *Weekly Telegraph* (Sheffield), 7 March 1925, 'The plot that failed' by Basil Thomson, p.20, col.3.[Held: Newspapers].

<sup>509</sup> Basil Thomson (1935) *The Story of Scotland Yard* (London), p.238. [Not Held].

<sup>510</sup> Basil Thomson (1935) *The Story of Scotland Yard* (London), p.239. [Not Held]. It has been digitised, and the images are online at <https://archive.org/details/in.ernet.dli.2015.220659/page/n261> and <https://archive.org/details/in.ernet.dli.2015.220659/page/n263>

<sup>511</sup> At pages 260-261 in Thomson Basil (1936) *The Story of Scotland Yard*, Garden City, NY: Doubleday, Doran & Co. ISBN-13: 978-1419154515. [Held: Articles > Thomson 1936].

who had instructions to wait outside the conference room and cast a searching eye over the agent when he passed them on his way upstairs.

'After listening to my statement of the case the Director demanded, as I expected he would, that the agent, on whose evidence the case rested, should be brought into the room and questioned. The colonel agreed to go and fetch him, and we waited expectantly. Then there walked into the room a thin cunning-looking man of about thirty, with long, greasy black hair. My superintendent sat up and stiffened like a setter at the scent of game. He called in the fingerprint expert and whispered to him; the expert hurried off. The agent showed extreme nervousness when he saw the manoeuvre, but he replied to our questions readily enough.

'There was at knock the door; the superintendent opened it a few inches and received from an unseen hand two cards, each bearing a photograph. He passed them to me. Both photographs were speaking portraits of the long-haired poet, but the names on each differed, and neither of them was 'Gordon' - that given by the agent to the colonel [Straight].'

- 5.218. It is highly plausible that the cards referred to by Thomson were record cards that identified the man in the room - 'Gordon'/'No.5'/'Francis Vivian' - as William Rickard/'Francis Carrington'. The 1910 index of the Habitual Criminals Register lists the name and details of William Rickard alias 'Francis Carrington'.<sup>512</sup>
- 5.219. Rickard/'Francis Carrington' had criminal convictions for malicious wounding, and demanding money with menaces (blackmail).
- 5.220. Nonetheless, the DPP decided to go ahead with the prosecution and instructed Thomson to proceed with the investigation.
- 5.221. Statements were taken from 'Gordon' (and Booth) on **18 January** by Inspector Parker, who sent them to the DPP with a covering letter noting that he had been 'specially requested' by Straight 'not to probe too deeply into 'Gordon''s antecedents or press him for correct name and address, as he had done good work for the Ministry of Munitions; did not know who he was working for, and they did not want him frightened at this stage. Mr Straight also said he had spoken to Sir Charles Mathews, Director of Public Prosecutions, on the matter and he quite concurred with the steps proposed to be taken by Mr Straight.'<sup>513</sup>
- 5.222. On **Saturday 20 January 1917**, the DPP sent the Attorney-General a copy of 'Gordon''s statement dated 18 January 1917.<sup>514</sup>
- 5.223. The DPP arranged a conference with Bodkin and the A-G for **Monday 22 January**, writing to Sir Archibald Bodkin, Senior Treasury Counsel: 'The Attorney-General, to whom I spoke this morning, will be greatly obliged if you can come and discuss the

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<sup>512</sup> 'Half-Yearly Index, Register of Habitual Criminals: January to June 1910', p.10. [Held: TNA > MEPO 6-21 - 1910 Habitual Criminals Register - Sheets 05 and 07].

<sup>513</sup> [Held: TNA > MEPO 9356 > MEPO 9356-05].

<sup>514</sup> DPP to Attorney General, 20 January 1917: [Held: TNA > DPP 1-50 > DPP Correspondence > DPP 1-50 DPP to A-G > DPP to A-G 19170120 - DPP 1-50 Sheet 327].

case with him at the Law Courts some time on Monday, as he is very anxious to have your opinion upon it.<sup>515</sup>

- 5.224. On **27 January**, Police Commissioner Edward Henry noted that the statements were suspicious: 'There are many features in this case to cause 'inquietude'... 'May it not be that some of the so-called evidence against Wheeldon has been manufactured? This is a case in which it behoves us to proceed very warily.'<sup>516</sup>
- 5.225. Sir Basil Thomson also remained concerned. Much later, writing in French, for a 1933 edition of his memoirs,<sup>517</sup> Thomson claimed to have been shocked to learn of Rickard's conviction for 'le même motif: chantage' (the same motive: blackmail).<sup>518</sup> He wrote (p. 248):

Nous devons nous servir de cet homme comme témoin, et je tremblais à la pensée de ce qui arriverait si l'avocat de la défense avait vent des antécédents du témoin à charge. Heureusement pour la justice, il n'en sut rien.

Translated as:

'We had to use this man as a witness, and I trembled at the thought of what would happen if the defence lawyer had wind of the main witness's antecedents. Happily for justice, he knew nothing about it.'

- 5.226. In the evening of **31 January 1917**, the DPP held a meeting to go through the evidence with the Senior Treasury Counsel, Sir Archibald Bodkin.<sup>519</sup>
- 5.227. The Brief for the Prosecution is dated 31st January. This date is overwritten by hand with '**1st February**' and the page is stamped as 'Noted' by the DPP on the same day. See Figure 5-4, page 153.
- 5.228. This annotated Brief includes a shortened version of the facts of the case, with many references to 'No. 5' ('Gordon'). The typescript has pencilled vertical lines through much of what would have been 'Gordon's extensive evidence.'<sup>520</sup>
- 5.229. Separately, in a letter dated Friday **2 February 2017**,<sup>521</sup> the Metropolitan Police's Basil Thomson appears to have requested information about Rickard/'Carrington'/ 'Gordon's time in Broadmoor Criminal Lunatic Asylum from the asylum's Medical Superintendent, Dr John Baker.
- 5.230. Also on **2 February 1917**, Charles Mathews, the DPP, withdrew 'Gordon' as a witness.

<sup>515</sup> DPP to Bodkin, 20 January 1917, DPP 1/50 [Held: TNA > DPP 1-50 > DPP Correspondence > DPP 1-50 DPP to Bodkin].

<sup>516</sup> Minute on cover by Edward Henry, 27 January 1917. [Held: TNA > MEPO > MEPO 9356 > MEPO 9346-06]

<sup>517</sup> Thomson was bilingual and by the 1920s had moved to France where he wrote his memoirs in French, (1933) *La Chasse Aux Espions. Mes souvenirs de Scotland Yard (1914-1919)*. [Held: Articles > Thomson]. English and American editions followed (1933 with second impression 1935, and 1936 respectively).

<sup>518</sup> p. 247: 'Chantage' is an archaic 19th century noun for 'the extortion of money by blackmail, Oxford Dictionaries. Extracts and translation of French edition. [Held: Articles > Thomson publications and translation of French edition.] The English language versions of the memoir omitted Rickard's conviction for blackmail.

<sup>519</sup> DPP to John Webster, Home Office Assistant Analyst, 31 January 1917. [Held: TNA > DPP 1-50].

<sup>520</sup> Brief for the Prosecution' [Held: TNA > DPP 1-50 > Brief for the Prosecution].

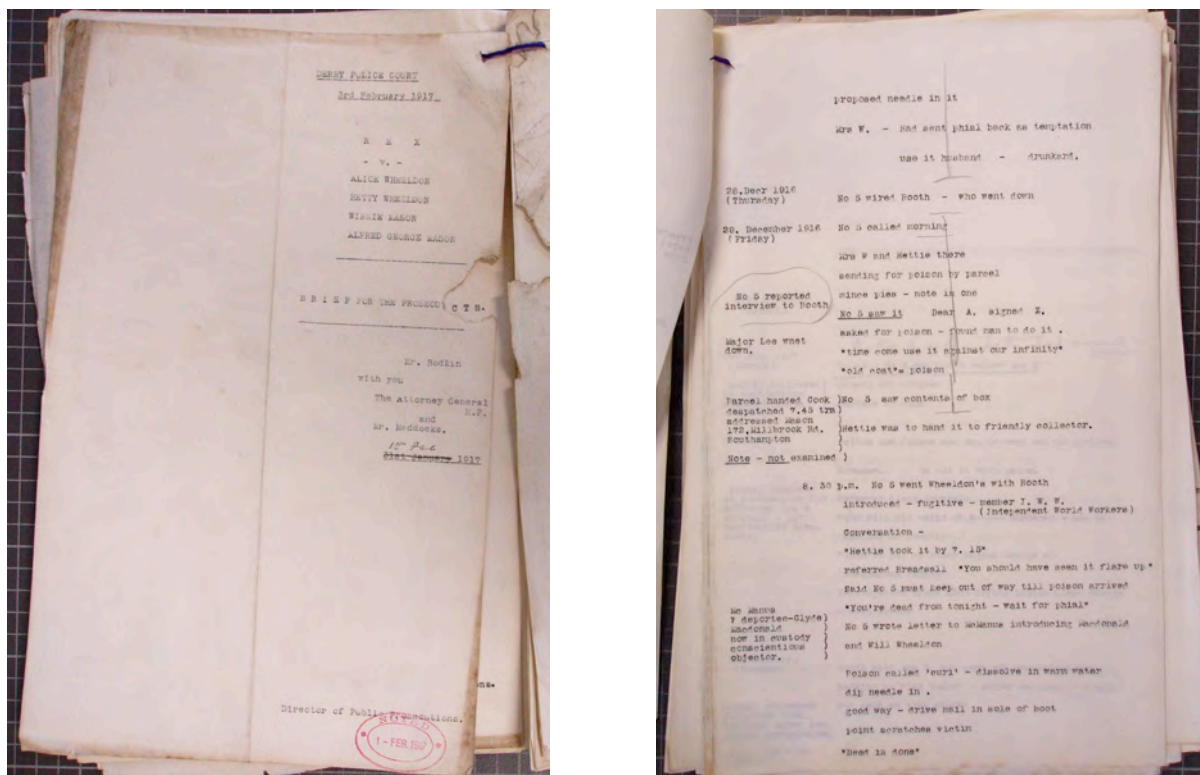
<sup>521</sup> Berkshire Record Office, Reading, Records of Broadmoor Hospital, D/H14/D2/2/1/2258 (William Rickard's patient file), The record is closed to public access until 2040 but Dr Hiley was granted privileged access and viewed the file with the support of Rickard's daughter. A Section 17 application requesting access to this file has been submitted by the Applicant concurrently with this application for CCRC review.



- 5.231. This was the day before the Attorney-General's Opening Speech at the Wheeldon committal hearings, on **3 February 1917**, in which he announced that 'Gordon' would not be called.<sup>522</sup>
- 5.232. Much later, reflecting in his memoirs, F.E. Smith wrote of proceeding with Booth alone 'trusting that the jury would give it sufficient weight; nonetheless, a decision of some anxiety, when the offence is closely connected with politics and to risk a prosecution failing ignominiously is one a Law Officer ought not to run'.<sup>523</sup>
- 5.233. By proceeding without 'Gordon', it appears that the Prosecutor acted out of an 'oblique motive' and the court did not intervene. This result appears to transgress principles about the limitation of prosecutor discretions, set out in *Haringey Justices*, as discussed in the supporting material to Skeleton Argument 5.3.3 and 5.3.4, page 112. For example:

'The first principle which limits this discretion is that it must be exercised in the interests of justice, so as to promote a fair trial. ... The court should interfere if the prosecutor had acted out of an oblique motive, that is to say if he had not called his mind to his overall duty of fairness, as a minister of justice (p. 544F).'

Figure 5-4. Brief for the Prosecution – sample pages showing annotations<sup>524</sup>



<sup>522</sup> Attorney-General's Opening Speech, p.4 in *Record* Chapters 2. February Speech: [Held: Proceedings]

<sup>523</sup> F.E. Smith (1926) *Famous Trials of History*, London., p.224. [Held: Articles]

<sup>524</sup> Full manuscript available [Held: TNA > DPP 1-50 > Brief for the Prosecution]

*Skeleton Argument 5.6 – ‘Gordon’ was kept out of the way and then deliberately sent to South Africa shortly after the trial to remove all risk of his antecedents being exposed.*

- 5.234. From 3 February 1917, with the publicity of the arrests and the non-production of ‘Gordon’ at trial, there was increasingly intensive pressure to find him and discover his identity. This is illustrated by the local Leicester and Sheffield trade union enquiries, the questioning in the House of Commons. In particular, the persistence of Ramsay MacDonald MP with the Home Secretary,<sup>525</sup> involving Special Branch. It subsequently earned him the wrath of Special Branch as a prospective ‘disloyal Prime Minister’.<sup>526</sup>
- 5.235. In his statement of 18 January 1917, Booth had warned that ‘Alex Gordon’ is afraid of ‘personal violence or even death’ in the event of him turning informant.<sup>527</sup>
- 5.236. On 24 February 1917, the DPP had been assured that PMS2 was doing its best to ‘keep an eye on A.G.’.<sup>528</sup>
- 5.237. After the trial, he and his wife were held captive at The Cock Inn in Headley, near Walton Heath, where Booth was then living.<sup>529</sup>
- 5.238. It is a matter of calculated inference, but it is suggested that ‘Gordon’'s location was suppressed and he was subsequently sent to South Africa for a number of reasons. He had expressed concerns about his personal security, but it was also true that the interests of Government agencies converged in keeping his location hidden (and then distant) to avoid him revealing his criminal and mental illness antecedents.

*Evidence of being sent to South Africa 1917 and returning 1919*

- 5.239. On 14 March 1917, Sir Charles Mathews wrote to Melville Lee that:
- ‘in their opinion [the DPP and Attorney-General], ‘Gordon’ had done an excellent job in the Wheeldon investigation, and that, since his actions had left him in fear of his life, he should be given every assistance ‘to commence a fresh career in some new and far distant place’.<sup>530</sup>

<sup>525</sup> J.R. MacDonald to G. Cave, 7 November 1917 PRO 30/69/1169. [Held: Ramsay MacDonald Papers].

<sup>526</sup> ‘Private’ report by Basil Thomson for the King’s private secretary, who his diary recorded as having seen on 30 October 1918, pp.4-5, Templewood Papers, Cambridge University Library: I/2/37: <http://www.lib.cam.ac.uk/collections/departments/manuscripts-university-archives/significant-archival-collections/templewood>

<sup>527</sup> Minute dated 18 January 1917 conveying report by Inspector Parker covering Booth’s statement (p.13) referred to ‘Gordon’s fear of becoming informant: MEPO [Special Branch]. [Held: TNA > MEPO > MEPO 9356 > 9356-05-01 – Parker Minute & Report].

<sup>528</sup> Melville Lee to Seward Pearce [Office of the DPP], 24 February 1917: DPP 1/50, Sheet 400. [Held: TNA > DPP 1-50].

<sup>529</sup> The Cock Inn was in the sole tenancy of his wife, Gertrude Firmin. It is located just over a mile (about 2km) from Walton Heath Golf Links, to which Lloyd George was regularly driven from London to play golf. Marriage certificate for Herbert John Booth and Matilda Gertrude Firmin, Epsom, 29 October 1914. [Not held].

<sup>530</sup> Draft letter of reply from Sir Charles Mathews to Melville Lee, 12 March 1917; Letter Mathews to Melville Lee 14 March 1917: DPP 1/50 Sheet 426; Melville Lee to Sir Charles Mathews 15 March 1917. [Held: TNA > DPP 1-50].  
15 March 1917 a letter of thanks from Melville Lee to Sir Charles Mathews, DPP 1/50. [Held: TNA > DPP 1-50].

- 5.240. 16 March 1917, 'Wm. Rickard' was issued a passport to South Africa, on 'Gov[ernmen]t Service'.<sup>531</sup>
- 5.241. 5 April 1917, Departure date for SS Athenic with Mr W. Rickard and Mrs L. Rickard listed as passengers bound for South Africa.<sup>532</sup>
- 5.242. 16 November 1917, Inspector Patrick Quinn reported that 'it is known to the Department the approximate date when Alec Gordon left this country: between March and May 1917'.<sup>533</sup>
- 5.243. May 1919, Rickard presented himself to the Office of Governor General of South Africa. A file minute recorded that Rickard claimed '...to have been sent out of the UK to get him out of the way of vengeance.'<sup>534</sup> the Secretary for Home Affairs in South Africa responded to Rickard's claims about serving as 'Alex Gordon' in the Wheeldon case, by providing money, and repatriating him and his family.<sup>535</sup> Rickard, Mrs L. Rickard and their baby daughter, sailed on the liner SS Durham Castle to England.<sup>536</sup>

*'Gordon's reflections on 'being kept out of the way'*

- 5.244. At the request of the South African authorities, Rickard provided a written statement in which he referred to having be 'exiled',<sup>537</sup> and went onto explain how he and his wife had been kept out of sight:

'After ...the L. George case my wife and self were taken to 'The Cock Inn' a public house at Headley in Surrey by Mr Booth and kept there until we boarded The Athenic at Plymouth...excepting for two small bags we had not outfit for voyage. I was given £5 as pocket money - & a draft on the National Bank of SA for £100. Mrs Rickard was refused permission to say good-bye to her friends. Mr Booth who appeared to have unlimited powers & money to spend told me that it was no use kicking against the pricks. My identity had unfortunately been revealed & my life was in danger.

'I was solemnly assured that a position would be obtained for me in SA, that in the event of ill-health or other trouble of a domestic character the Government would ... & also that a representative of the Government would be at the Capetown docks to meet us.'<sup>538</sup>

<sup>531</sup> Register of passports 18 December 1916 - 10 July 1917, No.151064 for South Africa issued to 'Wm. Rickard' on 16 March 1917, 'Gratis Govt. Service.': FO 610/134. [Held: TNA > FO].

<sup>532</sup> 1917 Passenger List SS Athenic, 5 April 1917 Contract Ticket Number 1630, Sheet 04.[Held: Shipping].

<sup>533</sup> Special Branch Minute by Inspector Patrick Quinn, 16 November 1917 MEPO [Special Branch] [TNA > MEPO > MEPO 9356 > MEPO 9356-73].

<sup>534</sup> 1919 May South Africa/GG South African 19190516 Minute.[Held: South African National Archive].

<sup>535</sup> Memos, August & September 1919, documenting funds to repatriate Rickard and his family on SS Durham Castle. [Held: South African National Archive 1919> Repository Pretoria].

<sup>536</sup> May 1919, South Africa Shipping: passenger list. Reference 'the Principal Immigration Officer arranged for them to travel.' [Held: Shipping].

<sup>537</sup> 1919 May South Africa/Rickard Statement Cape Town 19190515 (6 pages).[Held: South African National Archive].

<sup>538</sup> 1919 South Africa, Rickard's Statement for the Imperial Secretary of Home Affairs, South Africa, 15 May 1919, pp.3-4.[Held: South African National Archive 1919 > Rickard application - SA 1919 - 07 & 08].

- 5.245. This statement was repeated in November 1919 at the Rimington meeting. 'Vivian'/'Gordon' wrote of being exiled, and returning to England 'after some two & a half years of exile in South Africa...'<sup>539</sup>
- 5.246. In December 1919, interviewed by *Daily Herald*, 'Francis Vivian'/'Alex Gordon' recollected that Douglas Straight (head of PMS2) repeated the promised favourable terms for his 'exile':
- 'We want you to go to South Africa. We are going to give you £100 and £5 for your expenses. One of our agents will meet you on the other side, and letters of introduction will be sent out there for you.'<sup>540</sup>
- 5.247. In March 1920, 'Alex Gordon' was again photographed and interviewed by *Weston-super-Mare* when it was reported that: 'after the trial he was furnished with a sum of money to take him to South Africa, presumably out of harm's way, but he returned four months ago...'<sup>541</sup>
- 5.248. In 1926 for another interview, this time in the magazine *John Bull*<sup>542</sup> it was reported that he was obliged to leave England 'for, owing to his loyalty, he had made many enemies.'
- 5.249. In 1929, in response to 'Gordon'/Rickard's admission to a psychiatric hospital, his wife, Lily Rickard, had written they had been sent to South Africa because of 'his identity becoming known'.<sup>543</sup>
- 5.250. In June 1983, in an interview with historian Nicholas Hiley, Rickard's daughter, Mavis Jones, explained her parents' move to South Africa: since 'his life was in danger and confirmed that their hurried departure had been arranged because of his identity becoming known.'<sup>544</sup>

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<sup>539</sup> 'No. 5. True Story of Alex Gordon' Part 1, page 1. [Held: Mason Family Papers > Rimington papers 1919 > 11 - Alex Gordon Story > 2 versions > 13 - 1919 No. 5 True Story of Alex Gordon].

<sup>540</sup> *Daily Herald*, 27 December 1919, p.8, 'Alex. Gordon's Own Story'. [Held: Newspapers].

<sup>541</sup> *Weston-super-Mare* 20 March 1920, p.12 col.3, 'The 'Mystery Man': poet, mystic, actor, and diviner of criminals'. [Held: Newspapers].

<sup>542</sup> *John Bull*, 20 November 1926, p.15, "Cosmo' the Snooze King.' [Held: Newspapers].

<sup>543</sup> Letter transcribed from Lily Rickard in note of 20 July 1929, Wiltshire and Swindon Record Office, Wiltshire County Mental Hospital record for 'Delamere Carrington'. [Held: Wiltshire Mental Hospital].

<sup>544</sup> 1983 Hiley interview of Mavis Jones (née Rickard), 1 June 1983. [Held: Hiley Papers > 1983 Jones interview].

## Ground A Conclusion – Skeleton Argument

- 5.7 In the circumstances the defence were denied any opportunity to cross-examine any prosecution witness on ‘Gordon’s criminal antecedents and mental history. The relevance of this is that Booth acted on information provided by ‘Gordon’ and disclosure would have exposed Booth to cross-examination on both his competence and reliability in acting on the word of such a man.
- 5.8 In addressing this issue in the summing up, the judge directed the jury wrongly in the approach to the absence of ‘Gordon’. The judge stated: ‘If you think the absence of Gordon is so fatal and renders the prosecution so uncertain and the evidence in support of it so unreliable as that you would not be justified in convicting the prisoners, of course you are bound to acquit them.’
- 5.8.1 This direction confines itself to the mere fact of the absence of the witness. It does nothing to address why his presence might have been so important to the defence. The principal Defendant’s account, that ‘Gordon’s plan was to poison a dog, would have been lent substantial weight by ‘Gordon’s inevitable admission that immediately prior to his contact with the Defendants he had been in Liverpool and was investigating escape from internment camps where he claimed dogs were deployed.
- 5.9 Further, until the truth of ‘Gordon’s antecedents emerged, the judge’s words could not address what would have been the central issue if proper disclosure had been made, namely that the source of all the hard evidence as supplied to Booth was from a man who was mentally unstable and a criminal who the prosecution had deliberately concealed to avoid the risk of either side calling him to give evidence.
- 5.10 It is beyond doubt that the prosecution knew of ‘Gordon’s mental health and criminal antecedents (as established in 5.5.3). The clearest evidence is found in an account of a meeting between the DPP, Douglas Straight, the head of PMS2, and Sir Basil Thomson, the head of Metropolitan Police CID and Special Branch, in the French version of Sir Basil’s memoirs. Correspondence between Major Melville Lee, of PMS2, and the DPP alludes to the revelation of ‘Gordon’s identity and antecedents. Contemporaneous correspondence and the fact of ‘Gordon’s name being included on the back of the indictment strongly suggests that the prosecution intended to call ‘Gordon’ but changed their mind late in the day. Furthermore, one of the prosecuting counsel (Bodkin) had been the Recorder in a criminal case where ‘Gordon’ was the Defendant and convicted of theft prior to the Wheeldon trial [Dover Quarter Sessions, files for the quarters ending 13 April 1908 and 4 August 1908. Held: *Dover Quarter Sessions 1908*].
- 5.11 There was no perceived need at the time for formal duties of disclosure because the courts were thought able to rely on notions of fair play and the integrity of those acting on behalf of the Crown in criminal cases. The duty of prosecuting counsel to act as ‘a minister of justice’ was well established by 1917: see *R v Puddick* (1865) 4 F & F 497, per Crompton J; and *R v Banks* [1916] 2 KB 621 per Avory J. By contemporaneous standards the concealment of ‘Gordon’s true identity and antecedents was in breach of the Crown’s general duties of fairness.
- 5.13 Furthermore, plainly, under the duties of disclosure now in force, such information, about a man of pivotal importance to the events concerned, would have been disclosable – whether or not, in fact, he was to be called to give evidence. It would have been potentially useful to the defence in any abuse of process argument; in exploration at trial of the Crown’s reasons for not calling ‘Gordon’; and/or in criticism of the essential basis of the Crown’s case.

## 6. GROUND B: DISCHARGE OF JURY 1 AND EMPANELLING OF JURY 2

### Skeleton Argument

- 6.1. The first trial was aborted after the close of the prosecution case due to the illness of a juror. The defence argued that the juror should be allowed time to recover and the trial should then continue. The judge discharged the jury.
- 6.2. The second jury consisted of the original 11 jurors plus a new 12th juror. This was not a jury selected at random but simply the addition of one extra person to the existing 11. This was a defectively selected jury.
- 6.3. This defect was compounded with serious consequences because the judge prevented defence counsel from going into various evidential matters on the basis that such line of enquiry had been heard before. It had not been heard before by the new juror. The judge thereby expressly encouraged the other 11 jurors to relate evidence of what had been said in the first trial to the new juror and for him to act upon their reports. This is the very antithesis of the jury system and in direct contradiction of a jury acting only on what they had heard said in court.
- 6.4. In 1917 juries had to return unanimous verdicts. The verdict of the new juror was, on the judge's own direction, founded on evidence he never heard.
- 6.5. Authorities pre-dating this trial indicate the impropriety of the approach taken:
  - *R v Edwards* 170 E.R. 1356 – the Defendant should have been given the right of objection to the panel and evidence should not have been simply read back (let alone as in this instance 'taken as read').
  - *AG of NSW v Bertrand* (1865-67) L.R. 1 P.C. 520 – evidence on a retrial should not be read back to a jury from notes.

The approach adopted in this case would have suffered from flaws analogous to those suffered by reading evidence back from notes, which was prohibited, presumably, because of the obvious primary deficiency that the jury would not have the opportunity of assessing the witnesses' demeanours. Hurrying through 'live' evidence would have had much the same deficiency, but with the added defect that details were omitted.

## Supporting Material: Ground B

### *Deciding to replace the absent juror*

- 6.6. Thursday 8 March 1917, Day 3 of trial, at commencement Low J announced that one of the jurors had become ill and said it was improbable he would be able to attend.<sup>545</sup>
- 6.7. At this point, the trial had heard, over two days, all the prosecution case, the defence opening and the evidence of the principal Defendant, Alice Wheeldon.
- 6.8. Resolving the unforeseen absence of the ill juror was reached by deliberations led by Low J, who suggested:
- ‘...there are two courses open to you and to me: one would be to adjourn the case somewhat indefinitely – a course which, speaking for myself, I doubt ...; the other course would be to add another jurymen to your body, to re-swear the jury and start de novo.’<sup>546</sup>
- 6.9. The judge sought views<sup>547</sup> of the jury foreman, and counsel. The Attorney-General suggested:
- ‘... Learned Friend, I think the course which presents the minimum of inconvenience is that of commencing the case de novo. I think there would be a considerable economy possible in its presentation, and I think that the course would impose the least inconvenience on us all.
- Low J: What do you say, Mr Riza?
- Mr Riza: I have consulted with my clients upon this point, and I respectfully agree with the suggestion that the case should proceed with eleven jurymen present.
- Low J: It cannot proceed with eleven; we must add another; we must have twelve, you know. It is one of the anomalies of our law, as you possibly know, that we cannot dispense with the formalities necessary for a criminal trial; therefore, I have no power to try the case with eleven jurymen.
- Mr Riza: In that case, my request and my idea is, that we should wait until we can get the twelfth gentleman of the jury.
- Low J: On what ground do you say that?
- Mr Riza: On this ground: that the case, so far as it has gone, it is over, and it would be a great anxiety to my clients to the prisoners, to go over the same ground over and over again the next time.’
- 6.10. Following this exchange, evidence was given by the juror’s medical practitioner Dr John Waugh. Dr Waugh indicated there was a possibility, not certainty, he could be back on Monday 12 March. Bearing in mind the Attorney-General’s preference to start de novo, the judge adopted that course.

<sup>545</sup> 2nd Trial, Third Day, in *Record* page 364, and naming the juror Mr David J. Patterson L2556 in *Record* page 365. [Held: Proceedings].

<sup>546</sup> In *Record* page 364. [Held: Proceedings].

<sup>547</sup> L2755-2770 in *Record* pp.365-366. [Held: Proceedings].

- 6.11. Low J decided 'to discharge the jury and start afresh'. The Attorney-General concurred with this approach.
- 6.12. Low J, however, then said: 'Gentlemen of the jury, you are discharged for the moment'...'(A new juror went into the Box, and the members of the panel were separately sworn).'<sup>548</sup>
- 6.13. The ill juror was replaced by Martin Dale for the 2nd trial on the third, fourth and fifth days Thursday 8 to Saturday 10 March 1917.<sup>549</sup>
- 6.14. The 2nd trial commenced immediately with repetition of the Attorney-General's Opening Address 'in a summarized form', 'much condensed from the first, but sufficiently pointed in language.'<sup>550</sup>
- Prosecution witnesses and Alice Wheeldon repeated their testimony with some variations from the 1st trial.
- 6.15. The testimony of the other three Defendants was then heard over the following days.<sup>551</sup>
- 6.16. The entire 2nd trial took three days.

*Newspaper coverage:*<sup>552</sup>

- 6.17. *The Times* 9 March 1917 (Friday) 'Poison Plot Trial Interrupted':
- 'Re-hearing begun. Low J then discharged the jurymen present. They, however, remained in the jury box and were sworn again after a new juror had taken the place of Mr Patterson. The trial was thereupon begun afresh before the jury thus re-constituted. [emphasis added]
- 'The Attorney-General opened the case again, recapitulating the facts in a summarized form; Mr Booth, Major Melville Lee, and other witnesses who have already given evidence, were again called.'
- 6.18. Most extensive coverage: *Manchester Guardian* 9 March 1917 'The poison plot trial begins again. A jurymen ill.'
- 'Mr Riza, for the defence, took what seemed to an outsider the obvious course of suggesting an agreement to proceed with eleven jurymen....But this was one of the occasions when common sense does not tally with the law of procedure. ...Mr Riza's alternative of waiting for the recovery of the jurymen - his doctor gave evidence, and said he might be well by next Monday - was also not accepted, and without more discussion the case was started afresh, all for the benefit of the new jurymen...'

<sup>548</sup> L2771 in *Record* p.366. [Held: Proceedings].

<sup>549</sup> CRIM 6/24 and 6/62, relate to the first and second court record: names of jurors, listing who was in court, when the sessions began and ended.[Not Held]. - <http://discovery.nationalarchives.gov.uk/details/r/C1846381> - not digitised; a basic court record.

<sup>550</sup> *The Times* 9 March 1917 (Friday) 'Poison Plot Trial Interrupted'; *Manchester Guardian* 9 March 1917 'The poison plot trial begins again. A jurymen ill.' [Held: Newspapers].

<sup>551</sup> Compare Index to Witnesses for First and Second Day to Index for the Third, Fourth and Fifth Days, in *Record*, pages 228 and 363. [Held: Proceedings].

<sup>552</sup> [Held: Newspapers].



- 6.19. *Derby Mercury*, 16 March 1917, p.7 col.1, 'Conspiracy Case.' Described how a new juror was put into the box:  
 'the dreary task of beginning again was started at 11.20. ...The judge made a joke when he told the faithful non-influenza jurors that they were discharged - momentarily. It was only for the twinkling of an eye, for a new juror, looking decidedly glum joined his glum-looking brethren. They were all rapidly sworn and Mr Booth immediately stepped into the box again.'
- 6.20. Further newspaper coverage<sup>553</sup>:  
*The Advertiser (Adelaide SA)*, 10 March 1917, p. 9, 'Conspiracy trial: an absent juror'.  
*Daily Chronicle*, 9 March 1917 'Mysterious agent. Who is Alec Gordon', p 3 col 2.  
*Liverpool Echo*, 8 March 1917 (last edition) col 3, 'Poison trial. Juror ill. Another sworn.'  
*Nottingham Evening Post*, 9 March 1917 p.1 col 1 'Mrs Wheeldon's part in the "plot": 'The same counsel appeared, and evidence for the Crown was continued, witnesses being again examined owing to the swearing in of the new jury at yesterday's sitting.'  
*The New York Times*, 10 March 1917, 'Wished for death of Lloyd George.'  
*The Yorkshire Post* 9 March 1917, p.7, col 1 'The Grand Jury System'; 10 March 1917, p.7, col 1 'The conspiracy trial' - the swearing in of a new juror.  
*Daily Mirror*, 9 March 1917, p.2, 'All over again.. legal anomaly'.  
*The Westminster Gazette*, 8 March 1917, p.3 cols. 8&9, 'The Plot Charge. Old Bailey Surprise'.

### Observations

- 6.21. The 12th juror had a lesser, different exposure to the evidence and argument to the 11 other jurors.
- 6.22. Eleven of the 12 jurors therefore heard the Attorney-General's advocacy and the testimony of prosecution witnesses, twice.
- 6.23. This repetition was advantageous to the prosecution. For example, Booth as the principal prosecution witness gave his testimony twice. For the second trial he was no longer so reliant on his notes, considered above in the supporting material for Skeleton Argument 5.4.2 (page 123). Both he and examining counsel made a more practised, assured appearance, helping to dispel doubt to which 11 of the second jury had been previously exposed.
- 6.24. In the case of the defence, only the evidence and cross-examination of the principal Defendant, Alice Wheeldon, was repeated. The principal Defendant was not an astute witness.
- 6.25. The evidence from Hettie Wheeldon was only heard once, although it was she who had testified to detailed conversations with 'Gordon' in which he had:

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<sup>553</sup> [Held: Newspapers].

- displayed his convincing knowledge of the 'emigration scheme',
- persisted in promoting the scheme for Will Wheeldon, MacDonald and Mason, and
- provided an introduction to Arthur McManus, for access to the scheme.

6.25.1. On some occasions, this deprived the 12th juror from hearing all evidence. For example, on the verification of Alice Wheeldon's handwriting, Low J said: 'Mr Riza, is not it really idle to cross-examine with regard to Mrs Wheeldon's writing when eleven of the jury have heard her in the box, and I suppose the other one will hear later on.'<sup>554</sup>

The other juror did not hear this information later on. This open criticism of defence counsel further inhibited and disadvantaged the principal Defendant.

6.25.2. On other occasions, intercession about evidence already heard caused confusion. For example, during repeat evidence given by senior PMS2 officer de Valda, being questioned by counsel Maddocks:

LOW J: I thought this had been abandoned, long ago.

MR MADDOCKS: I am not quite sure if this has, if you will look at the last sentence; I will prove that.

LOW J: Very well.<sup>555</sup>

6.26. Further, the judge was keen for a speedy conclusion to the trial, urging prosecuting counsel at the end of the Third Day (the first day of the 2nd trial): 'Now Mr Young, you must get these witnesses up so that we can finish this case early tomorrow morning'.<sup>556</sup>

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<sup>554</sup> Third Day, Hiscock XXN L3490 in *Record* page 403 for Exhibits. [Held: Proceedings].

<sup>555</sup> Third Day, de Valda EIC L3603 in *Record* page 409 for Exhibit 59, a letter from Winnie Mason to Alice Wheeldon. [Held: Proceedings].

<sup>556</sup> Third Day L3843 in *Record* p.421 [Held: Proceedings]; *Daily Chronicle*, 7 March 1917, p.5 col.2, 'Poison Plot Trial Opens.' [Held: Newspapers].

## 7. GROUND C: ADMISSION OF AND JUDICIAL REFERENCE TO EVIDENCE OF THE DEFENDANTS' 'BAD CHARACTER'

### Skeleton Argument

7.1. In *Makin v. Att.-Gen. for N.S.W.* [1894] A. C. 57 the Privy Council provided the classic statement of the common law rule regarding evidence of 'bad character':

'It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried.

'On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears on the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused.'

7.2. It remains good law in Commonwealth jurisdictions without a regime equivalent to sections 98–113 of the *Criminal Justice Act 2003* of England & Wales (see *Myers v R* [2016] AC 314 (PC).

7.3. The principle was applied in cases heard on appeal in the years immediately before the instant trial: *viz. R v Fisher* [1910] 1 KB 149; *R v Rodley* [1913] 3 KB 468.

7.4. The approach taken by the Crown also appears to have contravened expected standards of professional etiquette, which were sufficiently well-established by the time as to be enshrined in rules drawn up by the General Council of the Bar in 1917 concerning cross-examination.<sup>557</sup>

7.5. The prosecution quite deliberately adduced from Booth evidence of alleged admissions by Alice Wheeldon of involvement in criminal acts and plots engaged in by the suffragette movement. The relevant passages from Booth's evidence are set out in Table 7-1.

7.6. In cross-examination Alice Wheeldon denied all the allegations of involvement in 'suffragette outrages', including the Breadsall Church arson, sending a skull to Home Secretary McKenna or 'the nail in the boot.'<sup>558</sup>

#### > Supporting material: page 166

7.7. There was considerable scope for the jury to be prejudiced against Alice Wheeldon by the evidence of involvement in such notorious and controversial criminality. There appears to have been no justification for admissibility of the evidence, in line with the principles in *Makin* (above).

<sup>557</sup> General Council of the Bar Rules 1917, held in Lincoln's Inn Library. [Held: General Council of the Bar Rules 1917].

<sup>558</sup> 2nd Trial, Fourth Day, Alice Wheeldon EIC L 4207 in *Record* p.437. Alice Wheeldon XX L4556-L4560 in *Record* p. 455. [Held: Proceedings]

7.8. It is self-evident that the introduction of such information into evidence had the potential to prejudice the jury's assessment of the Defendants. It is submitted that it would not have satisfied the criteria for admission through any of the 'gateways' provided by the current law, under the *Criminal Justice Act 2003*. Still less would it have satisfied the stricter requirements of the common law at the time, if subjected to proper scrutiny.

*Table 7-1. Booth's allegations of Alice Wheeldon's involvement in criminal acts or plots by the suffragette movement – from Booth's evidence*<sup>559</sup>

References are from the *Record of Proceedings* [Held: Proceedings]

TRANSCRIPT REF.	CONTENT	NOTES
L101-103 in <i>Record</i> p.234	Q: Did she show you anything else? A: Yes. Q: Do you remember any other matter she mentioned to you specially on that occasion? A: Yes. Q. What was that? A: She was showing me her son's photograph, and all at once she said: 'You know about the <b>Breadsall job</b> , we were nearly copped, but we bloody well beat them.'...	See also XX by Riza L502 onwards, in <i>Record</i> p.255  Repeated in '2nd trial' – L2826 onwards, in <i>Record</i> p.368  XX by Riza in '2nd trial' – L3105 onwards, in <i>Record</i> p.382
L169 in <i>Record</i> p.237	Q. Anything else? You may refer to your notes. A. I am referring to them. Then I turned the conversation on to sabotage. There was some more conversation, and suddenly Gordon said: 'I cannot understand how the <b>Suffs burn Churches down</b> '. I said 'Oh, with petrol'. Mrs Wheeldon said 'We did it with petrol', then suddenly, as if she had admitted something, she said 'that is how they did it'.	Repeated in '2nd trial' – L2891 onwards, in <i>Record</i> p.371  XX in '2nd trial' L3082-3086 in <i>Record</i> p.381
L172 in <i>Record</i> p.237	A. ... I said to her: 'What in your opinion would be the best way to poison Lloyd George?' Q. Did you say 'poison'? A: Yes. She said: 'We had a plan before when we' – that is the Suffragettes – 'spent £300 in trying to poison him. It was to get a position in a hotel where he stayed and drive a nail through his boot that had been dipped in poison. ... We did intend to do McKenna in, and when we sent the skull I was going to stick a poisoned needle through, but it was argued an innocent person might touch it and die.'	See also XX by Riza L651 in <i>Record</i> p.260  Repeated in '2nd trial' L2892 onwards, in <i>Record</i> p.371.
L2950 in <i>Record</i> p.377  L2951 in <i>Record</i> p.377	Q: 'When you were leaving what became of the box?' A: She gave the box to Gordon and Gordon put it in his pocket.' Q: 'Did she say anything?' A: 'She said ... 'Now <b>Walton Heath</b> will be the best place to catch George with an air-gun'. I said 'Right-ho'.	2nd Trial, Third Day Booth EIC, L2950-2952 in <i>Record</i> from p.377.

<sup>559</sup> 1st Trial, First Day, Booth EIC by Young & Bodkin in *Record* p. 230-239 [Held: Proceedings].

## Supporting Material: Ground C

### *Suffragette violence*

- 7.9. In contemporary newspapers, the alleged Wheeldon plot to poison Lloyd George and Arthur Henderson was generally attributed to suffragettes, a 'suffragette outrage' after the quiescence of the truce with the Women's Social and Political Union (WSPU). Such publicity prompted Mrs Emmeline Pankhurst to contact Special Branch to deny WSPU involvement in the alleged plot, to dissociate the WSPU from the Wheeldon Defendants, and to request being a witness for the prosecution. She ultimately secured Low J's invitation to address the court.<sup>560</sup>
- 7.10. In 2015, social historian Professor Sheila Rowbotham wrote that the local contemporaneous response to the Breadsall Church fire (near Derby) illustrated 'the depth and ferocity of the hostility aroused by the direct action campaign for the vote'. Opponents of women's suffrage, she continued, did not distinguish between the political views and tactics of the various suffrage bodies;<sup>561</sup> nor, did such opponents recognise how various suffrage groups within the movement aligned and split over the war and conscription.<sup>562</sup>
- 7.11. In 1909, the Women's Social and Political Union (WSPU) adopted a campaign of violent direct action, having become frustrated by the government's opposition to extend the franchise to women. It included arson, and bombings of high-profile, hostile buildings (empty), churches and golf courses, such as Walton Heath. Such criminal acts became known as committing 'suffragette outrage' and were widely reported.<sup>563</sup>
- 7.12. In 1913, for example, the bombing of Lloyd George's house at Walton Heath received widespread publicity<sup>564</sup> and in the suffrage press, including *The Suffragette*. This event was depicted in the 2015 film *Suffragette*, a historical period drama.

<sup>560</sup> In *Record* p.555. [Held: Proceedings].

CRIM 1-166 DPP to Freke Palmer, solicitor correspondence [Held: TNA > CRIM 1-166 DPP-Palmer Pankhurst correo].

<sup>561</sup> Sheila Rowbotham (2015) *Friends of Alice Wheeldon* London: Pluto Press, 2nd edition, extract pp. 2-4. [Held: Articles].

<sup>562</sup> Dr Marc Calvini-Lefebvre, review of *Pacifists, Patriots and the Vote: The Erosion of Democratic Suffragism in Britain During the First World War* by Jo Vellacott (review no. 642): <http://www.history.ac.uk/reviews/review/642> [Held: Articles];

Vellacott-Newberry Jo. 'Anti-war suffragists', *History*, 62 (1977), 411-25. [Held: Articles].

<sup>563</sup> *Derby Daily Express*, 13 June 1914, 'Suffragettes hustled. Derby meeting broken up'. [Not held].

Fern Riddell (2018) 'Suffragettes, violence, and militancy', British Library, 6 February 2018: <https://www.bl.uk/votes-for-women/articles/suffragettes-violence-and-militancy>.

<sup>564</sup> On 25 February 1913 *The Times*, p.6 col. 2, 'Arrest of Mrs Pankhurst' described that she had been charged (Malicious Injuries to Property Act 1861) for procuring people to place gunpowder and explosives to damage a house that is being built for Mr Lloyd George near Walton Heath Golf Links'.

The National Archives blog: <https://history.blog.gov.uk/2013/07/04/mrs-pankhurst-lloyd-george-suffragette-militancy/> *Derby Daily Telegraph*, 20 February 1913, p.2 (extract: 'Mrs Pankhurst made astounding statement') [Held: Newspapers].

*Yorkshire Post and Leeds Intelligencer*, 26 February 1913, p. 8, 'Mrs Pankhurst in court. Hostile reception by the crowd' (extract: 'charged with inciting bomb outrage at house being built for Mr Lloyd George at Walton Heath'). [Not held].

*The Illustrated London News* 24 May 1913 'From pavement-chalking to arson, window-breaking and bombing: the progress of Militant Suffragism' - a double page spread of photographs: <http://www.nationalarchives.gov.uk/wp-content/uploads/2018/02/ZPER34-142-13.jpg>

7.13. In 1914, with Britain's declaration of war, the WSPU negotiated with government (and Lloyd George) to suspend its violent campaign. In exchange for releasing suffragette prisoners and suspending its violent tactics, the WSPU advocated support for the war and conscription, and changed the name of its publication to *Britannia*. Mrs Emmeline Pankhurst publicly condemned dissenting organisations and individuals – handing out white feathers to men who had not enlisted. On 9 March 1917, she cabled the Australian Prime Minister repudiating her daughter Adela for being associated with the Women's Peace Army and promoting socialism in Australia.<sup>565</sup>

*Alleged involvement by the Wheeldons in suffragette 'outrages'*

7.14. On 3 February 1917, the Attorney-General's Opening Speech before the Derby magistrates primed the court for Booth's evidence of Alice Wheeldon's involvement in suffragette plots and acts, especially arson that destroyed the interior of the local Breadsall Church near Derby.<sup>566</sup>

7.15. One incident cited by 'Gordon' in his Police Statement was not raised at trial because it was subsequently found to be not true. 'Gordon' claimed that Alice Wheeldon had said:

'It was first tested on a well known detective who died very suddenly according to the press. ..The detective was killed because a picture appeared in the illustrated press depicting his carrying Mrs Pankhurst in his arms and it was considered by the suffragettes as an insult.'<sup>567</sup>

7.15.1. On 22 May 1914, Chief Inspector Francis Rolfe had (re)arrested Emmeline Pankhurst. On 26 July 1914 Rolfe died and an inquest was ordered, owing to speculation about cause of death by the *Daily Mail* 27/28 July 1914.

7.15.2. On 24 January 1917, at the request of the DPP, Scotland Yard investigated 'Gordon's' claim about the detective. Their memo of 24 January 1917<sup>568</sup> enclosed a copy of the 1914 Coroner's report whose verdict was accidental death by blood poisoning following injury to an elbow, occasioned by a witnessed fall.

7.15.3. This report also has the cautionary memo by Commissioner Henry expressing his 'inquietude' about 'Gordon's' Police Statement with respect to the credibility of evidence.

<sup>565</sup> *The Argus* (Melbourne, Australia), 9 March 1917, p. 6 'Ashamed of Adela'. Mrs Pankhurst's message. Repudiates daughter. [Held: Newspapers].

<sup>566</sup> Attorney-General Opening Speech February in *Record* p.7; March, in *Record* p.147. [Held: Proceedings]

<sup>567</sup> Gordon Police Statement, 18 January 1917, p.4. DPP archive. [Held: TNA > DPP 1 50 > Gordon Statement, Sheet 841]

<sup>568</sup> Memo 24 January 1917 by Inspector Edward Parker, with comments & signed off by Superintendent Patrick Quinn, enclosure *Report of Inquest* 30 July 1914 [Sheet 4], Metropolitan Police, Special Branch. [Held: TNA> MEPO> MEPO 9356-06-01].

Inspector Parker found that the inquest showed that Chief Inspector Rolphe died from blood poisoning following a fall when on duty at the Royal Agricultural Show in Shrewsbury, in July 1914.

*Daily Mirror* 22 May 1914, front page photograph of Chief Inspector Rolphe with Mrs Pankhurst in the arms of the arresting officer [Held: Newspapers].

### 7.16. Breadsall Church arson

- 7.16.1. On 4 June 1914, Breadsall All Saints Church, near Derby, was burnt down following an arson attack, immediately supposed as a suffragette outrage.<sup>569</sup> Occurring only a couple of days after the explosion in Westminster Abbey and the finding of a bomb at Aston Church in Aston-on-Trent Derbyshire, the Breadsall attack 'served to accentuate feelings of anxiety' in the local Derby area.<sup>570</sup>
- 7.16.2. In July 1914, the police had concluded that the Breadsall fire was the work of a WSPU-paid activist from London named Eileen Casey, and her local help (most likely Hilda Cross), who organised WSPU activities in the Derby area.<sup>571</sup> Cross was arrested in Nottingham and sentenced to 15 months imprisonment.<sup>572</sup>
- 7.16.3. In December 1916, following suggestions in reports from both 'Gordon' and Booth, PMS2's Melville Lee investigated the possible connection of the Wheeldons to the Breadsall fire.<sup>573</sup> He found no evidence of a connection between the Breadsall church arson and the Wheeldons.

### 7.17. Skulls and poisoned needles

- 7.17.1. Another pre-war 'outrage', in London, in 1913 was the delivery by suffragettes of a skull painted with WSPU colours to the house of Reginald McKenna, then Home Secretary in Asquith's cabinet. McKenna had introduced the *Prisoners (Temporary Discharge for Ill-Health) Act 1913*, which the suffragettes saw as undermining their tactics of prison hunger strikes.

<sup>569</sup> *Derby Daily Telegraph*, 5 June 1914, p.2 col 6 'Breadsall Church burnt down, supposed Suffragette outrage' [Not held].

*Derbyshire Advertiser*, 6 June 1914, p. 9 'Breadsall Church burnt down'. *Derbyshire Advertiser* also reported 12, 13 June and its restoration on 20 November 1914. [Held: Newspapers];

*The Suffragette*, 12 June 1914, p.149 cols 2-3, 'Destruction of ancient church' [Not held];

*Votes for Women*, 12 June 1914, p.5666, col.1 'Revolutionary actions' [Held: Newspapers].

Metcalfe Agnes (1917), *Woman's effort: a chronicle of British Woman's fifty years' struggle for citizenship (1865-1914)*, Oxford: Blackwell, p.314. <https://archive.org/details/womanseffortchro00metcuoft/page/314>

<sup>570</sup> *Derby Daily Express*, 13 June 1914, 'Mad Women Peril. Bomb found at Aston. Church guarded by villagers.' [Held: Newspapers].

<sup>571</sup> *The Suffragette*, 3 July 1914, p.7 'Sensational arrest'; *The Suffragette*, 10 July 1914, p. 6 'Militants in the Courts. Defiant scenes at Nottingham, Carnarvon, and Edinburgh'. [Held: Newspapers].

<sup>572</sup> Chief Constable of Nottingham to Home Office, 26 June 1914, enclosing cutting from *Nottingham Daily Express*, and report 're Irene Casey' by Detective Sergeant Ben Smith, 26 June 1914; file 11, cutting from *Nottingham Guardian*, 28 July 1914, Home Office files: TNA, HO 144/1206/222067, file 10 [Not held].

Elizabeth Crawford *The Women's Suffrage Movement: A Reference Guide, 1866-1928* (Routledge, London, 2001), pp.147-8, 'Eileen Casey.' [Not Held].

<sup>573</sup> Reports by Melville Lee, 31 December 1916.: Special Branch MEPO [Held: TNA > HO 144-13338-331997 - Transcription of Reports].

With de Valda, Melville Lee went 'to interview the Rector of Breadsall, Mr Whitaker and his wife. ... I went to County Constabulary Office, ... subsequently brought some papers [police file, newspaper clips with photographs] to me ... and arranged to see Superintendent Richardson in the morning ... another who may be worth investigating is Miss Cross.': Major Melville Lee's 2nd Report', 3 January 1917, p 12; and, noted the next day 'Shannon [Station Master] has no knowledge of Miss Cross', '3rd Report', 4 January 1917, p.18, Home Office files. [Held: TNA > HO 144-13338-331997 - Transcription of Reports].

- 7.17.2. In preparation for the Wheeldon trial, Melville Lee had investigated 'Gordon's reports about Alice Wheeldon's proposal to thread a poisoned needle through the crown of the skull. He asked the Home Office: 'Whether Mr. McKenna (or Mrs.) received a skull painted with W.S.P.U colours whilst he was Home Secretary as to the wording of the note which accompanied it'.<sup>574</sup>
- 7.17.3. As part of this investigation, on 18 January 1917, police interviewed McKenna's butler at Knightsbridge Barracks. They reported that: 'in 1913 or 1914 a small fruit basket had been delivered to the Home Secretary's house, near the Houses of Parliament, containing a human skull with 'Votes for Women' written across it. McKenna had not been told of the incident, and his butler had burned the basket and its contents in the basement furnace.'<sup>575</sup>
- 7.17.4. At trial, referring to the delivery of the skull, the prosecution alleged that Alice Wheeldon intended 'to do McKenna in' by adding a poisoned needle but that this was abandoned 'because an innocent person might touch it and die'.<sup>576</sup>
- 7.18. The poisoned nail in the boot**
- 7.18.1. Another example of a poison plot cited by the prosecution involved Lloyd George himself.
- 7.18.2. At trial, Booth claimed Alice Wheeldon had spoken of the suffragettes' plans or ideas for poisoning Lloyd George with the implication that she had been involved.
- 7.18.3. He stated that she had said: 'We had a plan before when we' – that is, the suffragettes – 'spent £300 in trying to poison him. It was to get a position in a hotel where he stayed, and drive a nail through his boot that had been dipped in the poison. But he went to France...'<sup>577</sup>
- 7.18.4. In his Opening Speech, the Attorney-General recognised that 'some element of confirmation may reasonably be asked' of the 'references to a nail in the boot that had been dipped in poison' as they risk sounding as 'conceptions so singular, and even apparently so wild'.<sup>578</sup>
- 7.19. All these references from the prosecution had the potential to create the impression for the jury that Alice Wheeldon and her daughters had experience in and were capable of using poison in violent, criminal acts.

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<sup>574</sup> Melville Lee's 2nd Report, 3 January 1917, page 9: HO file transcriptions: [Held: TNA> HO 144-13338-331997 > Transcription of reports].

<sup>575</sup> Report by Sergeant Harold Brust & Supt Quinn, 18 January 1917. [Held: TNA > HO 144-13338-331997 > Transcription of reports].

<sup>576</sup> 2nd Trial, Third Day, Booth EIC in *Record* L2892. [Held: Proceedings] Quoted in full at para 5.44.1.

<sup>577</sup> 1st Trial, First Day, Booth EIC L173 in *Record* p. 237. [Held: Proceedings]

<sup>578</sup> Attorney-General Opening Speech March 1917, in *Record* p.158-159. [Held: Proceedings]



- 7.20. The Attorney-General had put that the Defendants, 'desperate and dangerous' used covert actions. He had already framed the gravity of the charges directed at the Premier (and Arthur Henderson) as unpatriotic conduct; he further condemned the Defendants for sharing views of conscientious objection, despite this being a recognised category under the Military Services Act.<sup>579</sup>
- 7.21. By so characterising the Defendants, the jurors could have been persuaded that Defendants were guilty before the production (and non-production) of witnesses.

### *Breaches of prosecutorial standards*

- 7.22. In 1917 the governing body of the Bar, the Bar Council, issued a statement setting out the general principles for 'Cross-examination to Credit' by which counsel should be guided in cross-examination on imputations as to character of a witness. In this statement the Bar Council referred to both the Rules of the Supreme Court and the subject's fuller treatment by Sir James Stephen in the Indian Evidence Act 1872.<sup>580</sup>

The first and second principles state:

'1. Questions which affect the credibility of a witness by attacking his character but are not otherwise relevant to the actual Inquiry, might not be asked unless the cross-examiner has reasonable grounds for thinking that the imputation conveyed by the question is well-founded or true.

'2. A barrister who is instructed by a solicitor that in his opinion the imputation is well-founded or true, and is not merely instructed to put the question, is entitled *prima facie* to regard such instructions as reasonable grounds for so thinking, and to put the questions accordingly.'

- 7.23. At trial, before completing cross-examination of the principal Defendant, the Attorney-General again put to her a series of criminal acts, allegedly told by her to Booth, all of which he named as suffragette acts. The investigations of these alleged acts, however, had produced no evidence of involvement by Alice Wheeldon and the results of these investigations were forwarded to the Director of Public Prosecutions, the instructing solicitor and senior counsel. They possessed knowledge, therefore, that there were no reasonable grounds for thinking that the imputations conveyed by the questions were well-founded.
- 7.24. In terms of F.E. Smith KC's advocacy, the Wheeldon case is not the only case that is arguably in breach of prosecutorial standards in making imputations and deploying emotive language in attacking character. As Andrew Watson (2019) observed:<sup>581</sup>

'F.E. Smith attracted a good deal of criticism [later in his career], when Attorney-General, for exceeding bar etiquette, requiring restraint by

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<sup>579</sup> *Southern Daily Echo* 7 January 1916, 'Compulsory Military Service. Text of the Bill. The Conscientious Objector', [Held: Newspapers].

<sup>580</sup> Transcription and scanned copy of 'Cross-examination of Credit' 1917 and a copy of the *Indian Evidence Act 1872* [Held: General Council of the Bar Rules 1917].

<sup>581</sup> Watson Andrew (2019) p.162-163 and footnote 28 from 'Chapter 8 - A Spectacular Quartet of Leading Barristers' [pp. 153-172] in *Speaking in Court. Developments in Court Advocacy from the Seventeenth to the Twenty-First Century*, Palgrave Macmillan. DOI <https://doi.org/10.1007/978-3-030-10395-8>. Print ISBN 978-3-030-10394-1. Online ISBN 978-3-030-10395-8 [Held: Articles > Watson].

prosecutors, by the vigour with which he sought the conviction of Sir Roger Casement, tried for treason before three High Court Judges in 1916.'

7.25. Regarding the Wheeldon trial, Watson commented further on F.E. Smith's fairness as a prosecutor:

'At their committal and trial, Smith employed highly prejudicial, emotive and venomous language and, it is alleged, deliberately suppressed harmful evidence to the Crown in what was in effect a show trial against elements hostile to continuing the War; a view confirmed by the release of MI5 papers eighty years later. See John Jackson, *Losing the Plot*, History Today, May 2007.<sup>582</sup> Interview with Mr. Jackson held on 26th November, 2007.'

7.26. Other informed critics of the conduct of the Wheeldon trial, both contemporaneously and since, have also observed the prosecutorial conduct and lack of restraint in procedure by the Crown's prosecution led by F.E. Smith as then Attorney-General.<sup>583</sup>

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<sup>582</sup> John Jackson 2007 [Held: Articles> Jackson 2007].

<sup>583</sup> D.H. Prynne D.H. (1917) 'A dangerous precedent' *New Witness* 31 May 1917 p.115 (Prynne had acted for the DPP in 1913); George Stanley Goldwin (1940) 'Lloyd George Murder Plot - that wasn't!' *Reynold's News* 31 March 1940, p.6 cols 1-3 [Held: Newspapers];

D.N. Pritt (1958) 'Chapter V - The use of informers in war' pp. 37-44 in *Spies and Informers in the Witness-box* London: Bernard Henison Ltd. [Held: Articles].

## 8. CONCLUSION

- 8.1. It is respectfully submitted to the Commission that there are powerful reasons to conclude that there is a real possibility of the verdicts being overturned if the case is referred to the Court of Appeal. Fundamentally, the role of 'Gordon' and his conspicuous absence from the trial, seen in light of the revelations as to his true identity and character, seismically undermine the safety of the convictions.
- 8.2. Further, there are powerful reasons for the Commission to exercise its discretion in favour of making a referral. The impact of the case upon the Defendants and their descendants, its historical importance and its contemporary resonance, all combine to make the application uniquely worthy of referral despite its age.



ANDREW SMITH QC



BEN WILLIAMS

St Philips Chambers



CHLOË MASON

Applicant

Date: 11 November 2019

## APPENDIX 1 – GUIDE TO THE ‘DOCUMENTS’ FOLDER

The **Documents** folder contains the:

- list of authorities
- proceedings
- statements from third parties in support of this application and the CCRC’s referral
- copies of the sources cited in the text.

Sources are structured into sub-folders. The location of sources cited in the text are shown by [Held: xxx]. Copies of files held by The National Archives (‘TNA’), at Kew, are those in archives, for example, of the Director of Public Prosecution (‘DPP’), the Home Office, Special Branch Metropolitan Police etc.; they are shown by [Held: TNA > DPP 1-50 >] etc.

Where appropriate, a standard page, Description of Documents gives the record number, description of documents, and as needed, a numbered index and comments. For some handwritten documents, selective passages are transcribed in the Description of Documents.

Generally, multi-page documents have been combined into a single pdf. However, some documents in sub-folders for example, Colney Hatch, an asylum, are more easily read by accessing separate page(s).

### *Proceedings*

The copy of trial proceedings given here is from the unique, volume titled *Record of Proceedings Rex v Wheeldon* copied by the University of Cambridge Library. Use is made of this source because it contains the only copy of the full trial, whereas the copy in the DPP files held in The National Archives is incomplete in not having the first two days of the five-day trial.

Here, the Document Description demonstrates that the content is identical for comparable pages, and also gives the detailed provenance of this source.

Copies of this *Record of Proceedings Rex v Wheeldon* are located in the sub-folder ‘Proceedings’, in footnotes shown as ‘in *Record* page X [Held: Proceedings]’. This volume has sequential numbering, at top right handwritten, unlike the DPP files. The text refers to a citation with page numbers from this *Record* in the format: ‘in *Record* p. X’. The description of documents for the Proceedings demonstrates these points and also documents its provenance

### *Documents not held*

The Applicant can supply copies of materials designated as ‘not held.’

## Structure of the Documents folder

Including contents of key subfolders

