THE BIRMINGHAM INQUESTS
(1974)

Coroner: His Honour Sir Peter Thornton QC

RULING ON MATTERS TO BE LEFT TO THE JURY

Introduction

1. These proceedings are the inquests into the deaths of the 21 persons who were killed as a result of bomb explosions in two public houses, the Mulberry Bush and the Tavern in the Town, in Birmingham City Centre on 21 November 1974. The inquests were ordered to be resumed by the Senior Coroner for Birmingham and Solihull on 1 June 2016. The hearing of the inquests commenced before me on 25 February 2019.

2. On 2 April 2019 I made certain rulings on matters to be left to the jury. They included the questions to be left to the jury in a Questionnaire.

3. I am most grateful for the extensive written submissions of all counsel and for oral submissions which I heard on 2 April 2019.

4. My rulings on that date were a summary of my decisions so that we could progress the inquest to the Summing Up and the Jury's deliberations. I undertook to provide a fuller, more reasoned written Ruling in due course. This is my written Ruling.

5. It should be noted that the jury returned their findings and conclusions, including their answers to the questions in the Questionnaire, on 5 April 1974, before this fuller ruling.

The Questionnaire

6. It had been agreed between all counsel, including counsel for the Interested Persons (representing some of the families of the deceased and the West Midlands Police) as well as my legal team, that the appropriate way of eliciting from the jury their findings on the central issues and their conclusion for each of the 21 deceased would be to ask the jury to answer questions in a formal Questionnaire.

7. This route to verdict (now conclusion) was approved by Lord Bingham of Cornhill in the leading authority of *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182 at [36]. Emphasising that the choice was the coroner's, in the exercise of his

discretion, to decide how best, in the particular case, to elicit the jury's conclusion on the central issue or issues, Lord Bingham stated:

> This may be done by inviting a form of verdict expanded beyond those suggested [as short-form verdicts] … by inviting a narrative form of verdict … [or] by inviting the jury's answer to factual questions put by the coroner.

8. Questionnaires have therefore been used by coroners especially in more complex cases, most notably in the Hillsborough inquests in which Sir John Goldring, the Coroner, left 14 questions for the jury's consideration.

9. The use of a Questionnaire allows the jury to give answers on the central issues, particularly in an Article 2 inquest, which this is, in order to carry out their function of answering the statutory 'how' question: By what means and in what circumstances did the deceased come by their deaths?

10. My legal team helpfully drafted eight questions (some with sub-questions) under eight separate headings. The draft was used for the purposes of discussion and submissions. Each question was followed by an explanation box, which the jury could use to add further explanation should they wish to do so. In addition, some questions were followed by a list of considerations (bullet points) which the jury could consider if they wished. Some of the questions were challenged. Some of the considerations were challenged. I ruled on both.

11. I will consider each of the eight questions in turn.

Question 1: Basic facts of the bombings

12. This question was agreed by all Interested Persons. I ruled that it should stand.

Question 2: Attribution of the bombings

13. This question was agreed by all Interested Persons, subject to a minor amendment on the wording, which I approved.

Question 3: Unlawful killing

14. The question at 3b. on unlawful killing was agreed by all Interested Persons. It was agreed that I should direct the jury that this was the only short-form conclusion available to them on the evidence. I therefore directed the jury to answer Question 3.b Yes and to enter the conclusion of unlawful killing on each of the 21 Records of Inquest at Box 4.

15. Question 3a. asked: Are you satisfied, so that you are sure, that those who died as a result of the explosions in the Mulberry Bush and Tavern in the Town were murdered?

16. It was agreed by the Interested Persons that 'murder' was an appropriate route to the conclusion of unlawful killing and that I could direct the jury to answer Yes to this question, so long as I could be sure that in law no alternative of manslaughter was available. I was so sure and I did accordingly direct the jury to enter the answer Yes to the murder question. My reasons are as follows.

17. In my judgment the alternative of manslaughter was not available on the evidence. There was no doubt on the evidence that two high explosive devices of

considerable size were planted and primed (either before the planting or after) to explode in the two pubs. Both pubs were busy. It was a Thursday evening, both pay day and late night shopping in the City Centre. It was estimated that the Mulberry Bush, the smaller pub, had about 40 customers and the Tavern in the Town about 200 customers.

18. There was incontrovertible evidence that it was intended that the bombs would explode in the pubs, both confined spaces, and the effect would be massive devastation. The bombs were estimated by explosives experts at the time, and confirmed recently by explosives expert Alison Mansfield to comprise of approximately 25-30lbs of gelignite (dynamite) at the Mulberry Bush and 30lbs of similar explosives at the Tavern in the Town. These were massive bombs and much bigger, and in many cases twice as big if not more, than previous explosive bombs set to explode in the West Midlands. The intention to cause massive destruction was clear.

19. The only evidence which might have raised the alternative to murder of manslaughter, and on the basis of lack of intent for murder, was the hearsay evidence provided to the witness Chris Mullin by the now deceased and admitted Birmingham pub bomber Mick Murray. Mr Mullin, an investigative journalist (and also a former Member of Parliament) had investigated the alleged perpetrators of the Birmingham pub bombings in order to clear the names of the Birmingham Six, the six men who were convicted of the murders of the 21 deceased in August 1975 and released following successful appeals against conviction in March 1991. Mr Mullin had interviewed a number of IRA Volunteers from the 1974 era for this purpose. One of those was Mick Murray.

20. Mick Murray told Mr Mullin that the IRA had intended that the bombs should explode, but not that lives should be lost. He explained to Mr Mullin that he had made a warning call to the Birmingham Post and Mail and claimed that he had done so with sufficient time for the pubs to be evacuated by the police. The bombs, he claimed, exploded at 8.28pm. This raises, on the face of it, the possibility of a lack of intent for murder.

21. These claims of Mr Murray were, however, not remotely credible. For a start his claim of 8.28pm is impossible. The range of evidence about timings puts the timing of the explosions as notably earlier, approximately 8.15pm-8.20pm. But more precisely the 999 call record sheets which are still available after 44 years show that the first explosion at the Mulberry Bush must have been before 8.28pm. The first record is timed at 8.23pm and the record of the call does not state how much earlier the explosion had occurred.

22. Furthermore, Mr Murray claimed to Mr Mullin that there had been sufficient time for evacuation. He claimed that there was a half hour warning, meaning that the time from the warning call to the explosion allowed a clear half hour, sufficient for evacuation. This was not correct either. The warning call received at the Birmingham Post and Mail was timed and recorded by the telephonist there, Ian Cropper, at 8.11pm. There is no evidence to contradict that time. Half an hour from that time would have taken the timing well beyond the time of both explosions.

23. Mr Murray also told another witness, Witness O, a former Birmingham IRA Volunteer, when they met on an unspecified date in Dublin later, that the warning had been given in plenty of time. On this occasion he claimed that the warning

call had been given one hour before the bombs were due to explode. This was different from the explanation provided to Mr Mullin. It was also impossible.

24. Further, Mr Murray claimed to Mr Mullin that the reason why the warning call was later than intended was because telephone boxes had been vandalised. He also said that one had been occupied. There is considerable doubt about this account. It may well have been an excuse so as to avoid serious punishment (even execution) before an IRA disciplinary tribunal. His claim to Mr Mullin of two or three or even four phone boxes being vandalised was not credible, particularly on the timings given. He had taken something like 16 minutes to find a phone box that was working. In any event there is no evidence from any other witness that any telephone box in the vicinity had been vandalised. Indeed there was some evidence that phone boxes were working and had been used.

25. Furthermore, a completely different excuse was given to Witness O. Mr Murray told Witness O that the reason for the deaths was that 'MI5 allowed it to happen'. Mr Murray made no mention to Witness O of telephone boxes, vandalised or otherwise. The assertion about MI5, although apparently spread in IRA circles, was, according to my investigation and the evidence at the inquest, without any foundation. Mr Murray's excuses were therefore not credible.

26. And there was other evidence, albeit again both retrospective and hearsay, suggesting an intention to kill. Mr Murray was not unhappy with the fatal outcome of the bombings. About a year after the bombings, he told Witness O at a court hearing: 'We should have carried on … It caused so much chaos, it would do no harm if it happened every hour.'

27. All in all, there is no credible evidence that manslaughter as a route to the conclusion of unlawful killing could properly have been left to the jury on the basis of lack of intent by the bomb planters to kill or cause serious bodily harm.

28. Alternatively, as Mr Johnson QC submitted on behalf of West Midlands Police, this was murder, not manslaughter, in line with the approach of the Court of Appeal in the case of *R v Nedrick* [1986] 1 WLR 1025. I agree. The actions of the perpetrators, coupled with a warning call that was too late and too uncertain (it referred to neither pub by name nor any timing for the explosions) meant that death was 'a virtual certainty'. Broadly speaking this was the approach taken in the trial of the Birmingham Six when Mr Justice Bridge directed the jury that this was in effect murder, not manslaughter.

29. Since I have concluded that the evidential basis for lack of intent to commit murder is totally absent, I will not develop this alternative approach. There are good reasons why the West Midlands Police have conducted a murder inquiry for the past 44 years.

30. Either way, I accept that this was murder in law and I directed the jury accordingly. I directed them to answer Question 3a. Yes.

Question 4: The warning call

31. I directed the jury to answer all five sub-questions as Yes. On the evidence there are no alternative answers.

Question 5: The timings of the explosions

32. This question was agreed by all Interested Persons. I ruled that it should stand.

33. I did not agree with two submissions about the bullet points. I did not agree to the addition of a bullet point suggested by Miss Williams nor to the removal of one bullet point as suggested by Mr Thomas. In my judgment neither submission added to the effect of the question. Nor did I agree with Mr Johnson that I should provide a permissible range of times. The assessment of the timings of the explosions is entirely a matter for the jury in the light of the helpfully prepared evidence of timings given by civilians, and given in evidence through Mr Mole, the police professional witness, and through my own summary of times provided to the jury in the summing up drawn from the public service witnesses, especially the police.

Question 6: The adequacy of the warning call

34. I ruled that Question 6 should stand. I also ruled that the alternative *Lewis* question of possible cause should be left to the jury (see below). I also suggested minor amendments to the wording of the alternative *Lewis* questions (see below) in order to achieve consistency of wording. These were agreed. A similar alignment of wording was adopted for Question 8.

35. Mr Johnson for the West Midlands Police had submitted that I should direct the jury to answer Question 6a., b. or c. as Yes. Although the evidence in favour of Yes answers was strong, I declined to do so. This was a matter for the jury properly directed on the evidence.

Questions 6-8: probable/possible

36. Mr Johnson also submitted in relation to Questions 6-8 that there was no sufficient evidence, on a *Galbraith* Plus basis, for the lesser alternative of possible cause to be left.

37. It is now well established that a coroner has a power, not a duty, to leave to the jury causes of death that possibly caused or contributed in a more than minimal, negligible or trivial way to the deaths in question: *R (Lewis) v Mid and North Shropshire Coroner* [2009] EWCA Civ 1403, [2010] 1 WLR 1836; *R (LePage) v HM Assistant Deputy Coroner for Inner South London* [2012] EWHC 1485; see also *R (Chidlow) v HM Senior Coroner for Blackpool and Fylde* [2019] EWHC 581 (Admin).

38. When that power is to be exercised, in the coroner's discretion, is not entirely clear. As yet the authorities have provided little or no guidance.

39. There are, however, in my judgment reasons here to exercise my discretion and leave the 'possible' alternative on each of the three questions, so long as there is sufficiency of evidence, on a *Galbraith* Plus basis, for each question to be left. I will return to sufficiency of evidence.

40. In the first place the passage of time may make it more difficult for the jury to decide that something <u>probably</u> caused or contributed to the loss of life. 44 years have elapsed since the Birmingham pub bombings in 1974. Some witnesses have found it difficult to remember. Others have clearly misremembered while

doing their best. Some documentary evidence has gone missing or, in some cases, may never have existed. It is not always easy to tell which.

41. Secondly, it should be noted that the events of November 1974 continue to have a considerable significance for Birmingham and the people of Birmingham. The loss of life was substantial. 21 died, many of whom were young, and over 200 were injured, some with life-changing injuries. In my judgment clear and simple questions, without complication or confusion, provide the jury with fair and sensible opportunities to provide answers on the central issues.

42. Further, I take the view that the standard of a realistic possibility is a good minimum standard for the jury's consideration.

Questions 6-8: sufficiency of evidence

43. In my judgment there was sufficient evidence, on a *Galbraith* Plus basis, to leave all three questions, Questions 6-8, to the jury. I will deal with each in turn. In the light of the jury's answers, now given, I will keep this short.

44. On Question 6 there was clear evidence for the jury's consideration. There was good evidence that the warning call to the Birmingham Post and Mail at 8.11pm was late, may have been delayed, was inaccurate in that it made no reference to the two pubs, and made no reference to the timing of the explosions.

45. On Question 7, the police response to the warning call, there was ample evidence for the jury to consider and upon which they could safely rely in answering the question (and sub-questions) Yes or No. Issues upon which the jury had heard evidence included whether there were, following the coded warning call, any directions to police officers to attend King Edward House which had the Tavern in the Town pub in its basement; whether either Force Central Control or Digbeth Police Station Control could or should have made it clear to officers attending the scenes that the warning call had included an IRA code; the decision to search the Rotunda building (above the Mulberry Bush) before evacuating any premises which were part of the Rotunda, including the Mini Restaurant and the Mulberry Bush; and the decision not to cordon off the Rotunda including the Mulberry Bush before searching.

46. These were some of the key issues, but there were others, not least the short time the police had to attend the scenes. The weight of the evidence on timings strongly supports the conclusion that the bomb at the Mulberry Bush exploded at 8.18pm and the bomb at the Tavern in the Town exploded at 8.20pm. On those timings there were only seven and nine minutes between the time when the warning call was received by the Birmingham Post and Mail at 8.11pm and the bomb explosions. There was even less time if the Report by Chief Superintendent Brannigan (dated 29 November 1974) was accurate when it stated that the 8.11pm call was passed on by Mr Cropper to the police at 8.14pm. If correct, that left just four minutes before the first explosion and six minutes before the second, and the evidence showed that the police were at both scenes either before or at the time of the explosions, a quick response.

47. These were all matters for the jury to consider. They were explored in some detail in the evidence.

48. Mr Johnson submitted that the issue of the police response (Question 7) was not within scope as identified by me in my rulings of 3 July 2017 and 31 December

2018. That is not correct. From an early stage my legal team had listed, without disagreement or controversy, 'The police response to the warning', as a topic for the jury to consider: see Draft Provisional List of Topics of 13 July 2017 at 5.c.

49. Mr Johnson further submitted that the police response to the warning call should not have been left to the jury for a number of reasons including that they had heard no expert evidence as to 'the appropriate emergency response to such a call'. I do not agree that expert evidence was required. There was sufficient evidence about (a) the content and timing of the warning call to the Birmingham Post and Mail; (b) what Mr Cropper who received the call did with it; (c) what Force Central Control did with the message received from Mr Cropper; (d) what was received from Digbeth Police Station Control from Force Central Control; (e) what directions were given to police officers on the ground; (f) what they were told and whether, if told about the warning containing an IRA code, it would have made any difference; (g) what could or could not have been done within the timescale (as found by the jury); and (h) the usual methods employed by officers when responding to bomb threats.

50. All of this evidence was scrutinised by questions from counsel with care. In my judgment there was sufficient evidence without the need for expert evidence, particularly in the light of a number of police officers on the ground giving evidence that what they would do, how they would deal with a bomb warning, was a matter for their individual judgment in the circumstances as they found them on the information provided. It is long-established in law and practice that the coroner has a wide discretion in deciding which witnesses to call and whether expert evidence is necessary: see *Chambers v HM Coroner for Preston and West Lancashire* [2015] EWHC 31 (Admin) (DC) at [31] and authorities cited. The jury were well-placed, having heard all of the evidence, to make findings on the reasonableness or otherwise of the police response, without the need for expert evidence.

51. I made certain amendments to the bullet points. I removed the words 'including the question of where the people should go' in xix. because there was no or no sufficient evidence relating to these explosions that evacuation of the Rotunda was considered but declined on the basis that it would be dangerous to evacuate when the site of the bomb was not known. I removed bullet points relating to police failure to telephone the pubs on the basis that on the evidence the issue was too remote. I agreed to amendments to cover the issue of whether police cordons or other means of crowd control should have been considered.

Question 8: Forewarning

52. The topic for Question 8 was forewarning. When the Senior Coroner for Birmingham and Solihull decided on 1 June 2016 to resume these 21 inquests, she did so on the basis that there was some evidence about forewarning which needed to be considered. This evidence related to items (1) and (2) in paragraph 54 below. The Senior Coroner concluded in her ruling: 'It is only in respect of that issue [forewarning] that I consider there is sufficient reason to resume an inquest to investigate the circumstances of these deaths.' (See paragraphs 48-49, 69-70 of her ruling.)

53. I had identified forewarning as a topic to be considered in the inquests in my ruling on scope of 3 July 2017. The forewarning topic was described and agreed by all Interested Persons in these terms:

> Whether West Midlands Police (WMP) or other state agency had prior knowledge that a bomb attack would take place on or around 21 November 1974, and whether further steps could or should have been taken to prevent the bombings that did occur.

54. In a later ruling dated 31 December 2018, following representations from Interested Persons, I identified six topics under the heading of forewarning upon which evidence should be called:

    (1) HMP Winson Green conversation
    (2) Norman Catton: the Dogpool PH conversation
    (3) Arthur Jolley
    (4) Student visit to Steelhouse Lane Police Station
    (5) John Tonkinson
    (6) Talk of the Town

55. All six topics were explored in the evidence, with underlying documentation disclosed. Some topics fell by the wayside and no Interested Person required them to be considered by the jury: Nos. (4)-(6).

56. Some families as Interested Persons submitted that Nos. (1)-(3) should be considered. Mr Johnson on behalf of the West Midlands Police submitted that there was no sufficient evidence, on a Galbraith Plus basis, for any topic to be considered by the jury. So too did Counsel to the Inquests.

    (3) Arthur Jolley

57. As to No. (3), Arthur Jolley, I ruled that this topic should not be left to the jury. In short, there was no evidence that WMP knew about the information provided by Mr Jolley before the explosions. Mr Jolley had been arrested by police in Liverpool on 20 November 1974, the day before the Birmingham pub bombings, for an offence of attempted murder during a robbery in Buckingham. When interviewed by the Merseyside Police he decided to give information about a journey he had made as a taxi driver from Liverpool to Birmingham on 13 November 1974. He suspected that his passenger, who had paid more than twice the normal fare, had been delivering explosives in a wooden toolbox. The box had travelled in the boot of his taxi.

58. The information which Merseyside police had to hand on the morning of 21 November 1974 was (a) Mr Jolley's account and (b) screening tests taken by a forensic scientist which showed traces of nitroglycerine in the boot of Mr Jolley's taxi. This was information which contemporary witnesses agreed should have been passed on to WMP as soon as possible. There is, however, no safe evidence that it was. There is evidence that it was passed on to DS David Speake of the WMP at some time. But he said he did not receive the information before the bombings. DS Thomas Jenkinson of the Merseyside Police said he thought that the information 'would have been' passed to WMP, but he conceded that he did not know. There was therefore no safe evidence that WMP had received this information before the bombings. For that reason I did not leave this forewarning topic to the jury.

    (1) HMP Winson Green conversation

59. As to forewarning topic (1) I ruled that there was sufficient evidence, on a *Galbraith* Plus basis, to be left to the jury. There was contemporary evidence that on 9 November 1974 an anonymised prisoner Witness O was overheard by the

librarian to say to another anonymised prisoner Witness P that 'Birmingham will be hit next week'.

60. There were a number of reasons why this evidence should have been left to the jury. Witness O and Witness P were IRA prisoners, both on remand at the time for IRA terrorist offences. Witness O, who gave evidence at the inquest by a video link from the Republic of Ireland, had been an IRA Volunteer in Birmingham. He had previously been an IRA Volunteer in Manchester where he had committed explosives offences. He had been a Volunteer in Birmingham for only two weeks before his arrest, but he had got to know other local Volunteers. Any words from him about possible forthcoming IRA attacks should therefore have been treated seriously.

61. It seems the words were taken seriously. Police action sheets at the time recorded the words and they were referred to senior officers, particularly Superintendent Crawford, a senior officer then in Special Branch. What happened next is unclear. It is possible from the wording on one of the contemporaneous sheets dated 10 November 1974 that nothing happened. There is handwriting on the note that says: 'Supt Crawford to see', which is followed by further handwriting with Superintendent Crawford's initials below the words 'Noted and filed'.

62. Witness O denied in evidence that the conversation had taken place, stating that he had no prior information about the pub bombings. Witness P (also out of the jurisdiction) denied the conversation. He refused to assist the inquest. Nevertheless, there was in my judgment sufficient evidence on a *Galbraith* Plus basis for the jury to consider.

(2) Norman Catton: the Dogpool PH conversation

63. Similarly, I concluded and ruled that in relation to topic (2) there was evidence on a *Galbraith* Plus basis for the jury to consider. Norman Catton was a heating engineer who was sent by his boss on 21 November 1974 to the Dogpool public house in Birmingham to repair the central heating system. In order to do so he had to crawl underground below the seating. It was lunchtime. This is when he heard Irishmen discussing what he believed to be bombings in the City Centre and their proposing to catch a train at 9.30pm.

64. Mr Catton, who sadly died last year before he could give evidence, did, however, make six witness statements about these events. He said that after hearing the conversation he went straight to the nearby Tally Ho Police Training Centre but was kept waiting for half an hour until he was attended to by a police sergeant. He recounted what he had heard and they went together back to the pub, but everyone had gone.

65. Mr Catton was well thought of. He was described by his daughter Dawn as truthful and honest; by his employer as reliable, trustworthy and fully credible, not a fantasist; and by his divorced wife Patricia as truthful, although from time to time he would 'tend to flower things up, but not exaggerate'. A friend from the British Legion Club, Arthur Jones (a Police Inspector), said: 'From my knowledge of Norman Catton, I would say that whatever he has said he would genuinely believe to be the truth. He is not prone to embellish his account of incidents he relates and I have never had cause to doubt him in this respect.' Lucy Selby knew him for about 20 years: 'I have always found him to be honest, upright, a good citizen; I have never known him be prone to exaggerate or even be a romancer.'

66. Several people were told by Norman Catton about this overheard conversation, several friends and relatives. These accounts, however, by him over the years, sometimes many years, did not always exactly match. Whether this was mis-recollection over time or suggestive of genuine flaws in Mr Catton's account of events was a matter for the jury. There were undoubtedly some inconsistencies in his accounts. Mr Catton's numbers of the Irish men in the pub, whom he crawled out to see, varied from four to six to eight. There were inconsistencies in what he said in statements about identification. In Norman Catton's first statement of 24 October 1991 (or at least the first statement we have – he claimed he had made police statements nearer the time), he stated that the police had never shown him any photographs to identify the men. In his second statement in August 1992, the following year, he said that the police had shown him a photographic album on 15 July 1992 for the first time (about 19 years after the bombings) and he had picked out three photographs, three men out of the six in the Dogpool. In his third statement, later, he said that he had been shown an album of photographs 'approximately a week after the pub bombings'. In his final statement, to my legal team, he agreed there was some confusion, but asserted that he was 'confident' that he had definitely been shown photos in 1974.

67. I concluded that these were matters, amongst others, which went to his credibility as did the character references provided above. I ruled that there was sufficient evidence, on a *Galbraith* Plus basis, to be left to the jury.

68. I therefore ruled that forewarning topics (1) and (2), but no other, should be left to the jury. There was ample evidence for the jury to consider and upon which they could safely rely in answering the question (and sub-questions) Yes or No.

69. These are my reasons for the ruling I gave on 2 April 2019 on the Questionnaire.

70. I also ruled on that date that my Directions of Law in the Summing Up should be amended at (new) paragraph 38 to remove the word 'significant' relating to contribution to loss of life and replacing the phrase with the words ''you can only say that it did cause or contribute to the loss of life if you consider that it made a more than minimal or trivial contribution'. This amendment was agreed by all Interested Persons.

HH SIR PETER THORNTON QC
HM Coroner

10 April 2019