

Mark Cleary 'A Murderer's Victim'

Mark Cleary was the victim of the most appalling, cunning, vindictive and manipulative miscarriage of justice. In the end, I think, we managed to prove it. As I write, his case is making its way to the Appeal Court, and his barrister says he'll hang up his boots if he doesn't get the conviction quashed.

At first, I admit, I didn't want to touch the case.

It was an old case, and a loathsome crime, and as such it triggered two prejudices, one journalistic, the other personal; because the crime was committed as long ago as 1985, I was afraid that the case might seem a little whiskery. And because it involved the killing of a child, my own parental sensibilities were outraged. It was only when I overcame those prejudices and began to countenance Mark Cleary's innocence that I could translate those reservations into outrage; suddenly it wasn't a nine-year-old crime, but nine years of wrongful imprisonment, and, although nothing detracted from the horror of the crime, it seemed unbearably wrong and wretched that a miscarriage of justice should be added to something as terrible as the murder of a schoolboy, for which Mark Cleary was convicted.

The telephone rang on my desk, probably because everyone else was busy on their own line. Sean Webster, a journalist with the *Solicitor's Journal*, had for some time taken a kindly interest in us; he had written a friendly piece about Just Television when we left the BBC's *Rough Justice* programme, and he was a welcome ally in the face of the barrage from the Corporation's massed artillery of plump press officers. The BBC had not taken kindly to our leaving, and had briefed media journalists about us in terms so clumsily vitriolic as to prove counterproductive. There was a solicitor in Nottingham, Sean told me, who had been nursing a murder case for years. He didn't know much about it, but it concerned a body in a canal, and the solicitor wouldn't let the case go.

The case struck several totally arbitrary chords. Steve Haywood,

one of my colleagues and a former editor of *Rough Justice*, came from the East Midlands and knew the waterways well - he lives for his canal-boat, which he has christened *Justice*. But a stronger reason for following up the case at this early stage was the evident conviction of the solicitor involved.

The provincial solicitor lives at the drabber end of the law, a long way and an InterCity day-return away from the elegant fireworks of Appeal Court QCs. It is a tedious round of attendance at magistrates' courts, and chivvying the legal aid board to stump up the niggardly money grudgingly accepted as the rate for the job. Once a case has exhausted the judicial system, of course, the money dries up. Any solicitor who carries on the fight is either heroic or obsessive, and, on either score, worth talking to. Ron Birkett, of the Nottingham firm of Cleggs, is one of this unsung breed - among whom I'd certainly count Mark Hancock, solicitor for the Darvell brothers in Swansea, whose convictions for murder another of my colleagues, Stephen Phelps, and I helped to overturn in 1992. I rang Birkett, and arranged for Bob Duffield, our research consultant to see him.

It was guaranteed to be an intriguing encounter; for although we all become absorbed in the work, Bob has a unique passion and a tenacity about the cases he adopts. There's little he likes more than to comb through mountains of witness statements, cross-referencing them on a vast and expanding chart; I swear his heart leaps at the prospect of confronting an electoral roll, searching for one key name hidden among a non alphabetic list of fifty thousand. No one kills a potential case more quickly or more decisively than Bob Duffield; but when he begins to get a sniff of a miscarriage, no one fights harder. And, because of those misgivings, Bob had to fight hard to win our commitment to the case of Mark Cleary and the drab and sordid crime of which he was wrongly convicted.

The crime was committed on the Wednesday before Easter in 1985.

That afternoon, ten-year-old Wayne Keeton left his grandmother's house on the Bestwood council estate for a spin on his pride and joy, the red-and-yellow BMX bike he had been given for Christmas. He did not return home. Over the next four days, the community mobilized in a search for the child. Since the closure of the local pit the Bestwood area has declined; the heart has gone out of the place. But on this occasion, hundreds of people gave up their holiday weekend to walk the rain-swept moorland and reclaimed slag heaps.

One of these volunteers was Philip Atherton. He was twenty-one. He'd asked his friend Mark Cleary, to come with him. A strange thing happened while they were walking along a part of the embankment of the disused pithead railway, where the boy's BMX had been found abandoned. Atherton was very anxious that they make a thorough search of the area. They both walked, side by side, slashing at the springtime undergrowth with sticks; then Atherton suggested that they swap sides, and double-check the embankment. Although the area had, for obvious reasons, been extensively searched by police only minutes earlier, Atherton found a child's shoe. He showed it to Cleary who, given that police had only minutes earlier completed a fingertip search of the area, assumed it had been discarded as irrelevant. Cleary was also puzzled because he'd combed that very stretch himself without finding anything; it was only when Atherton had suggested that they search again, swapping sides, that the shoe was 'found'. The two left the site at 6 p.m. Less than an hour later, for reasons we can only guess at, the police descended once again on the scene and discovered the shoe for themselves. It was Wayne Keeton's. Had the police really missed the shoe? It seemed unlikely. But why had they come back - had someone tipped them off? If so, it could only be Atherton or Cleary - but why?

On Sunday, Easter Day, four days after Wayne's disappearance, a team of police frogmen searched the nearby River Leen, a narrow stream which runs down from a fishing pond, over a weir, and through a low tunnel before meandering off to swell the Trent. A few yards into the brick tunnel, wedged under water, they found the body of Wayne Keeton.

Philip Atherton was arrested the next day. He confessed almost immediately, his words properly and, as far as we know, accurately minuted. He said he had met Wayne on Wednesday evening outside a row of local shops where the youth of the local Bestwood estate would

gather to gossip, giggle, or, like Wayne, whizz up and down the muddy hillocks nearby - all that remained of the old pithead railway embankment. Philip Atherton introduced himself using the name 'Adey'. Who knows what story he spun, to entangle and enmesh the child; some say there was talk of a midnight raid on a local factory, to steal bottles of pop. Whatever the enticement, the two set off along the route of the old railway track on their bikes. It began to get dark. Wayne, his common sense presumably beginning to get the better of his sense of adventure, asked Atherton to walk him home. Atherton refused. Then, Atherton admitted, acting on a sudden sexual urge he grabbed the child round the throat. Wayne bit him on the thumb. The youth lashed out in pain and fury, felling the child to the ground. As his victim screamed, 'Mum, help me', Atherton tried a forcible sexual assault on the boy, but said that he could not muster an adequate erection. Through terror or exhaustion the boy became passive. Atherton then loaded him, quietly moaning, on to the crossbar of his bike and wheeled him back along the embankment. But they didn't go back to the shops. Atherton left the embankment, to reach the main road that runs parallel to it. The child fell off the bike as they negotiated the precipitous, forty-five-degree slope. Loading Wayne back on, Atherton pushed him across the road and down a track which leads past a bone mill to the River Leen. The child by now was silent. Atherton said he thought he was dead, and tried to wash some blood from his face. Then he heard a shout, and fled. He was back home, he said, by 9.30 p.m. when he had his tea and went to bed.

Such was his confession, and bloodstains on his bicycle confirmed the miserable story.

Atherton was remanded in custody. But some seven weeks later, there was a strange development. His father, a local JP, visited Philip Atherton in the cells, and told him that there was talk around the village of a second person having been involved in the killing. According to Mr Atherton's statement to the police, 'Philip said nothing for about two minutes, then said, "OK, Dad." I said "I want a name." He replied, "Mark Cleary."'

After this conversation, Philip Atherton produced a version of the fatal night's events similar in many respects to his original confession, except for one addition; this time Mark Cleary was with him - and it was Mark Cleary who was responsible for the worst aspects of the attack. It was Cleary, for instance, who kicked the child when he was helpless on

the ground (a new detail in the description of the attack). 'It was really vicious the way Mark put the boot in,' said Atherton. It was Mark's suggestion to 'fuck Wayne'.

The day after this new statement, Mark Cleary was arrested. He worked as a cleaner at the Shire Hall in Nottingham, which, by a strange irony, housed at the time the city's principal courts, as well as a police station. It was part of Mark's job to make sure the imposing mahogany of the law was properly buffed, and to clear up the legal detritus at the end of trials, as well as swabbing the station floor. He also had to look after some of the grislier departments of the Shire Hall complex - like the flogging room where the easel still stands, with its buckles and restraints, and the sink provided for the man with the birch after he had done his bloody and sweaty work. The old, medieval condemned cells are still there; tiny, rat-ridden holes in the wall, after which the fresh air of the scaffold, behind the tall brick prison wall, must almost have been a relief. On that day, however, Mark was asked by his supervisor to go to the staff room, a snug, dusty boxroom furnished with the sort of friendly old armchairs the council bureaucrats chuck out, but which never quite reach the skip. He was told that two officers wanted to talk to him. Mark Cleary was totally unprepared for what was to follow.

He was taken by car to Hucknall Police Station, on the outskirts of Nottingham. Mark Cleary was interviewed four times. We cannot be absolutely sure about what happened, because no contemporaneous notes were taken. Yet, strangely, some of the conversations are written up apparently verbatim, every exchange detailed, even down to the inclusion of dialect words, some twelve days later. There is one major omission: none of the strenuous denials which Cleary says he made during the first two hours are noted down. The interviewing officer, Detective Superintendent Newton, told Cleary that he believed Atherton 'because he has no reason to tell lies, he's already admitted what he's done.'

Under pressure - Cleary claims the police persistently accused him of being a homosexual killer - and without a solicitor present, Cleary eventually began to make halting and limited admissions. Yes, he had gone along with Atherton and the boy. Wayne began to get on the nerves of the two youths; Atherton hit him and Cleary went home. Two hours later, the police suggested to Cleary that he would feel better if he could only bear to unburden himself fully of his guilt. Cleary

apparently replied: 'I know what you mean, I just haven't been able to talk to anyone about it.'

It makes a refreshing change; most 'confessions' usually start - according to the police - with the contrite cliché 'I am so glad to get this off my chest at last.'

The police asked if Cleary kicked the boy. Cleary said he may have struck the boy, to shut him up. The police persisted, asking if it was a hard and deliberate attack. Cleary continued to deny such an assault before admitting that he may have kicked the boy once. 'Only once?' asked the police, who at this stage knew there had been two kicks. Cleary obligingly volunteered that he may have kicked the boy twice. Then - and we have only Cleary's word for it - he told the police that everything he had told them about that night was 'a load of bollocks' and that he had only submitted under pressure. He was held overnight and charged with Wayne's murder.

There are many reasons why people confess to things that they have not done. A cottage industry of forensic psychologists could give you a catalogue of them. In Cleary's case, it was almost certainly a matter of naked vulnerability; a stuttering, ill-educated lad, charged with the most heinous crime in the criminal calendar by officers convinced of his guilt. There was something touchingly understandable in his own simple explanation of why he felt he had to offer the police a confession. 'They took my shoes away,' he told us. No question of rubber truncheons, bright lights and the third degree; they just took his shoes away.

The trial was conducted in an atmosphere thick with anger and recrimination. Nottingham's Number One court, whose antique benches, jury box and dock Mark Cleary had polished so often, was thronged to the gallery. 'There was a Roman circus atmosphere,' said one onlooker 'every detail drew gasps of horror and hatred from the audience.' Atherton, his co-accused, did not give evidence and so could not be cross-examined about his accusation of Cleary. Cleary relied on a rather feeble alibi that he had been listening to records at home with a friend called Mick Ryan.

There are two problems with alibis, as far as the law is concerned. For a start, most of us find it hard to remember what we were doing on any particular day. Where were you, at half past six on this day seven weeks ago? Your life may have a regular rhythm and routine. If so, one day seems very much like another. For a young man in a regular and

monotonous job, one evening is very like another. Most people manage to dredge up a recollection of a particular day from what was on the television that evening, but Cleary didn't watch much television. The second weakness in most alibis is that, almost by definition, there are usually only friends or close family around to support them. This gives the court a problem; your mother may be the person most likely to know where you were on Tuesday night, but if she found you soaked in blood she is also the person most likely to want to protect you - by supporting a false account. The very people in the best position to give you an alibi are also the people most likely, from the court's point of view, to want to shield you.

The only independent witness was Mick Ryan. But Ryan had even less reason than Cleary to remember a Wednesday already some months distant. Ryan made a stuttering appearance. With the best will in the world he could not be certain about where he had been so long ago. Both men, Atherton and Cleary, were convicted of murder. Cleary's counsel, Desmond Fennell QC, advised that there was little hope of a successful appeal.

And there, but for a dedicated solicitor, a couple of coincidences, four months' leg work in Nottingham, and Channel Four's money, the case would have ended. Cleary, found guilty of a terrible crime while refusing to admit his guilt, would have had to reconcile himself to facing the best part of a lifetime in jail.

Bob Duffield made his first research trip to Nottingham in late November 1992. Over the next four months there were to be fifteen more, most of them in the company of producer Stephen Phelps - like Steve Haywood, a former editor of *Rough Justice* who left the BBC so that he could devote himself more intensively to this sort of work. It was a brief, exploratory contact; Bob didn't expect to advance the state of the case beyond the scholarly case assessment that he always prepares from the original documents - studded with meticulous footnotes and references. He went to meet Mark's parents.

These are notes from his casebook.

BD Notes on meeting with parents

The overwhelming impression is one of sadness. She chain-smokes nervously. He looks very ill. They tell us how they had to move from

Bestwood after Mark's arrest. Bricks through the window etc. Michael Cleary - older brother - lost leg after being rammed off motorbike by a car driver who hasn't been traced. Discussed Mark's childhood, background, interests. No known gay tendencies. Mad keen on his new moped at the time. They keep reassuring him they're looking after his helmet. Impressively, they've never given up hope. Deeply committed. Sadly, minimal evidential value.

Bob then went to meet Ron Birkett, Mark's campaigning solicitor, and then did the one thing which, in my view, would contribute most to the minimizing of miscarriages of justice; he went to the scene of the crime. The law glories in its dispassionate detachment from the mundane details of life - hence those wigs, those arcane rules of evidence, the collusive, collegiate, senior-common-room, dry-sherry wit of the courtroom. If members of the legal profession could only put on their gumboots and traipse across a few sodden fields they would realise that the crisp, starched version of events with which they are presented is - more than metaphorically - a world away from the creased and tangled truth. Bob saw at once the physical impossibility of wheeling two push-bikes (Atherton's and his victim's) as well as Mark Cleary's moped along the thorny, overgrown railway track. He saw the steep embankment down which Atherton claimed he wheeled his victim; it was virtually unnegotiable even on foot. (When we came to film the site, members of the film crew had to act as a sherpa chain gang, passing the tripod, camera and so on up the slope.) Solicitor and researcher walked across the road, then down the track to the River Leen and found that the path, which we had always assumed was a rutted track, was a metalled road passing through a residential area. Would Atherton really have taken the risk of taking his victim past the illuminated, nine o'clock windows of so many households?

Bob came back with the conviction that something was very wrong about this case. At the heart of it was the deeply implausible notion that a man weak enough to make an immediate confession to killing and attempting to bugar a child would wait for seven weeks before implicating an accomplice. He reported his news about the site visit at a case conference we were holding to determine the next programmes we were going to make. But most of us, apart from our reservations about Cleary being an old and distasteful case, were more interested in a complex conviction involving police malpractice in the North East.

Bob listened to the discussion with concern and bewilderment

growing by the minute. He couldn't understand why we weren't going for the Cleary case. Here, he said, was prima-facie evidence of the most appalling and cruel miscarriage of justice. We knew about the treatment supposed sex criminals received in jail: routine physical assault, and revolting interference with their food. We were impressed that Mark Cleary had not invoked prison Rule 43, which grants such a prisoner the sanctuary of voluntary segregation. (Later, we learnt that we were wrong: Cleary had gone on to Rule 43.) I remember Bob saying that, however much Cleary lacked gangland glamour or the journalistic excitement of police corruption, 'this is exactly the sort of case Just Television should be taking on ... and if we don't, we should pack it all in.' He was right. The glossy, high-profile cases, those with a rolling campaign bandwagon, may be better box office; but we went for Cleary.

The investigation entered its most exciting and unpredictable phase. You knock on a door and don't know what you will find behind it - except, almost certainly, that you'll get a lead to another door you'd never dreamed of knocking on. It is the journalistic equivalent of a cab-driver's day, never knowing where your next fare will take you, a random, pin-table voyage of discovery and disappointment. Those days and nights spent on the Bestwood estate provided the key to the case - the character of the true murderer, Philip Atherton.

Atherton's principal hobby, we soon discovered, was CB radio. It was very much an enthusiasm of the period, where the excitement of being able to communicate made up for the fact that there was nothing of great significance to say. As an activity, it rivals train-spotting for the passion with which its devotees pursue it, and the bafflement of those who are not party to its arcane attraction. CB-ers have their own private vocabulary, originating in the tangled etymological undergrowth of truck-driving middle America - they 'request eyeballs' when they want to see someone. Atherton's call sign, his 'handle', was 'Track Marshal', we were told by another enthusiast who rejoiced in the handle of 'Collywobbles'. It became a running joke with the team, as we dreamt up appropriate handles for each other: Stephen Phelps, plagued by a continuous cold, was given the nickname 'Night Nurse'. Bob Duffield, who occasionally reverts to the donnish persona of the postgraduate Oxford anthropologist he once was, assumed the notional soubriquet 'Professor'. Penetrating the CB fraternity opened up a network of contacts. We soon learnt that Atherton had been beaten up for

supposedly boasting on the air about having had sex with an under-age girl; it turned out, however, that he was innocent of both the deed and the boast - someone else had misappropriated his call sign.

Through contacts on the estate we began to build up a picture of Atherton. We learnt that he had difficulty being accepted by people of his own age, and compensated for this isolation by seeking the company of younger children. A young man called David Evans told us of the almost magical sway Atherton held over the youngsters of the neighbourhood. 'You'd follow him anywhere,' he told us, 'he used to tell us scary stories, do weird things.' One of the weirder games of this Pied Piper involved visiting the disused pit buildings and decapitating the pigeons who roosted there; 'he'd wring their necks and watch them flutter to the ground.' Among other things, we also heard that Atherton had a belt festooned with the tails of squirrels killed with a catapult. He would often offer to baby-sit for friends; but on one occasion he locked his charge in the boot of a car, and on another he set fire to some plastic model soldiers and flicked them, flaming and molten, at the children he was meant to be looking after. One of his acquaintances told us how he had once poured bleach into a tank of treasured tropical fish. The fish had died.

It was another tale of animal cruelty that took us closer to the heart of the case. Maxine Tulson had always been worried about the conviction of Mark Cleary. Maxine was a friend of Atherton's girlfriend, Theresa Monte. The Montes used to have a little dog, which would wake up the household whenever Atherton brought Theresa home late. One day, the dog disappeared. Atherton found it, wrapped in a plastic bag, drowned in the River Leen. He had taken a friend, John Jackson, with him on the 'search'. We found out that Jackson had since been imprisoned at HMP Stocken, and Bob made a special trip to confirm the tale.

It was a sombre and unnerving story, given the eventual fate of Wayne Keeton, but we know well the tendency in any community to demonize the guilty, and were therefore sceptical at first. At every turn, however, we found new instances of Atherton's amazing capacity to 'discover' things that had gone missing. Steve Snow told me how Atherton had run over his cat, and then offered to go looking for it. Maxine and her friend Stephanie Rawden told me how Atherton 'was always finding things,' such as a radio and a car which had been stolen from the Montes.

And this was the man who had 'discovered' the shoe of the murder victim.

We uncovered further, macabre aspects of Atherton's behaviour in the days after the murder and before the body was discovered. It seems that he took Cleary down to the very bridge under which the body was at that very moment secreted, and played a game of pooh-sticks - throwing twigs over the upstream side, and seeing which was first to emerge downstream. He took another friend to the same bridge and pondered aloud how strange it would be if the body, for which everyone was searching, was in fact only inches away. The day after Wayne's disappearance, Atherton even offered to sell a BMX bike 'for a tenner' to an acquaintance called Rob Smith. But when Atherton went to fetch it, the bike had disappeared. This was almost certainly Wayne's bike. Atherton seemed to be deriving some strange but pleasurable excitement from his secret knowledge of the boy's death, tempting suspicion, flirting with fate. We were later to learn more of this extra dimension of sensation sought by the psychopathic.

Intriguing as these stories were, all they did was to confirm Atherton's acknowledged guilt; they did not help to exonerate Mark Cleary. We did, however, discover an early attempt by Atherton to point suspicion at the innocent. David Evans, who followed his pigeon-strangling exploits, was induced by Atherton to take part in blowing up a £30,000 bulldozer. After a satisfactory bang, Atherton abandoned the young man to carry the blame alone.

Even so, it's fair to say that spirits were pretty low. There comes a stage with any investigation where you have to make a fine calculation of the odds of success - and when to pull the plug. Fascinating as all this local colour was, we weren't getting any closer to the sniff of a clue pointing to Mark Cleary's innocence. Then, we had one of those lucky breaks that make up for months of tedious tramping through inhospitable estates. We were puzzled about Atherton using the name 'Adey' or 'Adie' - we had no more idea than the police how it was actually spelled - at the time that he met young Wayne. The police had obviously been concerned, too, because they had interviewed almost every young man called Adrian for miles around. For reasons Bob still can't remember (but he must have been getting fairly desperate to embark on such an expedition) he decided to inspect the allotment Atherton used to work. Maybe he'd find a neighbour who could tell him more about the man.

On the next-door patch was a large, awkward man wearing a windcheater and a baseball cap, as he forked away at some recalcitrant bindweed. Mr Rhodes wasn't easy to understand; his words came haltingly through a thick accent and a speech impediment. But yes, he remembered Philip Atherton. He certainly remembered the murder of young Wayne Keeton, for, shortly afterwards, the police had received a tip off that he, an epileptic with learning difficulties, was the murderer. 'If I see Atherton again, I'll smash his head in,' Rhodes told us, because, as he claimed and we were subsequently able to prove, it was Atherton who instigated the call, asking his girlfriend, Theresa Monte, to ring the police with Rhodes' name.

As Bob left, thanking him for this piece of information, he shook his hand and, for the first time, saw the blue letters tattooed on Rhodes' knuckles. Many people have the words LOVE and HATE inked into their flesh. Adrian Rhodes' knuckles were engraved with his own nickname - ADEY. Philip Atherton had pretended to be 'Adie' or 'Adey' at the time he picked up young Wayne. At first we thought he was picking a name at random; we could see it now as a terrifyingly cunning, calculated and manipulative act. Mr Rhodes was lucky - the police were able to eliminate him from their inquiry. In less fortunate circumstances, he might have suffered the fate of Stefan Kiszko, another man with learning disabilities who spent years in jail wrongly convicted of a child murder.

Meanwhile, Bob and Steve were scouring the CB fraternity in search of a witness who had made a strange statement which the police did not seem to have followed up. The witness, Reece Packard, had said that he'd seen a shadowy figure round about midnight lurking outside the Atherton family home. By midnight, of course, Atherton, by his own account, would have been home and in bed for two hours and more. The problem was that Reece Packard was not to be found. That most valuable researcher's tool - the phone book - yielded nothing. There was nothing for it but the laborious comb through the electoral rolls. In the local library at Eastwood - D. H. Lawrence's birthplace - the team began the tedious chore of checking through the lists of local residents. Electoral rolls are listed street by street, house number by house number, so there is no alphabetic short cut. It took three hours before Phelps found the name Derry Packard, who turned out to be Reece's sister. Bob and Steve set out for the address. Just as they were approaching the house, a car nosed out of the driveway. Having put so

much effort into finding their quarry, the team were not about to see it slip away. For several miles they gave chase to the bemused, and of course entirely blameless, Ms Packard. When they had caught up with her, and after a sticky few moments while they had to explain their somewhat over-enthusiastic pursuit, Derry Packard proved to be a charming and helpful lead. Within minutes, we had found her brother Reece.

Reece told us that what he had *said* to the police was a lot more definite than what *appeared* in his statement. This cuts both ways. Sometimes, it's best to be wary about a witness who develops a clearer picture, years later, than the statement offered at the time; sometimes, on the other hand, you find that the witness has never seen his own statement, and is shocked at the partial, selective, biased, or inaccurate way his views have been represented. Reece Packard told us he was quite convinced that the midnight figure he had seen was Atherton. Indeed, he had met some policemen a few days later who told him that a man had been arrested in connection with the Keeton murder. 'Is it Atherton?' Packard had asked without hesitation. This is what led to Packard making his statement. The police, quite properly cautious about a 'fleeting glimpse' in the dark, asked him if he could be 100 per cent sure; equally properly, Reece Packard said that he couldn't be.

At this stage of the investigation two things were happening; Atherton was emerging as more devious and manipulative than we had imagined, and, to Bob's puzzlement, there seemed to be some confusion about Atherton's timetable of the terrible events that night. The time of the attack was beginning to slip later and later than that which Atherton had always claimed. But neither the police nor the defence had ever queried that timetable. Was this, then, to be another blind alley? Or could the emerging discrepancy somehow hold the answer to the case? Arguments about timing seldom add up - in our experience witnesses can be hours out - but it was something Bob didn't abandon.

Which was just as well. Timing was indeed to provide the key to the case. Within days, there was a breakthrough moment when we visited the home of Mr and Mrs Burgess.

We are always astonished at the open-heartedness with which strangers - after a few moments' understandable suspicion - are prepared to welcome us into their homes at odd hours of the day and night to ask them awkward and sensitive questions. A few, a very few,

are abusive and violent, and, it has to be said, the area was polarized between those who supported Atherton's story, and those who stood for Cleary's innocence. Between the two camps there were threats of lighted cigarettes to be put through letterboxes, of undefined harm that would be done to the other side's children. But Mr and Mrs Burgess were kindness itself - even though we were invading the privacy of passionate Nottingham Forest supporters at a time of the Club's impending collapse from Premier League status. None of our subsequent meetings went ungarnished with mighty plates of meaty sandwiches, flagons of tea. Without demur, the Burgesses let us trample all over their house, conducting arcane experiments from their bedroom as we measured how much they could have heard from the embankment behind their home. The couple sat serenely in front of their majestic array of video-recorders and satellite decoders as we made free with their hospitality and their home. The Burgesses were great television fans; we hope they still are, after having a television crew tramp its equipment over their carpets.

The reason for our curiosity had been buried in a statement Mrs Burgess had given. On the night of the murder, Mrs Burgess was on the edge of sleep when she'd heard a cry, 'Help me, help me,' from outside her bedroom window. The sound was unusual and distressing enough to make her leave her bed and go to the open casement. Her husband - a man used to the precision involved in setting his video - logged the time at 11.23 p.m. We knew that her evidence was significant, because it so accurately echoed what Atherton had described in his first statement to the police: the boy pathetically crying, 'Help me, mum, help me.' But at the time of the trial, no one had thought it important to ask Mrs Burgess to come to court; her statement had merely been read.

As a result, the court didn't understand what we had begun to realize was the crucial significance of this statement. Indeed, not only was its importance overlooked, but its value as evidence had been entirely discounted. When Mrs Burgess wrote that she'd heard the shout from the banking outside her window, she'd meant the disused railway embankment, just feet away. But the judge thought she had meant the bank of the River Leen, in completely the opposite direction, more than a quarter of a mile away, across a main road, from which a shout would have been inaudible. Obviously, if she was claiming to have heard a shout from there, she must have been wrong, or the cry must have

been that of somebody else. If, of course, she had been asked to give evidence in person she could have tidied up the misunderstanding. But she wasn't. No one corrected the judge.

So, the evidence of Reece Packard and the Burgesses - plus a dog in a nearby farm which, according to its owners, barked around half-past eleven in a way it only did when strangers were around - all began to point to a later time for the murder. But where did that get us? Evidence relating to timing is always fairly unreliable, although a discrepancy of as much as two hours did seem strange . . .

January was turning into a witheringly cold February. It was cruelly cold on the road as we traced and retraced Atherton's murderous journeys through the brambles of the overgrown track. The team returned to the Queen's Moat House hotel in Mansfield Road - we were to get to know the place so well that we would specify the room number when we booked - and, over coffee and warming brandies from the night porter, tried to make sense of the new pattern that seemed to be emerging. Atherton was a liar; but why, when you've admitted complicity in a killing, do you lie about the time you did it? The answer was not to come till later, but meanwhile we began to realize that a later time-frame did point to Cleary's innocence. After all, the only evidence against Cleary was his partial, and later withdrawn, confession. And it could only be valid if it matched the version of his supposed accomplice. In other words, if A says he committed a crime in January with B, and B is induced to agree, and then it turns out that the crime was in July, some doubt is bound to arise in the minds of the sceptical and dispassionate observer.

The Nottinghamshire Police had not been sceptical enough. They had secured an easy arrest in Atherton, and his implication of Cleary must have seemed a bonus. They had broken their own Chief Constable's guidelines for interviewing, by not taking proper contemporaneous notes, even though Atherton, the self-confessed killer, had enjoyed the privilege of scrupulously annotated interviews conducted by a different officer. And yet they purported to have had total recall when they came to writing up the interviews, even down to the precise turn of phrase and use of dialect idiom - sometimes Cleary says he has done 'nothing' wrong, and a few pages later he is protesting that he has done 'nowt' wrong. On one page he talks of 'me

Dad' and 'me tea', but a few exchanges later he refers to 'my Dad'. We went to Birmingham University and showed the interview to a language expert. He told us that the record - written up as a script with dialogue from police and suspect - was a 'script'. It could not be what it purported to be, a verbatim record of what had gone on. The idioms, explained Dr Malcolm Coulthard, gave 'a kind of playwright's veracity to the text' - not exactly the quality you are looking for in a police statement. I asked him how much of our two-hour conversation I would remember in twenty minutes' time, when the taxi would be taking me back to Birmingham New Street Station; if I tried to recall the conversation word-for-word, I'd get only one per cent of those words right. Food for thought for the reporter, and for those who claim to have been misquoted.

If there had been irregularities in the interviewing of Mark Cleary, it suggests that the police would not have been particularly interested in discrepancies in evidence that tended to cast doubt on his guilt, such as the possibility that the crime may have been committed later that night. The evidence of a much later time began to take concrete and incontrovertible shape. Buried in the statements were four individual pieces of evidence which were to provide the clinching argument. No wonder the defence and the police overlooked them, since each on its own didn't seem to add up to much. Susan Brealey and Teresa Cole were aged seventeen and fourteen when the murder took place. The statements they gave to the police at that time confirmed that they saw Wayne showing off on his bicycle between 9.30 and 10 p.m. on the night in question. (By Atherton's account the child would already have been dead for an hour or so by then.) Susan clearly remembers thinking that it was late for a little boy to be out, and that she had warned Wayne that there were nasty men about, and to be careful. Tears welled up in her eyes as she recalled her thoughts, presumably blaming herself for not having done more to protect the child. Susan and Teresa are no longer gawky teenagers hanging about the shops, but responsible mothers. We asked them what else they could remember about that sighting. Susan told us something intriguing; she herself had been worried about the lateness of the hour. She didn't like walking home in the dark. So she'd asked a local youth to walk her home to safety.

The problem was she couldn't remember his name. If we could trace this person, we might find independent confirmation of the teenagers' story of how much later Wayne was still alive. The seed of doubt about

Atherton's first account, first sown by Reece Packard who had seen the shadowy midnight figure he took to be Atherton, was beginning to grow. With Susan and Teresa's evidence, the suspicions about timing were building; the only problem was that we didn't quite know what it all meant, and we still needed some independent corroboration.

Back to the pile of witness statements - never, of course, heard in court, or deemed important by the authorities. Bob found the evidence of a young man called Stephen Barnett to the effect that he had walked two girls home but that *he* couldn't remember *their* names. At once, the pieces began to click into place, but first we had to find Stephen Barnett.

He was to prove elusive, probably because he did not want to be found. We traced his uncle, who made it clear that Stephen did not want to get involved. We knew he was a window cleaner. We toured the area asking for recommendations for local window cleaners, and his telephone number was among those we were given. By a mixture of fairish and foulish means, we managed to get Stephen's address. He was not pleased to see us, complaining that we were harassing him. This is, of course, a sensitive point for any investigative journalist. We work on the principle that it is acceptable to make every endeavour to trace someone. If, having heard our proposal, we are refused any cooperation, we must walk away and leave the person in peace. An honourable journalist will take 'No' for an answer if it is the refusal of a considered proposition. That's why we value people on our team who have the skill and charm to defuse antagonism, suspicion and distrust. We may follow up an initial approach with a letter; continued refusal means we must accept defeat. Harassment, involving camping outside someone's house, persistently ringing doorbells, and so on is not acceptable. It's all too easy to justify such actions because of the justice of the cause, but other investigators have come spectacularly unstuck by applying that justification; it certainly gives the enemies of our work a convenient stick with which to belabour our awkward activities.

There is also the moral dilemma of raking over what is inevitably, for someone, a family tragedy. We don't believe that innocent people should be kept in prison to spare a family's feelings; but we make it a priority to inform the family concerned before the news of our interest reaches them through cruel local rumour or a splash in the evening paper. We write to tell them what we are doing, apologize for any pain

that may be involved, ask them if they wish to speak to us at all, and tell them that we understand entirely if they do not. We do not pretend that this does anything to assuage the hurt, but we think it is the right thing to do. I think the most dignified response we had was from the husband of a murder victim who told us that we should go ahead only if we really believed that there was evidence of the convicted man's innocence. It is, we were able to assure him, the *sine qua non* of our business. We simply would not pursue a case where we had severe doubts - though, as we'll see later, that can bring its own problems.

A reasonable explanation usually works, and it worked with Stephen. He agreed to meet the two girls he had so gallantly escorted home eight years earlier. When they met, the threesome recognised each other - a giggly reunion after so long. This strengthened the story of the later sighting. The girls had seen Wayne around 10 p.m., and Steve Barnett had walked one of them home. The three confirmed each other's stories. What would make things watertight would be an independent sighting of the three.

We uncovered it in the unlikeliest of places; we found the statement a fourth person had given to the police - disregarded at the time because it did not match Atherton's confessed version of the time of the assault. This person remembered meeting his friend Steve Barnett that night at the time that corresponded with the other three's stories. What's more, he remembered seeing Wayne doing his wheelies on his new bike at around ten at night. The young man who had given the statement was Michael Cleary, Mark's brother. But we didn't have to be fearful of any misplaced family loyalty - Michael had volunteered this statement very close to the time of Wayne's murder, weeks before any suspicion was to alight on his brother Mark. Michael's statement locks those of Stephen Barnett, Susan Brealey and Teresa Cole together, proving, we believe, that Wayne was alive at ten o'clock and that the murder happened much later than the version given by Atherton and agreed to by the police and the jury.

The only evidence against Mark Cleary was his own confession. It had only stood up because it matched the story of the self-confessed killer. But that story was wrong in one significant detail - the timing, designed in Atherton's story to give him the chance of an alibi. We added that to the catalogue of doubt: the absurdity of the weak-minded Atherton waiting seven weeks before incriminating a genuine accomplice; the impossibility of Cleary manhandling his moped along

the track; the authentic ordinariness of his own alibi; Atherton's devious tendency to seek ways to put the blame on to others . . .

Not all the discoveries were made on location. Much of our work involves talking to specialists - such as the language expert in Birmingham. By definition, much of this expertise also concerns the grisly details of human pathology. Wayne Keeton, we knew, had died of drowning - he was still alive when he fell in the river. The presence of tiny organisms, which live in water, in the tissues of the recovered body confirmed this; anyone entering the water alive breathes in these micro-organisms, which would then be found in the lungs and even the brain. But Wayne's body was also found to have considerable damage to the spleen - an organ that mystifies most of us, but which generally supervises the body's immune systems. The wound must have been inflicted according to Atherton - by the kick Cleary was supposed to have delivered to the boy.

The spleen bleeds very freely when injured. We took the post-mortem results to Professor Alistair Wilson, an accident and emergency specialist attached to the London Hospital, who routinely goes to the scene of major accidents to tend to trauma patients. Many times we have looked out of the Just Television windows, across the London skyline, to see a distinctive orange helicopter clattering purposefully across the capital; it belongs, in fact, to the London Hospital, and is usually carrying Professor Wilson and his team of trained paramedics.

Professor Wilson could not square the bleeding from the spleen (relatively minor) with the story of the boy being kicked some time and distance away from when his body fell into the River Leen. He was deeply unconvinced by Atherton's account of transporting the boy from the scene of the attack to the banks of the river; he would have expected a much greater loss of blood from the spleen as a result of such an agonizing journey.

We do spend rather more time than is good for our health with pathologists. In our library we have a couple of illustrated textbooks of forensic pathology which we insist are kept locked in a filing cabinet; there are pictures in it no one should have to see. However, much often turns on a pathological detail, and, as with any piece of evidence, we argue fiercely among each other over it. One day, on another case, the argument had become quite heated as the three of us sat at the table

of the pavement cafe for a lunchtime sandwich. One of us was convinced that we could get access to some samples used at a trial several years earlier. Another of us feared that the police would either have destroyed them or lost them, or that the integrity of the original specimen would have been corrupted by reacting with xylene, the compound used to fix them to the microscopic slide. The third suggested that at least we could prepare an experiment to measure the decay of tissue fragments (the case revolved around the length of time the corpse had lain undiscovered). We became engrossed in the mechanics of such an experiment and the way in which the developing larvae of the blowfly can be used, in conjunction with meteorological data, to estimate the time of death. We were involved in elaborate conjecture about the disposal of bodies, when we were aware of the waitress hovering at our side. It became clear that she had been waiting for some time for a break in the heated debate. 'I don't know who ordered the prawn salad sandwich,' she said, 'but whichever one of you it is, I'm glad I'm not your girlfriend.'

In the case of Mark Cleary, another medical man helped put the case into a more plausible context. Dr Jeremy Coid is the forensic psychiatrist at the Secure Unit at Hackney Hospital. I have two principal memories of the day we spent with him: the constant jingle and clatter of locks and keys of the double-doored security airlocks; and the vague unease that came over me, as I watched an animated game of snooker, when I was told that several of those engaged in the game were killers.

Dr Coid reviewed the evidence in the light of his own experience of forensic psychiatry, warning us quite properly that, without access to Atherton, his observations had to be general ones. He was intrigued at the shift in Atherton's statements; the earliest were full and comparatively detailed confessions, while the later slid much more of the blame on to Cleary for initiating both the sexual and physical attack and were strangely muted when it came to detail. Did the discrepancy in the second statement - the one where he suddenly blamed Cleary - lie in the difference between the immediacy of a first-hand experience, and the inevitably mistier description of a fantasy ...? Certainly, had two people been involved in the murder, it seemed odd that not a hint of the cooperation, the relationship between the two attackers, had come out in the version where Atherton put the blame on Cleary.

What Dr Coid made clear was that a murder such as this was a

crime of control; the killer had derived pleasure from the vulnerability of his victim. Dr Coid guessed - correctly - that Atherton would have enjoyed the sense of power that came from knowing where the body was, while others searched for it; those macabre games of pooh-sticks all made sense to him. Did Atherton, even behind prison walls, still derive pleasure from the one element of control he could still exercise - the power over Mark Cleary's destiny? He and Cleary once met in prison; according to Cleary, Atherton taunted him with the power he held - the power to speak or stay silent, the power to free his former friend or leave him to rot.

The medical and psychological evidence meshed in with what we'd absorbed on the ground. Let's imagine what could have been going through Atherton's mind, at the time when he learned the details of the coroner's report, particularly the fact that, even though Wayne died of drowning, the injury to the spleen would have, nevertheless, been fatal. It had been agreed that there was insufficient physical evidence to support a charge of buggery and, to help spare what was left of the family's feelings, it was decided to make little of that aspect of the attack in the report. Armed with this information, Atherton suddenly drops all references to the sexual motive he'd previously admitted to. And now that he knows that the boy was alive when he left him on the river bank, he retracts his original admission, 'he was dead when he fell in, I'm positive.' Now that he knows that the boy was suffering from a fatal injury to his spleen, he places the blame for the kick squarely on Cleary. He sees the chance of a lesser charge for himself - perhaps manslaughter - by heaping his guilt upon Cleary.

His own role in the terrible events of that night is thus made to dwindle significantly, and the onus is transferred to his alleged accomplice. It is a cunning and vindictive plan. We have heard and had the statement independently confirmed - that Atherton has said that Cleary will stay in prison until he, Atherton thinks fit. It is the last, precious vestige of power that Atherton has as a prisoner - the power over an innocent man's life.

And the discrepancy in the timing? We believe that Atherton, even before deciding to implicate Cleary, had always had the notion of a makeshift alibi at the back of his mind, a notion which survived even as he made his admission to the police, placing the crime much earlier in the evening. By the time he realised that he could transfer the guilt to Cleary, he was stuck with this false timetable, which Cleary, knowing

no better because he wasn't there, innocently echoes in his 'confession.'

We made the programme. Some details will always stay with me. There was the courage of Mick Ryan, the alibi witness for Mark Cleary who said, honestly and fatally, that he couldn't remember what he'd been doing that evening. He had proved very hard to find. We left message after message for him. But either he wasn't contactable, or didn't want to be contacted. So we were astonished, one evening, to hear that he was waiting for us downstairs in the hotel foyer. Downstairs, indeed, was a shy young man with a speech impediment aggravated by the obvious stress he was under in coming to see us. At this stage, we had given up hope of locating him, though he would have been useful in demonstrating the flimsy thread on which Cleary's guilt or innocence hung. Mick didn't want to take part in the programme, mainly because of his embarrassment about his stammer. We didn't push it, but tried to assure him that he wouldn't be made to look foolish. In the end, with great dignity, he returned to the courtroom and re-enacted his nervous ordeal. He gave a wonderfully graphic account of the terror of the ordinary mortal facing the majesty of the law. 'In the end, when it was over', he said, 'I got out of the witness box, but couldn't open the door to get out of the court ... my hands were too sweaty to be able to turn the brass handle.'

Mick Ryan spoke movingly, and it took courage to help us. It made up for those darker moments - like the time we toiled up thirty-eight floors of the Victoria Centre council flats, only to get a door slammed in our faces by someone who 'didn't want to get involved'.

Turning the research into a television programme had, as ever, its moments of absurdity. Filming is a constant compromise between the demands of exposition, and the imperative of making a watchable programme. It's also an agonizingly cooperative exercise. The sound department was not happy when a passing airbus rumbled across the sky during an outside interview, whereas I didn't want to spoil the flow. There was always too much or too little light for the cameraman; the director liked the take of a piece-to-camera where the dappled sunlight fell artistically across my face, whereas I would rather use the version when I succeeded in remembering my lines. And we were always hungry. As ever, we would try to cram in too much filming, too many

interviews; the neat daily schedule, which looked so promising at breakfast, had begun to look positively fictional by lunchtime, and, by three in the morning, a mere fantasy especially when the 'wrap' time was listed as 6 p.m.

One particularly low point found us all looking for somewhere to have lunch at four in the afternoon in Arnold, a suburb of Nottingham. It took all our investigative skills to find anything at all to eat; eventually we found the customers' cafeteria at the local Asda supermarket. I am sure that, at lunchtime, Asda has a veritable banquet on offer; I am sure that, by mid-morning, the all-day breakfast is a sight to savour. But when the all-day breakfast has been around all day, and what's left of the lunch is what Asda's clientele have scrutinized and thought better of, only sheer hunger gets you through the meal. Hunger, and the comforting certainty that, wherever you are, somewhere, in the small hours, there will be a late-night curry waiting.

One disastrous sequence involved the attempt to recreate the progress of a body floating downstream. There was, I hasten to say, an evidential purpose to the exercise, to show that a submerged object, deposited in the river at point A, could not have made it to point B. So as not to disturb any casual passers-by, we had decided to film this sequence late at night. Discretion was indeed the watchword; we intended to film the operation as sensitively as we could; there had, after all, been a real murder, a real tragedy. We had brought up from London a body of the appropriate dimensions. The camera was set to film the delicate dark ripples of water on the moonlit surface.

Unfortunately, you need light even to film darkness. And when you are lighting a considerable area of rural Nottinghamshire, you need quite a lot of light to provide the merest shimmer of implicit moonlight. So we turned up at our discreet location to find a colossal crane, a throbbing generator, and a lamp of a size which Cecil B. de Mille might have considered somewhat on the vulgar side. That night we turned night into day. For miles around, puzzled cockerels cock-a-doodled, and predatory owls returned early to their nests. Only the deployment of teams of loudspeaker vans could have made our sensitive filming more overt. But there was worse to come. When it came to the filming, our body wouldn't sink. It floated, grossly, into shot. The problem was that it wasn't sufficiently waterlogged. We tried again, but still it failed to sink, and instead sailed triumphantly along and over a weir. Eventually, the camera assistant, Theo, was deputed to see what he could do to

make the body heavier. Theo waded out into the freezing stream, retrieved the dummy, and tried to hold it under, so that it would absorb more water. Unfortunately, the natural buoyancy of the thing made it pop out from under Theo's grasp, like some gigantic trout snapping at a midnight fly. Theo wrestled with it again, plunging it back beneath the surface of the water. The dummy, however, seemed to have acquired a life of its own. For some time the two were locked in epic struggle, until Theo subdued his rubber adversary.

Fortunately, no one came our way. Otherwise, I'm not sure how we'd have explained the sight of two figures grappling, midstream, in the darkness, one clearly intent on submerging the other, while the rest of us looked on in helpless, silent laughter.

It was strange to present the programme from the Shire Hall, from the very court - now decommissioned - where Mark Cleary had himself stood trial and which, in happier days, he had polished and scrubbed. The programme was broadcast in June 1993. It was well received, most importantly by senior officials in both the Home Office and the Court of Appeal, who asked for a copy of the programme. The barrister David Martin-Sperry has since taken up the case, on the basis of our research, only a twentieth of which actually reaches the screen. Interestingly, when we took him up to Nottingham to look at the scene of the crime - a rare encounter with reality for most of m'learned friends - he said it was one of the most useful days he could remember in his professional career.

At the time of writing I received the following letter from Mark Cleary:

I thought it only right that I should write to you, because the response since your programme has been overwhelming. If the last bit of information that I've had is right, which is 'the case is likely to be heard before the end of the year, and would probably take place before the Christmas recess' then it shall give me even more to celebrate, as I intend to get engaged in December to a person I thought I'd lost forever thirteen years ago. Maybe one day I shall get the chance and tell you the story. But until then I'm praying and hoping that this year will be the year of all years. So once again, thank you for all that you've done.

It was good of him to write; it is good for us to be reminded that, at the heart of a detective story, there is the genuine tragedy of two lives - one, a child's life, lost, and the other shattered by the failure of justice. But things, as we shall see, were to change dramatically.

Day of Judgement

It's a bright early spring day, the first day after the May Day bank holiday, the day that has hung over the long weekend full of threat and promise. It is the day of Mark Cleary's appeal. Ever since we heard that the Court of Appeal had consented to look again at Mark Cleary's case, we've been on the rack. I remember the moment well, receiving the news on a mobile phone and breaking into an ungainly and embarrassing jig in the middle of Farnham High Street while we were filming the Peter Fell case. It means that our work is finally going to be judged. If things go wrong, we will have raised Mark's hopes only to dash them to ultimate despair. If it is judged to be right, we will have achieved our ultimate goal - the freeing of an innocent man.

I've always thought that the occupational vice of journalists isn't cynicism, but sentimentality. Lawyers need to keep a professional distance from their clients, but we get hopelessly involved in our cases once we have committed to them. That's why I find myself doing stupid things as I prepare to go to court, like rootling out my lucky underpants, avoiding (naturally) the lines on the paving stones on the way to the Central Line Underground Station, and making extraordinarily rash deals with God in exchange for a favourable result.

Outside the Royal Courts of Justice there's the usual disconsolate knot of television cameramen who know they've got at best a long day, at worst a wasted one, ahead of them. Central Television ask me if I'll go back and walk in again so that they can film me. Today I'll do anything for anyone - if only ... Besides which, Central were helpful all those months ago, in letting us look through their regional archive on the Cleary trial.

Through the cathedral nave of the cold palace of justice which is the Law Courts, and up the stairs on the right, is the appeal corridor. Court Six is where we're booked in. David Martin-Sperry, his own sunken eyes attesting to the homework he's been doing, and with a razor mind behind his languid Harrovian mien, checks a final fact with Ron Birkett, Cleary's campaigning solicitor, who has come up from Nottingham to see the culmination of his for so long single-handed fight for justice. Martin-Sperry reminds me of the bargain I've struck - that I'll take him to dinner at Cipriani's in Venice if we win. And of course there are the people to whom it matters infinitely more - Mark's parents - sitting on the narrow, marble sills that serve as benches. Christine, tugging on a

cigarette, asks me if I know where the Ladies' is to be found. We get in a flap over whether there's time for her to go to the loo before the appeal begins. Bill Cleary sits, crouched forward, gazing into space.

We enter the court minutes before half past ten, taking up the back pew facing their Lordships' bench. The lady usher fusses around, placing the carafes of water in place. I notice, for no particular reason, that the glasses do not have little paper hats on them as they do in the Lord Chief Justice's court along the corridor; is that one of the special perks of the job? Here in the very Olympus of the law, there are some strangely mundane features; in the witness box, for instance, sits a very large industrial vacuum cleaner which the night staff don't seem to have put away.

The three judges appear, and as always I'm reminded of a colleague's remark, that judges wear wigs to make it look as if they've got their brains on the outside of their heads. Lord Justice McCowan has the face of a dissipated cherub. To his left sits Mr Justice Buckley, whose wig looks almost as if it were his own hair. He has brought his own quarter bottle of Vittel. Mr Justice Morland makes up the trio. They make fidgety little adjustments of the green-shaded brass lamps which illuminate their patch of desk.

A door opens to the right of the court, and two prison officers escort Cleary into the dock. My heart sinks. Cleary has aged and hardened during his time in jail. Not surprisingly, he looks like a prisoner. We have done everything we can to get him to look presentable. I have written to him in prison begging him to shave his Mexican bandit moustache: 'Olympic runners shave their legs to get that extra millionth of a second; it would be a shame if we lost by a whisker.' But he's wearing a ponytail. It's understandable, of course; he doesn't want to change his prison persona too drastically, for fear of the reception he'll get back in prison tonight if the appeal fails. We have bought him - courtesy of Channel Four - the jacket his hard-up parents could not afford. It looks good on him. But he's wearing sunglasses ... The effect is hopelessly, undeniably, sinister. Mr Justice Buckley gives him a long, appraising look. Then McCowan nods. The appeal has begun.

David Martin-Sperry doesn't stand in the front row of the court, because he is not yet a QC. He opens with the courteous diffidence characteristic of him. He reminds me of a Victorian curate nervously, but with ineffable grace, asking the irascible squire for his daughter's hand in marriage. The bench beams benignly on his unflinching good

manners; when they get in a muddle Martin-Sperry apologizes for not having made things clear, and when McCowan agrees with something he has said, he has the trick of making it appear that it's the judge himself who has, in his infinite sagacity, lighted upon a truth which had hitherto not dawned upon the humble advocate.

He explains that, all those years ago, it was not perceived that there were any grounds for appeal; but that now the case must be seen in a whole new light. This is the dangerous point. If the court is so minded, it can abort the whole process now. For cases to succeed, they have to meet that arcane formula that either there is new evidence which was not available at the time of the trial, or some 'other consideration of substance'. Their Lordships could argue that the defence, all those years ago, could have done what *Trial and Error* managed to do - excavate and analyse the evidence which, albeit buried, was there for the finding. Martin-Sperry has to convince the court that there was no reasonable way in which the defence, on the facts known at the time, could have known what we know now.

Things begin to look bad. McCowan isn't just sitting back, listening to Martin-Sperry's argument. He's actively intervening, threatening to push Martin-Sperry off his carefully planned course. But at least it shows that the bench has done its homework; McCowan seems to know the case inside out, with an impressive command of the detail, immaculately briefed, no doubt, by the backroom staff at the Appeals Office. Martin-Sperry has to think on his feet, adjusting his tactics and strategy to absorb the interventions from the bench. Gradually, he coaxes the argument back on track. Partly, that's his skill; but equally, as it becomes clear to us, the bench has already formed much of its own view of the merits of the case over the long bank-holiday weekend. Martin-Sperry isn't exactly pushing at an open door; but their Lordships have clearly not left it locked.

The argument unfolds, as a clear, incandescent ray of sunshine pierces the skylight of Court Six, picking out the white cardigan of Mrs Cleary, slumped beside me. We hear how Atherton's first confession was true in every respect - except that he lied about the time of the crime. The police, faced with such a frank admission, had no reason to doubt its least contentious element, the timetable; if a man admits to murder and buggery, you don't question what time he says he committed the crimes. The net effect of this, the court hears, is that the police and the Crown excluded the evidence of any witnesses who

gave the lie to Atherton's timing of the fatal night's events. When Atherton, seven weeks later, decided to shed a lot of the guilt onto the hapless Mark Cleary, the confession extracted from Cleary mirrored the facts as they were then known - but facts which we now know could not be true. They are merely a regurgitation of what the police believe, from Atherton, is the chronicle of that night.

McCowan is joining in with a will, at this point. Why couldn't Mick Ryan, Cleary's key alibi witness, remember clearly enough what happened that night? Was it simply the passage of time, or Ryan's tender years? 'Maybe he took fright because of the pressure of local opinion?' McCowan offers. 'Precisely,' David Martin-Sperry replies, through the smile of one who knows the court is with him. (I scribble out a typically smooth and gracious Sperryism: 'Your Lordship's thought process is one that is entirely correct now, but had not occurred to anyone at the time.')

He deftly praises the police for taking contemporaneous notes during their interview with Atherton - and then we realize that his tactic is to contrast that process with the failure of the police to take proper notes during Cleary's interview. The earlier praise for the police means that he does not need to condemn them - something the court is never very keen on - but the condemnation is tactfully implicit.

Throughout it all, Mark Cleary, the man at the centre of the argument, seems strangely detached. Does he simply not understand? Has he closed his mind to the ordeal, and is he just waiting for it to end? Sometimes he looks in my direction, but I cannot tell what is going on behind those dark glasses.

Sometimes the court itself seems oddly detached from the mundane details it is analysing. 'Wayne was doing wheelies,' says Martin-Sperry, and, after hesitating for a moment, 'that is, performing tricks with only one wheel of his bicycle on the ground.' Deep down, I suspect Lord Justice McCowan knows what wheelies are, but it's as well to have the t's crossed, I suppose. Suddenly, the almost church-like atmosphere is shattered when Martin-Sperry drops a bulky lever-arch file. The clatter of the accident breaks the growing tension.

Stephen Phelps sits next to me, on the other side from the Cleary family. If I can fault my colleague in any way, it is his habit of filing his nails in public, which sets my teeth on edge. Out of the corner of my eye I see him gently stroking the emery board along a hangnail. Gently, I confiscate it. He passes me a note - the court has made a mistake

over the timing of the call for help that Mrs Burgess heard, putting it at 11.10 p.m. instead of 11.23; should we send a note to Martin-Sperry to correct them? On the whole, we decide not; courts are touchy about journalistic trespass on their preserve, and it's more diplomatic to sit quietly. Indeed, although Martin-Sperry has told us that it was the best-prepared case he's ever seen, he never alludes to the television programme. We've agreed that that's the best policy.

It is now 12.47 by the unticking courtroom clock housed in its own little wooden Gothic niche. Things are happening fast. The court is clearly impressed by the fact that the judge attached too much weight to the alibi that failed; it's a point we made, but clearly the court gives it greater weight than we did, because it's exactly the sort of procedural, legal detail that is the daily diet of the Court of Appeal. There's clearly disquiet about the circumstances of Mark's interrogation, especially the absence of a solicitor; their Lordships seem, thank goodness, to be applying the principles of the Police and Criminal Evidence Act, which protects suspects, to a case which happened long before the act was passed. I give a large wink to Steve Haywood, sitting on the bench in front of me; this is clearly good news for a raft of cases on our books, where confessions have been extracted by dubious, but not at the time illegal, tactics. And the court has grasped the point that we found so difficult to put across, that a confession which echoes another confession in details which we know to be false must, of itself, be a false confession; in what we have now been able to demonstrate was an entirely circular process, the version of events that Mark Cleary stammered out was the one the police believed, because they themselves had believed Atherton.

David Martin-Sperry sits down. He turns to me with a satisfied smile on his face. He's always known that if he can just get the court to listen to the argument, we're on to a winner. He passes me a note, reminding me of my Venetian bargain: 'How many I's in gondola?' it says. I pass him back a note saying the Cipriani's I was referring to is a Cypriot restaurant in Stoke Newington. Schoolboy stuff, but the stuff of relief.

A red-faced QC who has said virtually nothing all morning stands up. He is the Other Side - representing the Crown and resisting the appeal. For weeks we have been trying to discover what the Crown's attitude to this appeal will be. Sometimes they make no effort to contest the appeal. But we gather that there will be at least a formal attempt to oppose. Red-face has got about five minutes to outline his case before

judicial stomachs begin to rumble for the lunch adjournment. He has none of Martin-Sperry's fluency - it's a mumble, with sentences left abandoned halfway through, like the lines dying on the lips of a superannuated actor. Does he realise that the court is not with him, and that it is impolite to stretch their Lordships' patience with a lost argument? Or is he himself half-hearted about his case? So much of what goes on seems to be as much to do with etiquette as with justice.

McCowan decides that it is time for the lunch adjournment. We blink our way out into the sunshine of the Strand, crossing the road to a pub. Martin-Sperry joins us. He is beamingly confident. We agree that it couldn't have gone better, the court readily taking on board most of our new evidence. We can't of course, resist asking Martin-Sperry how he assessed the chances, as we chew nervously on our prawn sandwiches. We want the time to pass. We want to be back in court. We want to know what's going to happen. We rehearse all the options. There are a number of things the court can do; it can, of course, either grant or refuse the appeal. It can also decide to order a retrial. It could defer judgement to another day, leaving us all in an agonizing limbo. It could release Mark Cleary pending judgement, which would be a strong hint that things were going to work out successfully, but would not enable us to break open the champagne. It could decide that it wanted to call some of the witnesses, and examine them; we had argued, the day before, over whether we should bring some of them down to stand by. Or the court could take an entirely literal view of the legal situation; technically, we are asking for leave to appeal, because Mark Cleary has long exceeded the time limit for lodging an appeal - his original counsel, Desmond Fennell QC, having advised that there was no realistic hope of success. So the court could simply grant - or refuse to grant - permission for a full-dress appeal another day.

We return to the court, and I am delighted to see that the entire staff of Just Television has turned up for the afternoon. Emma, the secretarial lynchpin of *Trial and Error*, has been involved with Cleary as much as any of us; she monitors and logs all the correspondence with prisoners, and develops a keen sense of the ebb and flow of the morale of those behind bars. To scores of prisoners, Emma Coghlan is the unseen link with the world outside. Laura, who we hired as a telephonist in the early days, before we realized how well she could run the office, is paying her first visit to a court - any court. Olwyn, one of the four founders of Just Television, and the only one who understands

the finances, has deserted the computer to be with us. No one, apparently, is looking after the shop, but we all feel we all should be here.

The Crown never gets into its stride. Who knows what has happened during lunch? Has Red-face calculated that the mood of the court is irretrievably against him? McCowan is making his impatience obvious, by shaking his head at some of the arguments put forward. He refers to some of our evidence as 'dynamite' - not a word, in its metaphorical sense at least, that often trips from the tongue of an Appeal Court judge. His two fellow judges have caught the mood, openly agreeing that Atherton, the man correctly convicted of Wayne Keeton's murder, is 'a liar'. Since Cleary's conviction depends utterly on Atherton, this augurs well. There's an awkward moment when it looks as if the court is going to ask to hear the witnesses, which will mean a delay of at least several days - but the moment passes. For no apparent reason, the Crown sits down. McCowan announces that he and his fellow judges are going to retire for a few minutes. When they go, it's as if we have been holding our breath all afternoon.

I know that it is going to be a very long quarter of an hour, for the parents above all. I chatter about anything, everything but the appeal, to keep Christine Cleary's mind off the final verdict. I don't think I succeed, but at least it doesn't seem long before the red-robed judges return. We cannot read the result in their expressions.

But from the moment McCowan returns, at 3.24, to begin his judgement, we know that things are looking good. There is a heart-stopping moment when, in the first words, he says that he will 'grant' the application, but we quickly realize that he is merely giving technical permission for the appeal to be heard. Now the judgement proper begins; it starts with a recital of the known facts - the sad fate of Wayne Keeton, Atherton's arrest and his implication of Mark Cleary. He quickly grants the point that the judge should not have given so much weight to the failure of Cleary's alibi: 'In my view this was a misdirection.' We are home - but home so far on a judicial technicality. But there is better to come. The circumstances of Cleary's interrogation are severely criticized: 'We have considerable doubts as to whether this interrogation should have been allowed in evidence ... and there is not a shred of evidence other than this.' Finally, he accepts our evidence of the sightings of Wayne Keeton at a time which proves Atherton a liar and Cleary innocent. 'We have become increasingly anxious about this

case, and have decided that the original verdict is' - we all tense for the magic formula - 'unsafe and unsatisfactory.' There is a brief moment when McCowan seems to be considering a retrial, until he accepts that too long has passed. Mark's father is fiddling with his tie; he is suffering, I find out afterwards, an angina attack. In the commotion the final words float over us: '... we therefore grant the appeal and quash the conviction.' Christine Cleary looks blank; she cannot take it in. 'What does it mean?' she asks me. 'It means we've won,' I tell her. She jumps up and buries her weeping head on my shoulder. Mark, by now, realizes what has happened; he stands up to give a victory sign to the court. A vast hubbub erupts - until we realize that the judges haven't left the court; Ron Birkett, ever the professional solicitor, has got Martin-Sperry back on his feet to ask for costs.

At appeal, one plays for the biggest possible stakes. If their Lordships turn you down, the two prison officers take you down the stairs to face the rest of a life sentence. If they find for you, within ten minutes you are out on the pavement, a free man. Those ten minutes are spent in formalities in the jailer's office, on the ground floor. Here, the prisoner receives his discharge papers, and his property - sometimes in plastic sacks, sometimes the old, cardboard suitcase he first took to the remand centre all those years ago. I well remember Paul Darvell turning up at the Hilton Hotel reception desk with his sacks, stamped 'Property of HM Prison Department', leaving the reception staff a little uncertain as to whether the legend was a piece of designer chic or the real thing. Mark Cleary emerged with a couple of crates - the sort of thing used to transport paperwork and files when people move office.

The team had been hovering round the jailer's gate, but as Mark emerged we withdrew to leave him alone with his parents. There'd be plenty of time for us later, and this, above all, must be a precious and private moment. We've only ever had two pictures of Mark - one of the gawky teenager peering out from his identity pass at the Shire Hall where he worked, and the other, a dreadful photograph taken in jail, when we had asked for a more up-to-date picture. In the latter, with his lank hair, droopy moustache and bandanna he had looked for all the world like the founder of some exotic para-Christian cult irredeemably doomed to dissolve in mass suicide. Here, in the dusty daylight of a spring morning in the Royal Courts of Justice, he looked desperately older than his thirty years. His twenties, which he had spent behind

bars, had hardened and strengthened his small physique, giving him a wiry, pinched and almost ferret-like look. Prison had made him look like a jailbird, sly, pale and wary.

He came over to us, shook my hand and gave me a suitably inarticulate hug - there are no words for such a time. I explained to him the abrupt baptism into freedom he was about to experience; the press and television were massing outside the precincts of the court. And we walked out.

Mark stood in front of the scrum, and, on the pavement of the Strand, spoke movingly. He graciously thanked *Trial and Error*. 'I wouldn't be here without them; their research was fantastic; I couldn't fault 'em.' Then a touch of iron entered: 'This should have happened ten years ago ... I've spent ten years in jail for a crime I never committed, and should never have been found guilty of.' I could see his eyes beginning to redden, and so could his father, Bill, for he embraced Mark and took over the impromptu conference. 'We're a family again,' he said, 'we just want to put this behind us and go back to being a family again.' I stayed behind to mop up the requests for quotes and interviews from the papers and television, and to give the family time to get away; we bundled them and our own Just Television crew - the crew who had filmed the original story and were now to chronicle the victory - into a fleet of black cabs.

Because of the London traffic, we all arrived at Just Television's offices, among the Dickensian warehouses of Emerald Street, at about the same time. There was spontaneous applause for the Cleary family as they reached the airy, open-plan, top-floor office. We had decided to take them to the office rather than to the hotel where we had - optimistically - booked them in, to provide them with an environment where they could make the telephone calls and give the interviews they wanted to the local press in relatively peaceful surroundings. We also wanted to have a party. I had telephoned from the Appeal Court that we should lay in the champagne, but unfortunately the petty cash tin was empty and we came back to a dry office. That was quickly put right - though there were very reasonable requests from Christine Cleary for a reviving cup of tea.

It was a great party. Friends, well-wishers, lawyers, journalists working in the same field, assaulted the office with messages of support. There's no professional envy among those who share the obsession about miscarriages of justice, and recognize it as a special,

and different branch of journalism, though sadly, if perhaps predictably, we heard nothing from the BBC's *Rough Justice*, over whose disappointments we had genuinely grieved. Stephanie Rawden, one of the young wives on the Bestwood estate with the courage to speak out for Mark, telephoned to say she'd be on the next train down. Mark hopped from telephone to telephone, giving his 'how does it feel' interviews to radio stations up and down the country. Just for the day, the lowering Calvinist ban on smoking in the office was relaxed; this wasn't a day when Bob Duffield should have to loiter by the landing window for an apologetic puff. For a moment, I thought of faxing a copy of the judgement to the whimsical television critic who wrote a 'silly me' review of the original programme, saying how hard it was to understand, but decided that this was not a day for recriminations. I was too busy, anyway, trying to stop one of the press's more enthusiastic photographers from killing Mark. Having done his bit to drain the European Moet and Chandon lake, he had taken Mark up on to the flat roof overlooking London. 'Back a bit, back a bit more,' he exhorted Mark, to try to get his subject into some sort of focus - with the very real danger that Mark's first hour of freedom would be marred by a three-storey backwards flip over the parapet.

I won't say that it's moments like this that make it all worthwhile. It's all worthwhile, anyway. Every case is an intriguing detective story, with its own surprises and frustrations; every story brings us into contact with extraordinary people and is an education in itself, whether it teaches us about tidal river flows, the incidence of idiom in Derbyshire dialect, or the *modus operandi* of a particular crime squad. Compared with teaching, mining, or checking-out at Tesco's, television is an extraordinarily privileged way of earning a living, even though you sometimes have to remind yourself of the fact at four o'clock in the morning, when you are standing in a damp field, your brain numbed into an incapacity to remember your lines. What's more, it is television with a point to it, so that those of us who never have a totally convincing answer to the question 'why don't you get yourself a proper job?' can at least mumble something about there being a purpose to it all. We may not achieve the big things like toppling presidents or revealing famines, but almost without exception, those who have done this sort of work and who have gone on to grander things in television look back upon their miscarriage-of-justice days as the most fulfilling. Everything else, as we say, is just television.

At last Mark and I get the chance for a quiet word, as the hubbub subsides. Yes, he had a feeling this was going to be the day. At the lunchtime adjournment, his warders had told him 'You're going to walk, son'. How desperate it would have been if that assessment had been wrong. He told me he had met Atherton, his accuser, in jail; 'Philip looked across the landing and said "you shouldn't be in here." Well, I could've told him that.' I can't help asking him the fatuous question about how freedom feels, and his eyes mist over again. 'You have to be in my situation to understand.' I say I hope I'm never in his situation, and the remark temporarily diffuses the tension I can see growing within him. He is beginning to realize that freedom is not an absolute; he'll never be free of the memories, never be free of the sly accusations of those who believe him guilty. It is as if he suddenly realizes that it's not just the last ten years, but the rest of his life which will have to be spent persuading others of his innocence. I try to reassure him: 'Mark, you always were innocent; we know you are innocent, you know you are innocent, and now the highest court in the land has agreed that you are innocent.' Yes, he agrees, but that's easy for a judge to say. But a judge cannot cancel the memory of ten years, ten desperately wasted years in a young man's life.

The celebration has become a little solemn, and somehow it seems fitting. Mercade has entered to set our revelry in context. It's time to send Mark and his family off to the hotel, to start putting their lives together. We can't do much to help there. A few days later we get a beautiful Thank You card. We will also soon receive a Well Done card from Stuart Egdell, the boy actor who took part in our reconstructions. I hear later that Mark has not found the first weeks easy, wandering in graveyards late at night. It has been hard for his parents to understand that the teenager they lost has returned to them not as a youth, but as a man hardened and tautened by time and adversity.

For the moment, though, we let the telephones ring, and take the entire Just Television team round to Two Brydges Place, and the club where we hold the dinners of our eminent advisory group. It's a joyful and raucous occasion. We all make speeches, whether we're asked to or not, which will be related back to us next morning, to our amnesiac astonishment. David Martin-Sperry, who has spent most of the evening calling his family in Oxfordshire with details of ever-later trains, throws in the towel and spends the evening with us. Later, he is to write a most moving and generous letter, which, with his permission, I reproduce:

Dear Just Television,

Congratulations on the magnificent outcome of your investigation into Cleary. This was your result. You turned the case from a unanimous 57-minute murder conviction, as to the correctness of which the jury and virtually everyone else could not have been more certain, into what was, by the time it reached me, an almost unloseable appeal. You put right an appalling historical error, not on the basis of any technical mistake made at the trial or by discovering evidence previously unknown about, but by reconsidering all the material known at the time of the original investigation. You succeeded in showing that Mark Cleary had nothing to do with the killing of Wayne Keeton with precisely the same material as had led the Crown to argue successfully for his conviction in 1986.

It was a pleasure and a privilege for me to have shared in your victory.

Yours,
David Martin-Sperry
May 1994