Blacklisted!

A history of rank-and-file class struggles on construction sites

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Abstract

This article charts the history of widespread illegal 'blacklisting' of active trade unionists and socialists working in the UK construction industry. Blacklisting had long been a practice by employers in the construction industry, but it was escalated after the rise of the more militant rank-and-file shop stewards' movement in the 1960s. The consequences of these events are followed through to the present day. The paper demonstrates that, in spite of protection of workers' trade union rights in law, in practice the framing, policing and implementation of the UK criminal justice system has protected the interests of capital and has been found wanting when it comes to protecting workers from corporate and state 'crime'. As with all struggles between capital and labour, this case study demonstrates that only the most determined and sustained efforts by workers over decades brought some recompense but, as yet, not justice.

Keywords: Blacklisting, construction industry, corporate crime, the lump, The Consulting Association, The Economic League

This article looks at the rise of a militant shop stewards' movement on construction projects in the UK in the 1960s and charts the class response over many decades since by the practice of 'blacklisting' of active trade unionists; a process in which the whole panoply of the capitalist state was drawn upon by the bourgeois class. It then charts the unravelling of this conspiracy and the fight back to expose the class nature of 'justice' in the context of a capitalist society.

Most liberal-democratic societies, at least in Europe, are in agreement that a free society should not only allow but should also encourage association between workers in order for them to have at least some, however limited, influence in the workplace. The right to association free from

discrimination and persecution to further collective ends by collective bargaining is internationally regarded as a basic human right. Indeed, certainly since the end of the Second World War, there has been an obligation under international law and through international treaties for governments in Britain, not only to tolerate but also to promote trade union membership, to promote the right to engage in trade union activity, to promote the right to engage in collective bargaining and to promote the right to freedom from persecution for such actions.[1] However, as this article will demonstrate with regard to the UK construction industry, the criminal justice system in its framing, policing and implementation has always reflected the fact that we live in capitalist societies where bourgeois assumptions about 'human rights' and the interests of the ruling class and not the protection of the organised working class, prevail.

At most places of work where workers have organised themselves into trade unions they have built up better wages and conditions of employment over decades than exist in non-unionised workplaces; although, of course, in the long run all workers benefit from the trade union 'trailblazers'.[2] These gains by unionised workers have historically been a consequence of fairly stable workplaces and workforces. In these industries workers have built on what had been achieved previously or, in the current 'neo-liberal' climate of austerity, have at least defended, to some extent, what had been gained.

The UK construction industry, particularly for workers involved in contracting, has always been very different. Building sites are, by their very nature, transitory places of work. Throughout the twentieth century most construction work was undertaken on the basis of fairly short-term contracts. It is true that construction employers always directly employed a small band of so-called 'key workers' who were moved from site to site across the country as and when contracts were completed and new ones were started. This minority tended to be 'loyal company men', though not always.

However, since the start of the industrial revolution the leading trades in the building industry had developed a system of 'tramping' across Britain, staying in cheap temporary lodgings in major towns and working for different employers as and when they could get work. Certainly, since the building boom of the 1950s, it became even more commonplace for labour to be hired on a job-by-job basis and dispensed with at the end of contracts.[3]

There are national agreements on terms and conditions of employment for all building and civil engineering sites between employers and trade unions to protect the wages and conditions of all construction workers

in such circumstances.[4] These agreements largely developed during the inter-war period. Nevertheless, 'casualisation' has meant that these agreements have always provided only a very basic set of standards, wages and conditions of employment; agreements that were frequently broken by employers on non-unionised sites anyway.

So, for most of the twentieth century, when an active trade unionist secured employment on a new site, that worker usually tried to recruit all those who were not union members into one or other of the building workers' trade unions before seeking recognition from the employer for collective bargaining purposes on that site. Such activists would then be elected to represent their fellow workers in local negotiations with their employers.[5]

After the second world war these local negotiations often centred on 'bonus' or incentive payments. In 1947 a national agreement had been controversially agreed between the major employers and the trade unions to introduce such payment-by-results schemes onto building sites. Such schemes had been vehemently resisted by the rank-and-file for many years before the war. They were agreed, or imposed by employers, on a site-by-site or company-by-company basis. Consequently, from the 1950s onwards elected shop stewards were in the front line of the struggle for better wages as it was they, not full-time officials, who were responsible for negotiating site-level incentive schemes. Two separate systems thus developed; a 'formal' system of nationally agreed rates of pay and an 'informal' system negotiated at local level by elected shop stewards.[6]

In the 1950s and 1960s there was a boom for construction as a consequence of the implementation of the Beveridge Report's proposals for post-war slum clearance and a mass house-building programme. Conditions were ripe for trade unions to negotiate higher pay for construction workers. However, in 1965 the Labour government under Harold Wilson, in an attempt to control inflation, introduced a Prices and Incomes Board which restricted the ability of the national leaderships of the unions to negotiate higher wages. This boosted the power of shop stewards and site works committees who, through an informal system of workplace deals, were able to negotiate incentive payments that doubled, or even trebled, workers' pay over and above increasingly irrelevant national rates of pay.

As most of the schemes that were implemented by employers were bogus or so complicated as to be open to interpretation, on trade union organised sites, shop stewards could negotiate payments upwards on an ad hoc basis or force the employers to be 'more creative' in their implementation of the schemes by recommending industrial action. By this

time ninety-five per cent of strikes were 'unofficial', called by site stewards rather than by union leaderships.[7]

In construction, this was a period of serious 'wage drift'. There was a growing gap between site activists and shop stewards on the one hand, and a trade union officialdom that had become complacent and failed to recognise the changing circumstances on the other. In the Amalgamated Union of Building Trade Workers (AUBTW) and the Amalgamated Society of Woodworkers (ASW) in particular, officials increasingly saw their job mainly as one of disciplining members. Leaders of the building workers' unions were also reluctant to be seen undermining the Labour government's incomes policies.

Shop stewards were also central in negotiating better site conditions, severance pay agreements and health and safety arrangements. Of course, some sites only lasted a short time, which meant that by the time they had done all this active trade unionists would have to start all over again on another site with another employer, or even sometimes with the same employer.

The temporary character of work in construction, the myriad employers and subcontractors and its many trades made for a constantly changing workforce. In such a situation, employers were constantly seeking to break union organisation by bringing in non-union labour. Workers were very vulnerable to persecution for being active trade unionists by being blacklisted by construction companies. Blacklisting is a system whereby employers collectively, or an independent organisation on their behalf, draw up a list of activists on the basis of information supplied by individual employers. Then, for a small fee, companies can access the information on any individual that applies to work for them and deny them work, not on the basis of their inability to perform the work required, but on the basis of their trade union and political affiliations.

Until 1993, central to this persecution was The Economic League (EL), set up in 1919, in the aftermath of the Bolshevik revolution in Russia, by Conservative MP Sir Reginald Hall. Hall, a former director of Naval Intelligence during the First World War, formed the EL with help from the intelligence services and the military, and from National Propaganda and other groups of industrialists to 'counter subversion', 'combat the red infection' and 'crusade' for unregulated free-market capitalism.[8] Trade unionists had been subject to victimisation ever since the industrial revolution – in the late nineteenth century, for example, employers used the euphemistically named 'character notes' to prevent trade unionists from obtaining work. The EL made the practice much more sophisticated.

In 1925 the EL became a permanent organisation, and one of its major functions was blacklisting services. Its first major foray into industrial relations was a campaign to break the 1926 General Strike under the slogan 'every man a capitalist'.[9] With the cooperation of the police and the intelligence services, in the 1920s and 1930s the EL then built up an immense database of trade union organisers, socialists and communists in over 600 companies as a service to employers in their blacklisting operations. The post-war 'settlement' and the arrival of 'welfare capitalism' in Britain were responsible for the relative inactivity of the EL in the 1940s and 1950s. Although the Conservatives were in office from 1951 to 1964, during that period they were resigned to a mixed economy, in contrast to the EL's commitment to unregulated free enterprise.

However, from the 1960s onwards construction companies began to employ 'industrial relations officers' more frequently. Their main purpose, it seemed, was to keep active trade unionists off their projects as a rising tide of militancy began to sweep across Britain's construction sites. The casualised and scattered nature of the British construction industry was well suited to blacklisting. Their major resource for vetting job applicants was the EL secret list of active trade unionists and socialists.[10] In the 1960s *Labour Research* uncovered and published details of the staggering scale of the EL's blacklisting activities.[11] Also, although EL had an annual income exceeding £1m from over 2000 subscribers, no criminal investigations were launched and no criminal charges were brought against it for this activity.[12]

New wage contract forms to defeat building site militancy

Because of the casual nature of the construction industry, in the 1960s employers were also able to increase the use of different types of wage contracts. The principal one that undermined the ability of trade unionists either to ensure even a minimal degree of control over their wages and conditions, or to resist blacklisting became known by building workers as the 'lump'. Employers preferred the term 'labour only sub-contracting'.

The 'lump' was a system whereby main contractors would pay a lump sum of money for the completion of set amounts of work on a 'self-employed' basis either to a sub-contractor who then paid the 'lump' workers or directly to the workers themselves. Although the lump had existed in various forms in the past, its use grew as a direct result of and an extension to the 1947 payment-by-results settlement which had been intended to enable workers to supplement their basic incomes with bonuses but had now been turned into 'piecework'. Additionally, the

introduction of Selective Employment Tax by the Labour government in 1966 made it more lucrative for companies to use 'lump' labour.[13]

The attraction of this relationship for some workers was that they would be responsible for their own income tax and National Insurance payments as 'self-employed' workers and could either negotiate lower income tax payments or, in most cases, avoid paying it altogether as the payments from employers were often 'cash in hand'.[14] Although this was illegal, even a government report suggested that 'the lump' offered the 'opportunity for an enterprising worker to gain independence'.[15] The flaw in this argument was and still is that such statements rarely distinguished between the minority of workers who freely chose such contracts and the majority who had them imposed upon them for the greater benefit of the employers.

The lump meant employers could avoid their responsibilities to pay their share of National Insurance, holiday and sick pay and other obligations under national agreements. Health and safety and the training of apprentices also became the responsibility of the 'self-employee'. Employers could also offer very lucrative 'lump' sums when there was a shortage of labour in boom years, in order to attract workers from other construction companies but slash prices when the industry went through one of its periodic slumps – the 'free market' and the 'invisible hand' *par excellence*.

The biggest benefit to employers was that workers were not covered as 'employees' by employment law with regard to trade union activity and could be dismissed at a minute's notice on a whim. Hence, rank-and-file trade unionists and, in theory, trade union leaders had always opposed the lump as it undermined their ability to organise in the industry.[16]

Rise of the shop stewards movement, the long 1960s and the challenge to 'the lump'

During the 1960s strikes in general increased, reaching ten million working days lost through strikes by 1970. There were many reasons for this. Firstly, by the 1950s trade union leaders had become wedded more to the Labour establishment and remote from their members. However, in the 1960s a new generation of trade union leaders, who responded more to their members' needs, began to emerge. The Transport and General Workers' Union, for example, elected left-leaning General Secretaries Frank Cousins and Jack Jones, and in 1968 Jones rescinded the ban on communists holding union office.

However, most of the strikes were 'unofficial' in that they were not sanctioned by trade union leaders. There are numerous reasons for this.

The trade union movement had grown to thirteen million members by the late 1960s. This was aided by the practice of the 'closed shop' where trade union members began to insist that their fellow workers had to be in the union if they wanted to enjoy the benefits that trade unions brought them. This increased the strength of trade unions at shop floor level. There were also many demarcation disputes as old industries declined, new industries emerged, and employers used new technologies to undercut job security. This increased the importance of shop stewards.

In 1965 the Labour government appointed a Royal Commission on Trade Unions and Employers' Associations, chaired by Lord Donovan. It was a wide-ranging inquiry that finally reported in June 1968. As a result, the Labour government's Employment Minister, Barbara Castle, presented a White Paper to Parliament entitled 'In Place of Strife'. She suggested ballots before strikes and a twenty-eight day 'cooling off period' before action could be taken. Her aim was to prevent 'unofficial' strikes initiated by the rank-and-file through their elected shop stewards. Because of rank-and-file opposition and the threat of industrial action, the TUC (Trade Union Congress) General Council rejected the idea and pressured the government to withdraw their plans.

It is against this background that industrial relations in the construction industry and the scale and nature of blacklisting developed in the 1960s and 1970s. Until the 1960s not much had changed in building workers' conditions since Tressell wrote *The Ragged Trousered Philanthropists* in the Edwardian era. Whilst being critical of this situation, trade union leaders had become complacent. The shop stewards' movement in the 1960s, however, represented a concerted attempt by organised labour at site level to change these conditions. The seeds of this militancy were evident in a national building strike over pay and hours in 1963 which involved 60,000 workers striking on over 800 sites.[17]

There were also many bitter disputes on individual sites over Victorian site conditions, poor health and safety requirements, bogus incentive schemes and the attempt by employers to spike this new-found militancy by the use of lump labour. Two outstanding examples were the Horseferry Road site, where new government buildings were being constructed, and, more especially, at the Barbican development, both in London.

The Barbican development in particular was central to a wave of militancy that swept across construction sites throughout Britain in the mid to late 1960s, especially in the larger cities. Started in 1962 and finally completed in 1982, the Barbican site, a forty-acre development of housing, landscaping, a business centre, a school and one of the largest arts centres

in Europe, employed over 1000 building workers at its peak in the mid-sixties. This was one of the first major projects where new, non-traditional and 'modern' construction methods predominated. Increased mechanisation, increased complexity, new building methods and the use of new technologies increased the use of new, non-traditional occupations. The use of in-situ concrete in particular dramatically increased the employment of workers in non-traditional trades who were members of more militant general unions rather than the more conservative and traditional craft unions.

This, coupled with the tenor of the times and the initially grim site conditions, gave the impetus for a new, militant trade unionism. Led and co-ordinated by several shop stewards who were mostly, though not exclusively, members of the Communist Party of Great Britain (CPGB), workers launched numerous challenges to the status quo for building workers, especially between 1965 and 1967. Following a dispute over the use of sub-contractors in 1965 the whole workforce of the contractor Turriff were sacked. New workers were each required to sign what was colloquially known by building workers as 'The Document', promising never to take any industrial action. This tactic by the employers had started in the early nineteenth century but had fallen out of use since the early decades of the twentieth century.[18]

This provoked widespread support for the strikers from sites across Britain, especially in Liverpool and Manchester. In London, 2000 workers on the capital's four next biggest building sites walked out in sympathy. This was the embryo from which developed the militant organisation, the London Joint Sites Committee.[19] After a long and bitter struggle the employers, Turriff, eventually conceded defeat. Despite this phase of the development continuing to be marked by disputes over bonus schemes and the sacking of stewards, it represented the biggest battle over the direction of industrial relations on UK building sites for many years.

However, bigger battles were still to come. In 1966, on Phase 4 of the development, the company Myton faced industrial action when they tried to bring in steel-fixers working on 'the lump'. Then, in a dispute over bonus payments, Myton locked out the whole workforce for thirteen months. The strikers were supported by workers on sites in all parts of London, Manchester, Glasgow and Liverpool. Strike funds were raised and coach-loads of supporters were sent to pickets and demonstrations called by the strikers.

In June 1967 this resulted in a Court of Inquiry being set up by the government under the Industrial Courts Act.[20] Initially, none of the works

committee of site stewards were invited to submit evidence to the inquiry, despite the employers blaming the 'poor' industrial relations record on the site on them. It was only after one of the site stewards complained about this clear bourgeois bias that he was given just two/three days to prepare and send in a written submission.[21]

Despite overwhelming evidence given at the inquiry that design and tendering mistakes had contributed greatly to the problems and delays on site, something that Myton later admitted, the inquiry placed the blame wholly on the works committee. This was supported by a campaign of vilification of the site stewards by the national press – in particular of the convenor steward, Lou Lewis.[22] The Cameron Report, as it became known, recommended that trade union leaders ignore democratic site processes and appoint new shop stewards so that the site could be re-opened with the existing stewards remaining sacked.

Union leaders, who thought that the shop stewards were undermining their authority, supported these recommendations and even took out full-page advertisements in the national newspapers saying that there was no strike at the Barbican and that trade unionists were free to work there with the support of their trade unions. Additionally, two of the sacked stewards, one of whom was Lou Lewis, were expelled from the Amalgamated Society of Woodworkers for continuing to picket the site. When trade union officials accompanied Myton managers on a mission to reopen the site they were confronted by a picket of several hundred and pelted with mud.[23]

Whilst this 'settlement' was rejected overwhelmingly by the workforce, on 16 October a huge police presence forced the re-opening of the site against a 500 strong picket. At a later mass meeting the works committee accepted defeat in the face of the overwhelming force of the state, the trade union leadership and the employers. Lou Lewis, the sacked convener steward, presciently told the 500 assembled workers that it was the trade union leadership that must now be 'destroyed'.[24]

Sir Frank Taylor, managing director of Taylor Woodrow, and Barton Higgs, managing director of Taylor Woodrow's subsidiary Myton publicly blacklisted the sacked stewards. All the trade union stewards from the Barbican and Horseferry Road sites as well as trade unionists from other sites that had supported them were blacklisted and found themselves unable to secure employment, even in other unrelated industries. This was the start of a massive increase in the use of the blacklist.[25]

The long 1960s and the 1972 National Building Workers' strike

In so many respects 'the long 1960s' extended well into the 1970s. So it was with building site militancy, which continued to escalate in the favourable conditions of a building boom that saw about 330,000 houses built every year. As a result of the cooperation of rank-and-file building workers across Britain in supporting the Barbican disputes, the London Joint Sites Committee joined up with site committees in Manchester and Liverpool and launched the Building Workers' Charter in April 1970. Two-hundred and eighty-eight delegates from fifty union branches and an equal number of stewards from sites met in Manchester to found the organisation. They dedicated themselves to fighting blacklisting, victimisation and the lump. They drew up a 'charter' of demands for a basic rate of pay of one pound an hour, a thirty-five hour working week, three weeks (later four weeks) paid holiday in addition to statutory days holiday, an end to 'lump' labour, decasualisation of the industry with the registration of all building workers, rigid enforcement of health and safety legislation and nationalisation of the construction industry.

The Building Workers' Charter grew – its next annual conference in 1971 attracted 500 delegates, and in April 1972 there were 865 delegates. Seven area committees were established, in Glasgow, London, Manchester, Wigan, Leicester, Stoke and North Wales. By 1972 the *Charter* newspaper, edited by Lou Lewis, had regular sales of 10,000-15,000 copies. Through the use of strikes, demonstrations, raids on sites and with the support of district official Ken Barlow, Charter members like Pete Carter, Mike Shilvock and Phil Beyer won major breakthroughs in the Midlands where trade union organisation had always been much weaker than in London, Manchester and Liverpool. By February 1972 the lump had been virtually eliminated in Birmingham.

In the summer of 1972 workers on big sites up and down the country refused to accept continuing poor wages and conditions as well as the use of lump labour.[26] In particular, they refused to accept a national deal negotiated by their unions. In response the trade union leaderships sanctioned selective strikes on the largest and most militant sites. However, led by the Building Workers' Charter, militants like Lou Lewis and Peter Kavanagh in London, Dennis Dugen and Alan Abrahams in Manchester and Tommy Walker and Pete Carter in the Midlands organised 'flying pickets' to go to other sites across Britain to persuade workers to join them. Due to the initiative and fighting spirit of these site militants and a minority of regional officials, by mid-August every major site in Britain

was closed down; 300,000 building workers were on strike and the union leaders had no option but to make the strikes 'official'.

After twelve weeks of a shutdown on virtually every major site in Britain the Employers Federation capitulated and offered a thirty per cent increase in the basic rate of pay and other better conditions. The unions recommended a return to work. Although there was a return to work, many rank-and-file workers, including some of those in the Building Workers' Charter, thought that the fight should have carried on until the issues of blacklisting and victimisation had been addressed and the lump had been totally eradicated. The numbers of workers on the lump had grown from an estimated 160,000-200,000 in 1965 to an estimated 400,000 by 1973.[27]

However, support for carrying on the struggle was waning. Some ultra-left critics claimed that this was a consequence of not continuing to publish the *Charter* during the strike and thus a failure by the rank-and-file communist leadership of the strike to raise the demands of the strikers. Even Lou Lewis himself confessed that 'in the strike the Charter went to sleep'. However, as he pointed out at the time, they were too busy travelling the length and breadth of the country persuading workers on unorganised sites to join them to have the time to write editions of the *Charter.*

Nevertheless, the employers were bitter and decided to get their revenge with waves of victimisation and blacklisting. Long after the strike was over representatives of the major contracting companies, Conservative government ministers, senior police officers and members of the security services colluded to charge a number of building workers from the North West with common law conspiracy. A National Federation of Building Trade Employers (NFBTE) dossier on picketing during the strike, which included sensationalised press cuttings from the right-wing press, was sent to Conservative Home Secretary, Robert Carr. Before the building strike had even started, Carr had circulated a statement to Chief Constables throughout the country telling them to take a harder line on picketing.[28]

Robert McAlpine also wrote to the Commissioner of the Metropolitan Police, Sir Robert Mark, complaining that the law had not been enforced at Shrewsbury. Mark gave his support, describing the Shrewsbury pickets' 'crimes' as 'worse even than murder'.[29] The High Sheriff of Denbighshire, who, not incidentally, was the ninth member of the McAlpine family to have held that post, also gave his support.[30] The Home Secretary then pressured the police to arrest and charge those who had taken part in picketing at Shrewsbury.

All those involved in picketing at Shrewsbury had been congratulated at the time by police officers on the ground for their impeccable

behaviour when visiting other sites to persuade workers to join the strike. The police commanding officer went so far as to shake by the hand one of the leading pickets, Des Warren, and congratulate him on the discipline and good humour of the strikers. This counted for nothing. Thirty-five were arrested and charged with conspiracy under common law.[31] Eleven were acquitted at Mold Crown Court after defence lawyers had exercised their right to challenge potential jurors. The remaining twenty-four were all found guilty at Shrewsbury Crown Court after the Lord Chancellor had intervened to abolish the defence's ability to challenge jurors.

The day before the prosecution completed its case, ITV screened a sixty minute documentary entitled 'Reds under the Bed' which showed supposed violence by pickets and closed with a Conservative MP talking about violence in the building workers' strike. This was followed by a half hour discussion programme, not shown in every ITV region, but transmitted by ATV, the region that covered Shrewsbury. The Foreign and Commonwealth Office's 'Information Research Department' (IRD) admitted having had a hand in this programme. It showed two of the defendants taking part in protest marches, and these images were interspersed with footage of damage on building sites alleged to have been caused by the trade unionists. Despite all this, the judge dismissed complaints that this amounted to contempt of court.[32]

In 2015 Labour MP Andy Burnham revealed to Parliament previously secret files, which showed a government conspiracy to frame and jail the strikers. This included commissioning and promoting the ITV documentary, and involved the secret services, senior police officers, government ministers and even the Conservative Prime Minister Edward Heath. One of the files reveals that, on seeing a transcript of the documentary before the conviction of the trade unionists, Heath commented 'we want as much as possible of this'. Another document shows that the then Conservative Home Secretary, Robert Carr, directed police evidence gathering.[33]

Furthermore, another file on a meeting between Chief Constables and prosecuting lawyers documents 'inconvenient' witness statements being destroyed. It said that this was needed because the statements were taken 'before officers taking the statements knew what we were trying to prove'.[34] At the trial the jurors were also given assurances informally that if the defendants were found guilty they would most likely just get small fines. Many of the jurors were said to look deeply shocked at the sentences handed out.[35]

Twenty-one of the defendants were indeed fined, but John McKinsie-Jones was given a six-month jail sentence, Ricky Tomlinson was given two years in prison and Des Warren was sentenced to three years. As Des

Warren said from the dock at the time, the only conspiracy that had taken place was a conspiracy by the capitalist class. Laughably, the judge warned Warren that this was not a political trial and that he should not use the opportunity to address the jury to make a political speech. Tomlinson still maintains that 'it was a show trial. We were whipping boys'.[36]

At the time, a letter to Downing Street from Sir Michael Hanley, Director General of MI5, recently uncovered by campaigner on behalf of the Shrewsbury 24, Eileen Turnbull, stated that Warren and Tomlinson '… must be kept in prison'.[37] While in prison Warren was continually drugged with a cocktail of tranquillisers, colloquially known as 'liquid cosh'. His family and friends are all convinced that this resulted in him contracting Parkinson's Disease and dying at the early age of sixty-six.[38]

Tomlinson was released after sixteen months of his two-year sentence and became an actor because, like all of the twenty-four, he was blacklisted and couldn't get any work as a plasterer. Even now, he remains blacklisted and is still campaigning for the truth to come out about the political conspiracy against all of the twenty-four. Back in 2004, a unanimous backbench vote in the House of Commons called for the release of all documents relating to the case. Even now more than forty years after the trial, on the direct order of the Home Secretary, the government says that it won't release all the papers on the affair at least until 2021 because it would 'compromise national security'.[39] If, as the government claims, the security services were not involved, then how would the release of all the papers compromise national security?

The aftermath of building site militancy in the long 1960s

After the national building workers' strike in 1972, the employers intensified their campaign against socialists and active trade unionists on their sites and began to use the blacklist much more. The EL set up the 'Services Group' to cater solely for the needs of its construction clients. Many of those activists who had been victimised for their activities in the 1960s and 1970s sought election to full-time positions in their respective trade unions. Organised by the 'broad left', this was a deliberate and concerted strategy to ensure that those blacklisted in the 1960s and 1970s could gain employment and also fulfil sacked Barbican convener steward Lou Lewis's promise to 'destroy' the right-wing domination of the building trade unions. Lewis was himself elected as a full-time organiser later on, eventually rising to become the London Regional Secretary of UCATT (Union of Construction, Allied Trades and Technicians).

However, by the late 1980s the scale of the illegal conspiracy against building workers had become so great that the media and politicians were forced to take notice. Press investigations revealed that much of the data that the EL kept was inaccurate and biased and that it had been working with MI5 to blacklist more than 22,000 'subversive workers'. The EL was receiving 17,000 calls per month.[40] This led to a parliamentary enquiry in 1990 in which the EL was forced to give evidence about its blacklist. Because data protection laws meant that it would have had to open its files to further scrutiny the EL closed down in 1993.[41] However, we now know that construction company Sir Robert McAlpine Ltd invested £20,000 in setting up another secret organisation, The Consulting Association (TCA), buying the blacklist database from the EL for £10,000 and installing Ian Kerr, a former employee of the EL, to manage the operation.[42]

Under a Labour government, draft regulations to make blacklisting an offence were drawn up in 1999 as part of the Employment Relations Act (1999), but they were not implemented. Most MPs believed that the closing down of the EL had brought an end to the practice. Draft regulations were once again put out for consultation in 2003, but again were not enacted because of heavy lobbying by the construction employers and the fact that it was difficult for unemployed building workers to prove that they had been blacklisted, save for the obvious fact that they could not find work in the industry. So, by 2009, although it contravened a number of other laws, such as the 1998 Data Protection Act, it still wasn't specifically illegal in UK law to blacklist a worker for trade union activities. Discrimination and unemployment plagued the whole working life of many of those who had been militant trade unionists since the 1960s and 1970s.

In February 2009 the Information Commissioner's Office (ICO) tracked down the whereabouts of TCA and, using Schedule 9 of the Data Protection Act, obtained a warrant to raid their office where they seized files.[43] These files revealed that 3,213 workers had been blacklisted, many dating back to the site militancy of the 1960s, that companies paid a £3,000 annual subscription with a fee of £2.20 for each enquiry and that forty-four companies had been involved in the conspiracy. At the request of companies, about 40,000 checks were shown to have been made on individuals by TCA during 2008 alone.[44] Because of blacklisting over the years many building workers had adopted pseudonyms. Even many of these pseudonyms had blacklist files on them.[45] Kerr was charged with breaking the Data Protection Act (1998). He didn't attend the hearing at the Magistrates Court in Macclesfield, simply pleading guilty through his solicitor. The case was referred to Knutsford Crown Court where he was fined just £5,000 with

£1,187.20 in costs; an amount that the ICO described as 'derisory'.[46] Even these sums were paid for him by Sir Robert McAlpine Ltd. Many Labour MPs were said to be shocked that Kerr could only be prosecuted under data protection laws.[47] Kerr died shortly afterwards. After the case the ICO did issue Enforcement Notices under the 1998 Data Protection Act against fourteen companies who had subscribed to TCA, but these are just warnings not to do it again. In addition, some of the biggest users of TCA, especially Sir Robert McAlpine and Skanska, were not included on the list.[48]

It was also revealed that the ICO had seized only between five to ten per cent of the material from Kerr's office, claiming that the material seized satisfied the terms of the warrant.[49] In response, at an inquiry that will be discussed later, the Labour MP Iain McKenzie said:

> Forgive me gentlemen, but it seems a strange raid. I am trying to put it into the context of what the police would do. If the police did a drugs raid, they wouldn't go in, find a pill and say: 'Right, that's enough, let's go' and leave it at that. They would assume that that room had additional things to look at and so on.[50]

Kerr had taken the opportunity to destroy most of the remaining incriminating evidence afterwards.

The Blacklist Support Group is born and 'discovers' the inadequacies of the legal system

In 2010, ten affected workers set up the 'Blacklist Support Group' (BSG) to work independently of, but also within their trade unions, UCATT, UNITE, and the GMB to fight this long-standing injustice. The campaign quickly grew as other affected workers joined the struggle. UCATT commissioned a report by Professor Keith Ewing of the Institute of Employment Rights which concluded that:

> Blacklisting is a nasty, secretive and unaccountable practice that causes untold misery for individuals who are entrapped unwittingly by its covert nature, incapable of challenging what is being said and used against them, and unable to understand why their lives are being blighted by the failure to secure work.[51]

Because of inaction by the ICO, BSG members started taking cases through the Tribunal system. However certain features of the Tribunal

system meant that it was always likely that the majority of these cases would fail for two reasons. Firstly, there is a three-month time limitation on claims; a wholly unreasonable restriction given that blacklisting, as this case demonstrates, often takes years to uncover. In addition, despite the unusual circumstances surrounding these cases, the three-month rule was applied very strictly by clearly unsympathetic judges, even though the law allows for unusual circumstances to be taken into account.

Most cases also failed because of what constitutes employee status in law. By this time the lump had largely been eradicated with certification regulations. However, this had taken many years of campaigning and action by activists to improve weak legislation that had so many loopholes for employers as to make the early sops to trade union pressure virtually ineffective.[52] Indeed, main contractors started using sub-contracting firms much more, and the effects of certification were simply that the lump had been formalised and workers made to pay their own National Insurance and income tax. Relationships of power were largely untouched. Now, hardly any main contractors employ all the workers directly on site, and can dispense with the services of a sub-contractor which employs an active trade unionist or threaten the sub-contractor that it will lose the contract if it does not get rid of 'troublemakers'. The large contractors always did this to an extent, but now it is an almost universal practice.

In addition, most main contractors and sub-contractors now use agency labour. This practice began to flourish with the establishment of national labour agencies such as Manpower, Labour Force and SOS back in the 1960s.[53] It has now escalated to become the predominant labour contract on offer on large sites. If a worker is employed through an agency, then that worker is not covered by employment law as an employee, even though all interaction with the contractor or sub-contractor is exactly the same as if the worker was directly employed, even to the point where a contractor can dismiss an agency worker who is on the blacklist. As a result of these sinister moves by employers, construction workers remain excluded from most of the legislation designed to protect workers.[54]

In 2010, Blacklisting Regulations were finally enacted in the last days of the Brown Labour government under the provisions of the 1999 Employment Relations Act. However, they only enable workers to make a claim against a company that refuses to employ them; not against the main contactors who use the blacklist against them, but don't employ them directly. Also, under the regulations, workers can only make a claim against a company if they have been blacklisted for 'official trade union duties'. Many workers, however, have found themselves on the blacklist

for simply being trade union members, supporting the aims of the building trade unions or, indeed, because of their political affiliations. Indeed, the regulations are so full of loopholes they are virtually useless.[55]

The Scottish Affairs Select Committee, the ICO and the secret state

Because of blacklisted workers in Scotland making representations, in 2013 the Scottish Affairs Select Committee convened an inquiry into the practice. One of the many things to come out of it was that, despite the raid on the office of TCA and the threat of legal action, blacklisting was still continuing. At the Select Committee representatives for Sir Robert McAlpine, Skanska, Balfour Beatty and BAM were all forced to admit that workers had been blacklisted from the 2012 Olympic site construction. It was also admitted by Pat Swift, Head of Human Resources on the Crossrail project, to be an endemic practice by companies involved in what was then the biggest civil engineering project in Europe.[56]

The Scottish Affairs Select Committee inquiry also revealed that undercover police had been co-operating with the employers and TCA to identify potential 'troublemakers'. As a consequence, in 2013 an Independent Police Complaints Commission (IPCC) report found that the police had been systematically providing names and personal details of active trade union building workers to TCA. The IPCC report concluded that 'it is likely that all Special Branches were involved in providing information about potential employees [to TCA]'.[57]

In particular, the police colluded in blacklisting through the National Extremism Tactical Co-ordination Unit (NETCU) which is now subsumed into the Metropolitan Police. Gordon Mills, Head of Police Liaison at NETCU, gave a PowerPoint presentation to construction employers in 2008 in the Bar Hotel in Oxfordshire on how to blacklist workers.[58] It was also revealed by the IPCC report that Mark Jenner, an undercover police officer from the Special Demonstration Squad (SDS), now subsumed into the Metropolitan Police as well, infiltrated trade unions, in particular UCATT, under the pseudonym Mark Cassidy. Peter Francis, an undercover officer himself, actually blew the whistle on such activities by the SDS.[59]

The IPCC report also concluded that it was probable that the secret services were involved as well. Indeed, like the Industrial Section within Special Branch, the entire raison d'être of the F2 branch of MI5 was to spy on trade unions and share the information with major employers.[60] In addition, the Foreign and Commonwealth Office's 'Information and

Research Department' (IRD), which had been involved in the case against the Shrewsbury pickets, had a hand in the conspiracy against building workers. The acronym IRD appeared on numerous files held by TCA. A request by Smith and Chamberlain for an IRD construction industry report was refused on the grounds of 'national security'.[61]

The BSG also criticised the ICO for recommending in the letter that accompanied the file to blacklisted workers that they contact the employers who were setting up 'The Construction Workers' Compensation Scheme' (CWCS). This scheme has been dismissed by both the trade unions and the BSG as a totally inadequate stunt designed to merely distract attention away from their criminality, to keep the case out of court and to placate the Scottish Affairs Select Committee and concerned MPs. Steve Murphy, the General Secretary of UCATT said 'The ICO's advice is like telling someone who is in debt to visit a loan shark'.[62]

The Group Litigation Order: compensation but not 'justice'?

Because of the inadequacies of the Tribunal system, more than eighty blacklisted workers contacted their unions to seek representation in a High Court action. They were told that their unions would not support a High Court claim. In July 2012 legal representatives Guney, Clark and Ryan (GCR) were then contacted by members of the BSG. They agreed to represent the workers on a conditional fee arrangement ('no win, no fee') basis to bring multiple claims in the High Court against Sir Robert McAlpine for offences including defamation, breaches of the 1998 Data Protection Act, conspiracy and misuse of private information. They were then joined by solicitors acting on behalf of the trade unions UCATT, Unite and the GMB.

In July 2014 the judge hearing the cases agreed that construction companies involved in blacklisting had a case to answer and that hundreds of separate cases made by victims of blacklisting should be heard together under a Group Litigation Order (GLO). The cases were managed by a Steering Committee comprising solicitors acting for the unions UCATT, Unite, and the GMB, and Guney, Clark and Ryan for the BSG, against a consortium of eight of the UK's largest construction companies, known as the 'McFarlane Defendants'.

Case management hearings proceeded to take two years, with the employers' lawyers using every delaying tactic imaginable. The defendants' legal team initially denied that anything untoward had happened. When confronted with the evidence they then claimed that it was merely a 'vetting scheme' to advise employers on the best workers available.[63]

In a cynical public relations exercise the criminals then set up the pitiful 'compensation scheme' mentioned earlier that even they admitted would have resulted in most blacklisted workers receiving £1,000 (later increased to £4,000). They even tried to dupe MPs into falsely believing that this had been agreed with the trade unions. They also prevaricated from hearing to hearing when ordered to supply the court with documents.

Finally, the full trial was set to run for ten weeks from 16 May 2016; more than *seven* years after the conspiracy was 'discovered'. As is the case in many legal actions, as the date set for the full trial approached the employers, desperate to avoid having to appear in court to justify their actions, started to increase their offers from the miserable amount of £4,000 that they had offered most workers under their discreditable 'compensation scheme'. With less than a month to go before the full trial, a settlement was reached between the construction workers, Unite, GMB, UCATT, the BSG and their legal teams with construction firms. Seven-hundred seventy-one blacklisted workers shared an estimated £50 million in compensation, most getting between £25,000 and £200,000. It was also estimated that, including legal costs, it cost the employers £250 million.[64]

Conclusions

The final act of the group litigation case was a public 'apology' given by legal representatives for the employers in the High Court on 11 May 2016. Although the construction companies said that they were sorry 'for the distress and anxiety caused to workers and their families' they still couldn't bring themselves to use the word 'blacklisting'. The 'apology' also contained the words 'that the litigants agree that this is the end of the matter'. The BSG disassociated itself from the 'apology'.[65]

Blacklisted workers were elated that the wrong against them had finally been recognised with the multi-million pound settlements. However, many of them expressed frustration that the case had not gone to full trial where the contemptible captains of the construction industry would have been cross-examined about their cowardly behaviour. In addition, this matter is far from over. There is the more immediate question of pressing for criminal charges to be brought against the perpetrators of this conspiracy that would see the directors of these companies in the dock for attempting to pervert the course of justice. Indeed, based on evidence arising from High Court orders of the deletion of email accounts, the destruction of computer hard drives and the shredding of documents by companies, the BSG confirmed that it intended to make a formal submission to the Metropolitan Police to investigate.

The BSG are also demanding a watertight agreement with employers to ensure that blacklisting is ended. Four years after the raid on TCA the ICO admitted possessing evidence of a second blacklist. This followed the revelation in 2012 that the City of London Police passed information to construction companies about protests by rank-and-file electricians.[66] The employers have merely agreed 'to issue guidance to site managers' to ensure that trade union members receive no less favourable treatment for job applications. Given their track record, workers are understandably sceptical about such a promise. Indeed, the technology of blacklisting is now moving offshore using wiki models in which the conspiracy can become more dispersed and, crucially, less actionable.

The role of the police and secret services in this conspiracy also still needs to be uncovered and guilty parties dealt with. In this respect, the BSG has been given 'core participant status' in the ongoing Pitchford Inquiry into police surveillance.[67] Despite this, it now seems that the BSG itself is under surveillance by undercover units at the Metropolitan Police.[68]

In addition, new and effective legislation to make blacklisting a criminal offence with very punitive sanctions is needed, but this would require the election of a Labour government committed to workers' rights. More immediately, plans are being drawn up by the Labour leadership to advise all Labour-controlled local authorities on incorporating 'no blacklisting' clauses into contracts for construction projects offered to private contractors. Over 100 local authorities and public bodies such as the Scottish government and the Northern Ireland and Welsh Assemblies have already banned blacklisting firms from public sector work, thereby turning the tables by blacklisting the blacklisters.[69] Labour also plans to ban blacklisting companies from all public contracts if it comes to power as well as holding a 'transparent and public' inquiry into all aspects of the practice.[70] However, as this case demonstrates, without active mass action on employment rights a Labour government committed to ending this iniquitous practice will not get elected, nor will its eradication be able to be sustained in the long run.

Indeed, this struggle should not be seen as either a closed chapter or unique in the history of industrial relations in Britain. It is an episode in the constant and necessary class struggle that is a feature of all capitalist societies. The victimisation of trade unionists as part of this class struggle has taken many forms over the last 200 years; from the Combination Acts of the early nineteenth century which made combination between workers illegal to the penal transportation of farm labourers from the Dorset village of Tolpuddle to Australia for common law conspiracy in 1834 through to the use of 'character notes' and 'the document' in the late

nineteenth and early twentieth centuries through to the blacklisting that has taken place over the last fifty years. The struggle for justice by trade unionists will necessarily continue as long as the capitalist system exists.

Notes

1. See Article 1 of the International Labour Organisation's 1949 Right to Organise and Collective Bargaining Convention (No. 98) as revised in the 1978 Labour Relations (Public Service) Convention (No. 151) which says that workers in the public sector '… shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment'. This is backed up by Articles 5 and 6 of the 1961 European Social Charter as well as its revised version in 1996 with regard to all workers, whether in the public or private spheres. Article 11 of the 1953 European Convention on Human Rights guarantees freedom of association and the right to form trade unions free from discrimination whilst Article 8 of the 1966 United Nations International Covenant on Economic, Social and Cultural Rights guarantees the right to form or join a trade union and the right to strike. In addition, the Charter of Fundamental Rights of the European Union (2000) protects freedom of association (Article 12), the right to collective bargaining (Article 28) and, significantly for this article, protection of personal data (Article 8).
2. On the 'union wage premium' see John Forth and Neil Millward, *The Determinants of Pay Levels and Fringe Benefit Provision in Britain*, London 2000, and Andrew Hildreth 'Union wage differentials for covered members and non-members in Great Britain', *Journal of Labor Research* 21 (1) (2000), pp133-147.
3. For an explanation of the causes of the 'tramping' system in the nineteenth century see Christopher Powell, *The British Building Industry Since 1800: An Economic History*, Abingdon 2013, pp38-39. For evidence of the upsurge in hiring labour on a temporary job-by-job basis in the 1960s see Terry Austrin, 'The "lump" in the UK construction industry' in Theo Nichols (ed.), *Capital and Labour: A Marxist primer*, London 1980, pp302-315.
4. The National Working Rule Agreement (NWRA), The National Agreement for the Engineering Industry (NAECI) and the Joint Industry Board (JIB) are the three main collective agreements.
5. See Terry Austrin, 'Industrial Relations in the Construction Industry', PhD thesis, University of Bristol, UK, 1978 and Leslie Wood, *A Union to Build: The story of UCATT,* London 1979.
6. Wood, *A Union to Build*, pp59-69. Also see Charlie McGuire et al., 'Battles

on the Barbican: the struggle for trade unionism in the British building industry, 1965-67', *History Workshop Journal* 75(1) (2013), p36.

7. HMSO, *In Place of Strife: a Policy for Industrial Relations*, Cmnd. 3888 (1969), p39.
8. See Richard Norton-Taylor and Mark Hollingsworth, *Blacklist: the inside story of political vetting*, London 1988, and Mark Hughes, *Spies at Work*, London 2012.
9. Hughes, *Spies at Work*.
10. Norton-Taylor and Hollingsworth, *Blacklist,* Hughes, *Spies at Work*; Arthur McIvor, 'A crusade for capitalism: the Economic League, 1919-1939', *Journal of Contemporary History*, 23 (1988), pp631-655 and Phil Chamberlain, 'The construction industry blacklist: how the Economic League lived on', *Lobster*, 58, Winter (2009/10).
11. The Economic League continued to deny that they held a blacklist of workers until the publication of Labour Research, *A subversive guide to the Economic League*, 1969.
12. Norton-Taylor and Hollingsworth, *Blacklist.*
13. Wood, *A Union to Build*, pp66-67, Austrin, 'The "lump" in the UK construction industry' and McGuire et al. 'Battles on the Barbican', p35.
14. Max Gagg, 'The subby bricklayer' in R. Fraser (ed.), *Work*, Volume II, London 1969, p113.
15. E.H. Phelps Brown, *Report of the Committee of Inquiry under Professor E.H. Phelps Brown into Certain Matters Concerning Labour in Building and Civil Engineering,* Cmnd. 3714, London 1968, p15.
16. Dave Lamb, *The Lump: an heretical analysis*, London 1974; UCATT, *Smash the Lump*, London 1977 and Wood, *A Union to Build*.
17. Robert Tressell, *The Ragged Trousered Philanthropists*, St Albans 1965. See McGuire et al.. 'Battles on the Barbican', p35 on the 1963 national building strike.
18. 'The Document' was a declaration workers were required to sign to say that they would never take industrial action of any description. See Christine Wall et al., *Building the Barbican 1962-1982: taking the industry out of the dark ages*, University of Westminster 2012, p25.
19. See McGuire et al., 'Battles on the Barbican', p40.
20. *Ministry of Labour Report into Trade Disputes at the Barbican and Horseferry Road Construction Sites in London* (Cameron Report), Cmnd. 3396, London 1967.
21. Wall et al. *Building the Barbican 1962-82*, p39.
22. See Wall et al., *Building the Barbican*, p41 for a summary of the findings of the Cameron Report. For media vilification of the strike leaders see John

Tilley, 'This Smiling Man … Who Halts the Building of a Village Within a City', *Daily Mail*, 22 February 1967. Wall et al., *Building the Barbican*, p37, report that *The London Evening News* also ran a series of articles blaming the strike on a small group of communist agitators who had 'infiltrated' the sites.

23. Wall et al., *Building the Barbican*, p41, and McGuire et al., 'Battles on the Barbican', p47.
24. Wall et al., *Building the Barbican*, p44.
25. Ibid., pp45-48.
26. Austrin, 'The "lump" in the UK construction industry', and Wood, *A Union to Build*.
27. Austrin, 'The "lump" in the UK construction industry', p303.
28. Peter Lazenby and Conrad Landin, 'Just the tip of the iceberg', *Morning Star*, 12 December 2015, and Daniel Boffey, 'Revealed: how Ted Heath used TV film to wage bitter battle with striking builders', *The Guardian*, 6 December 2013 both reported on this conspiracy. For a fuller outline of events see Wood, *A Union to Build*, pp29-34.
29. Alwyn Turner, *Crisis? What Crisis? Britain in the 1970s*, London 2009, p77.
30. Dave Smith and Phil Chamberlain, *Blacklisted: the secret war between big business and union activists*, Oxford 2015, pp55-56.
31. Ricky Tomlinson, *Ricky*, New York, Time Warner 2004.
32. Dave Smith and Phil Chamberlain, *Blacklisted*, p56.
33. Lazenby and Landin, 'Just the tip of the iceberg', and Boffey, 'Revealed'.
34. Boffey, 'Revealed'.
35. Tomlinson, *Ricky.*
36. Lazenby and Landin 'Just the tip of the iceberg'. In his evidence to Parliament Shadow Home Secretary Andy Burnham also described the events at Shrewsbury Crown Court as 'a politically orchestrated show trial'.
37. See Luke James, 'Spies Rigged Shrewsbury Pickets Trial', *Morning Star*, 10 December 2015.
38. Tomlinson, *Ricky*.
39. Smith and Chamberlain, *Blacklisted*, p60.
40. Norton-Taylor and Hollingsworth, *Blacklist* and Chamberlain, 'The construction industry blacklist'.
41. Hughes, *Spies at Work*.
42. Chamberlain, 'The construction industry blacklist'. The chairman of the organisation for the first three years was Callum McAlpine, director of Sir Robert McAlpine.
43. Smith and Chamberlain, *Blacklisted*, p33.
44. Chamberlain, 'The construction industry blacklist', p50.

45. Smith and Chamberlain, *Blacklisted*, p271
46. Chamberlain, 'The construction industry blacklist', p48. Even this paltry amount was paid for him by Sir Robert McAlpine.
47. Chamberlain, 'The construction industry blacklist', p54.
48. Ibid.
49. Smith and Chamberlain, *Blacklisted*, p159.
50. Ibid., p159.
51. Keith Ewing, *Ruined Lives: Blacklisting in the UK Construction Industry. A Report for UCATT*, Liverpool 2009, p2.
52. UCATT, *Smash the Lump*.
53. Austrin, 'The "lump" in the UK construction industry', p306.
54. Indeed, evidence has emerged that agencies, such as the international employment agency *Atlanco Rimec*, are themselves running blacklists against active trade unionists. See *Building Worker*, Summer 2014, p6.
55. See Smith and Chamberlain, *Blacklisted*, p132.
56. Chamberlain, 'The construction industry blacklist', p50.
57. Smith and Chamberlain, *Blacklisted*, p280.
58. Ibid., p282.
59. Ibid., p257.
60. BBC2, *True Spies*, Broadcast 3 November 2002.
61. Smith and Chamberlain, *Blacklisted*, p47.
62. *Morning Star*, 12 April 2014.
63. They even persuaded the judge to avoid using the word 'blacklisting' in the title of the case, insisting that the scheme be known as the 'vetting scheme' case.
64. *Morning Star*, 30 April 2016.
65. *Morning Star*, 13 May 2014.
66. *Socialist Worker*, 17 May 2016.
67. Christopher Pitchford, *Undercover Police Inquiry*, (ongoing) available at: https://www.ucpi.org.uk/ (Accessed 6 June 2016).
68. In response to a Freedom of Information request by journalist Phil Chamberlain in October 2014 the Metropolitan Police, using Section 24(2) of the Act, claimed that it was in the 'public interest' to refuse to confirm or deny that the BSG was under surveillance in order to 'safeguard national security'.
69. Islington Council actually threw *Kier* off their £16.5 million a year housing repairs contract because of the firm's involvement with TCA's blacklist.
70. Jack Simpson, *Construction News*. However, Labour and local authorities have been warned that this could be unlawful under EU rules, especially if the blacklisting was intended to punish companies for past misdemeanours.