

## Transcript of interview of Stephen Sedley by Chris Thomas, 2007 (803/22A)

Approximate timings given in minutes and seconds in various places.

### Summary

Relates to the conduct of the Scarman Inquiry into the dispute and the role of the law in industrial disputes.

### Transcript

1. **CT:** OK, I'm asking everybody the first question is how you first heard of Grunwick, about the Grunwick dispute.
2. **SS:** From the newspapers, like everybody else.
3. **CT:** And how were you briefed? How did you come to represent the workers, the strikers at . . . ?
4. **SS:** Well, I was in practice as a junior barrister then. A lot of my work was employment work, and I was doing work for most of the early law centres which had been set up from 1969 onwards. So I suppose I was among those who were obvious choices, and it was as far as I remember the Brent Law Centre that instructed me, probably on behalf of Brent Trades Council rather than of the strikers themselves.
5. **CT:** And as you read the case, how did you see it? What were the strong points as you saw that had to be made clear to Scarman?
6. **SS:** Well, it wasn't a case in any normal sense at all. It was an inquiry, what's more an inquiry conducted by Lord Scarman, whom I knew, both from the Bar and because I'd appeared two years before in the Red Lion Square inquiry<sup>1</sup> which he conducted. So I knew Scarman wasn't going to let it turn into a political battleground, and that he was going to keep a very firm hand on the tiller, which he did. He made it clear right from the start that it was his inquiry, not ours, that he was only going to allow as many questions as he thought were useful to his purposes, not questions that were going to advance anybody else's purposes. And so one asked questions in that knowledge; you tried to make sure that you didn't crash into the barriers. [2:05]
7. **CT:** What were the points that you were trying to absolutely make clear?
8. **SS:** I couldn't tell you now what the brief was; it should have emerged from the questions that I asked. But essentially what I think the trades council was interested in was the bad industrial relations and the effect on the community that an employer who conducted his industrial relations in this way was likely to have.

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<sup>1</sup> Inquiry into disorder arising from demonstration against National Front in London in 1974 during which student Kevin Gately sustained injuries of which he later died.

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9. **CT:** At the time, the Scarman Inquiry was created at the time of the mass picketing. How much were both sides aware of the background that this was happening in, and the effect it might have on the inquiry?
10. **SS:** I don't recall that being a prominent issue. It's certainly true that there was a certain amount of moral panic about the idea of mass pickets, but the Grunwick picket line, while it was often substantial, wasn't of the kind that was seen in the miners' strike, for example. It was always, as I recall it, peaceful, usually good-natured, and different groups undertook each day to come and man it or support it. One day, for example, the legal profession undertook to turn out and turned out in quite large numbers, including among its numbers John Platts-Mills QC, a very distinguished figure who addressed the picket line in his bowler hat and pin-stripes with a loud-hailer. It's an iconic press picture that was produced. **[4:03]**
11. **CT:** Terrific. As you listened and conducted, presented the trades council side of the argument, what were your feelings about, and seeing George Ward operate, were you feeling the Scarman Inquiry was going to resolve this?
12. **SS:** There was no way of knowing, except for this: that Scarman was used by government repeatedly for occasions in his life, as other judges were not used, to try to bring peace where there was strife: Londonderry (or Derry)<sup>2</sup>, Red Lion Square, Grunwick and then lastly Brixton<sup>3</sup>. And it was a job that he did rather magnificently. He conducted his inquiries with great charm but with complete authority. He produced reports which tried to steer a middle course and make recommendations that would bring more social harmony, and it was a job that government had a lot of reason to be grateful to him for because he did it very well. His recommendations in the Grunwick inquiry, as you know, were that the strikers were unlawfully dismissed should be taken back, and those not taken back should be given ex gratia payments. And that was Scarman's mode of operating. **[5:34]**
13. **CT:** In terms of the atmosphere: immigrant workers having to present themselves in an inquiry – slightly intimidating for them. Do you have any memory of them and how they presented their case?
14. **SS:** No very sharp memory of it. Scarman was very good at putting people at their ease. He paid attention to the layout, the choreography of his inquiries to make sure that people weren't intimidated and indeed that the layout wasn't confrontational. And while it wasn't going to be easy for anybody, particularly somebody like Mrs Patel or her fellow strikers.
15. **CT:** Mrs Desai<sup>4</sup>.

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<sup>2</sup> Inquiry into 'Bloody Sunday' killings, 1972.

<sup>3</sup> Inquiry into riots in Brixton, 1981.

<sup>4</sup> Jayaben Desai, treasurer of the strike committee.

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16. **SS:** I'm so sorry. Mrs Desai and her fellow strikers to speak in public. Mrs Desai, in fact, had by then become a very competent public speaker, and I can recall her performing extraordinarily well, because one of the things that the strike did was of course build the confidence of people like Mrs Desai and enable them to become much more public than they'd ever dreamed of being. **[6:51]**
17. **CT:** But it was still an adversarial atmosphere.
18. **SS:** No.
19. **CT:** Wasn't it?
20. **SS:** No, that was the point: Scarman made sure it wasn't. In other words, the witnesses were there to tell him how they saw it. If the barristers were allowed to question them it was on Scarman's terms, it was not in order to confront them or intimidate them, and he made sure that that was so.
21. **CT:** Do you have any memory of how George Ward<sup>5</sup> presented his case there?
22. **SS:** Not specifically. I can remember questioning him within the limits that Scarman allowed. I can remember that he had been made something of a cult figure by his political supporters, and that at least one of them – a well-known politician – gave evidence on Ward's behalf. But it was all very much done under Scarman's watchful eye, and it was all directed to Scarman and his panel. **[7:55]**
23. **CT:** When the report came out, what was your response to it?
24. **SS:** I'd been doing a professional job. It wasn't an inquiry that one won or lost. I read the report with as much interest as anybody else, but no more than that.
25. **CT:** But it was considered favourable for the strikers at the time. I mean –
26. **SS:** I think everybody got something out of it and nobody got everything they wanted out of it. That was the way these things tended to be.
27. **CT:** Do you think it exposed the limitations of the law at that time for resolving acrimonious disputes like this?
28. **SS:** Well, the law had no role to play in it, and that is the way the unions had always wanted it. For a century and more, [they] totally mistrusted judges and had no confidence that the judiciary would give them a fair hearing. The policy of parliamentary law – statute law – since the beginning of the twentieth century had been to keep the judges out, so far as possible, of trade disputes by ring-fencing them and leaving them to be fought out, in effect, on the streets. That was an advantage to those who had the muscle, and a disadvantage to those who didn't. But the inquiry was not, of course, the intervention of the law; it was the intervention of a quite separate process. It wasn't a

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<sup>5</sup> Owner of Grunwick.

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legal process, although it replicated some aspects of the legal process. [It] couldn't give judgement for or against anybody. It was designed to try to heal wounds. [9:44]

29. **CT:** But when – I think in the Scarman Report one of his recommendations was that he said that the company had operated within the letter of the law but not within the spirit of the law. Was that the Achilles heel of a judgement really?
30. **SS:** It wasn't a judgement.
31. **CT:** I'm sorry.
32. **SS:** It's an Achilles heel if what you're looking for is something tougher. If you were looking for compromise it was the perfect formula.
33. **CT:** But the law that he was referring to, which I assume – was that the 1975 Trade Union?
34. **SS:** No, common law.
35. **CT:** Common law.
36. **SS:** If you went on strike you were in breach of contract and could be dismissed, that was the common law position. The common law had never recognised the right to strike, never recognised the contract became suspended, for example, if you gave strike notice. And that's why he said that the dismissals were within the letter of the law, and not within the spirit of the law, as he said, because the law, by standing back, expected that when the strike was over the workforce would be taken back.
37. **CT:** So much of the – there was ACAS<sup>6</sup> involved, which was also to do with – based on the fact that goodwill should prevail, that compromise and conciliation should be able to resolve these things. But if you really had an adversarial situation there appeared to be no way of resolving it. If everyone dug in – [11:21]
38. **SS:** Within the inquiry or on the streets?
39. **CT:** Generally, in a trade dispute, if ACAS, if they say "I'm sorry, I'm not accepting the findings of ACAS," and they were challenged through the appeals procedure, then the employer was in a situation where it paid to his side to be more adversarial, to be less compromising if the situation really got tough, á la Grunwick.
40. **SS:** Yes, that was the situation. The final court of appeal was the picket line.
41. **CT:** Which some call a demonstration in support of a strike.

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<sup>6</sup> Advisory, Conciliation and Arbitration Service.

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42. **SS:** Well, that's what it is. A picket line is intended to persuade others not to enter the premises, both employees and suppliers and so forth, and a great deal of law, of course, has developed about secondary action and the effects of picket lines on non-combatants, but that's part of the ring-fence within which the law, historically, let trade disputes run their own course.
43. **CT:** The police, inevitably, can have a lot of elasticity, it appears in that time, about the right to picket is the right also to persuade. Object, "could you stop? Could we tell you our story? We've got a dispute on here, you're not helping us if you go into that factory, please don't." But if that is stopped by the actions of the police, then picketing is almost a redundant action and there's nothing – it seems a grey area whether the police say "hold on a second, could you get off the bus and talk to these people?" Or "hold on, let's just get these people into work." [13:07]
44. **SS:** Yes, I mean the police have to take a – find the line between lawful picketing and unlawful interference with other people's activities. It's a very difficult one; lawyers find it difficult, judges find it difficult.
45. **CT:** And we're no better off now, really, are we? Well, except we can't do anything.
46. **SS:** Yes, the law's moved on a lot since Grunwick.
47. **CT:** One thing that sort of cropped up – sort of a mystery for most people, certainly trade unionists, lay people outside of the law: as the outcome of the ACAS inquiry challenged by George Ward went through subsequent appeals procedures with different Law Lords or senior judges assessing. How do judges get cases to consider? I mean, is it the taxi-rank system or - ? How does it work? Who?
48. **SS:** Pretty much. I mean, first of all it would depend on which court you find yourself in, but ordinarily you draw whichever judge is next due to hear a case. That may not be the case where something is known in advance to be of particular importance and where the senior or presiding judge may very well take the case for that reason.
49. **CT:** And is that the case when it arrives finally at the House of Lords?
50. **SS:** No, I don't think so. I mean, the House of Lords has a very small establishment – eleven or a dozen judges – and it goes before whichever panel of five happens to be sitting. [14:46]
51. **CT:** Oh, so when Lord Denning made his final judgement he did that with four others, did he?
52. **SS:** That wasn't the House of Lords, that was the Court of Appeal. Denning did used to take all the important cases himself when he was Master of the Rolls.
53. **CT:** And he could just select: "this is something I'm interested in and I have experience on and, thank you, I'll have a look at it." Right, OK. Let me just stop and see if I've – read my notes. [break]
54. **CT:** I mean, your lasting memory of the dispute would be?

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55. **SS:** I would only have memories, really, as a member of the public of this. The only sharp memory I have, absurdly, was on the morning that the inquiry started I arranged to meet Jamie Ritchie, the solicitor who was instructing me from the Brent Law Centre, at a café at Piccadilly Circus near which the inquiry was taking place – it was taking place in a hotel conference room. And I can remember – this was 1977 – we sat down, ordered coffees and were outraged at being asked to pay twenty-five pence for a cup of coffee.

56. **CT:** Yes, now it's two pounds fifty. In fact, Jamie's my sort of boss; he's the editor –