

**Nd files there, or ar you waiting for the feature?  
'Direct action' taken at  
Ratcliffe Power Station**

**10<sup>th</sup> April 2007**



**Court Reporting: ALAN LODGE**

**11 defendants go on trial charged with 'aggravated trespass'  
an offence under section 69 of the Criminal Justice and  
Public Order Act 1994. In that they trespassed and then  
disrupted people engaged in a lawful activity.**

**The trial held at Nottingham Magistrates Court  
from 14 – 16<sup>th</sup> January 2008**

**Judgement delivered on 25<sup>th</sup> February 2008**

**Press Release:**

**Climate change activists target power station**

Today [10th April 2007] a group of people inspired by the Camp for Climate Action have disrupted the operation of Ratcliffe-on-Soar coal-fired power station by locking themselves to machinery. Direct Action was taken to target the 3rd largest source of carbon dioxide emissions in the UK.

One of the group said “the threat of climate change is so huge and the government so complacent that the people themselves are now acting in proportionate response to this and targeting the root causes of climate change. It's not enough to reduce emissions individually – we need to act together to challenge fossil fuel consumption.”

“Putting pressure on individuals to reduce emissions when companies like E.ON are profiting from this polluting industry is obscene and irresponsible. We should not be burning coal in the 21st century”.

For more information, please contact

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## **Ratcliffe Power Station Court Case**

### **Nottingham Magistrates [day 1]**

Before the trial started, there was a protest / gathering of 20 - 30 people outside the court, to offer their support. Holding banners with the slogan "The Earth is getting too hot. Together we can make it stop", people were ushered away from the immediate court area by the security and a couple of policemen who were there on station, to make sure no one got into any trouble.

There had been a number of court dates so far, to go through the required administration to distil what was to be decided by the trial.

11 defendants all inspired by the 'Spring into Action' week of events held in a variety of places last April in Nottingham, took direct action at the Ratcliff-on-Soar power station. To physically attempt to stop its operations and draw attention to the burning of fossil fuels contribution to CO2 emissions and thus its impact on climate change.

All are charged with 'aggravated trespass' an offence under section 69 of the Criminal Justice and Public Order Act 1994. In that they trespassed and then disrupted people engaged in a lawful activity. Previous argument required a re-specification of the charge and had to enter the words " and entered into buildings .....". All 11 had previously pleaded not guilty.

They are employing the defence of necessity. Their actions were 'proportionate fearing peril of death and / or serious injury' by the plants contribution to climate change.

Mr Cunningham for the Crown Prosecution Service opened the case describing the events of Tuesday 10th April 2007. Accepting that it all was non-violent and was generally good-natured, his case appeared to be that if the defendants really thought themselves at peril, then their actions would have been far more forceful and vociferous! He pointed out that in a democracy, we could expect the institutions of the state to look out for the citizen interests. Direct actions were thus not required.

So it seems then we just need to write to our MP's !

The first witness called was Mr Raymond Henry Smith: Power Station Manager.

He was first aware of protesters presence on the site at about 9:15am. He went to the control room and there was informed people were chained to coal conveyor in the coal plant area. Others were chained to the 'trash screen

filtration system' [device to filter out large coal lumps]. For health and safety reasons, all coal moving plant was stopped and disabled.

Because the station had previously been off-line after the Easter bank holiday and thus reduced demand, they had a full stock of coal.

However, people were locked onto the conveyor that took coal from stocks to the storage bunker. Thus the station was able to continue in operation using what remained in the bunker. Depending on the burn rate, there were perhaps 5 hours of supply available. Marketing Department of E-On management thus instructed the starting up of another power station, 'Ironbridge' which for technical reasons takes a number of hours, burning a substantial amount of oil to 'warm it up'.

Ratcliffe Station has 4 generators producing 2000Megawatts. Only some of this capacity was on load at the time and was being progressively reduced. But should the protestors have remained there for very much longer, it would have resulted in the complete shutting down of the operations. Mr Smith agreed that the loss of generation capacity would have also implied a reduction in the amount of CO<sub>2</sub> emitted. He pointed out though that the firing up of the Ironbridge plant required some £16,000 of oil thus creating an associated amount of emission, but the plant didn't not get round to generating any replacement energy before protestors where removed and Ratcliffe came back on-stream.

It was put to Mr Smith that the Ratcliffe station was the 3rd largest emitter of CO<sub>2</sub> into the atmosphere from the UK. He disputed this, but didn't have the figures available to him. The defence had earlier asked for the production of statistics, records and general management figures on the operation of the plant, but he had not brought them with him. When pressed said: "he hadn't had the time to produce them". He did say however that emissions are within those set out in government legislation. These target operate company & nationwide rather than those from individual stations. They make monthly returns to the Environment Agency and Ratcliffe has benefited from hundreds of millions of pound investments in attempt to reduce emissions.

Further, he didn't recognise other figures put to him from CARMA - Carbon Monitoring for Action [ <http://carma.org> ] that suggested 12.8 million tons of CO<sub>2</sub> emitted by coal fired burning, but said it depended of power outputs. He agreed renewables were still quite a small proportion of total generations by E-On. He declined to say anything about the companies nuclear ambitions for the future.

Power stations possibly have a shelf life of 25 years. Ratcliffe is now 40 years old, but frequently upgraded. He didn't agree with James Hanson of NASA who had said that coal-fired burning should be abandoned altogether.

Next witness was Mr Christopher Marsh: Assistant Shift Team Leader. He attended a briefing re the protest and had been designated as the "incident controller". On visiting the location, he saw 4 policemen in



attendance and 3 protestors at the base of the junction tower [the confluence of the coal conveyors]. Others were chained to the trash screens [large object capture filter] and the hand rail. More were D-locked onto 'fire protection pipe-work and the top of the tower. Mr Marsh said some of these places were very unsafe and negotiation took place asking people to re-locate. Later he said, police took control and were supported by E-On staff.

Mr Marsh agreed that if protestors had stayed where they were for longer, this would have resulted in the plant operation coming to a close. Further, that the action did directly result in a reduction of CO2 emission from Ratcliffe. No other staff at the power station were disrupted in their activity and hence they were quite targeted in effect. A lighter moment was when he was asked to 'put himself in the protestors shoes', could they have done anything more to remain there longer. "No" he said, "They were doing their best!"

Last witness of the day was Mr Nicholas John Holick: A Service Engineer. His duties included being 'Head of Security'. He was responsible for co-ordination of the security effort, but had not actually attended the locations within the plant. He had said that the plant was 'quiet' in that the operations of the conveyor had stopped, that this, when operating, could easily be heard from outside of the buildings.

He was asked if had heard how protestors had got onto the site. They just walked onto the site via road 22 and road 6. No fences or gates were climbed. A weighbridge attendant did see people coming and expected them to arrive at his office where he would have told them they were coming in the wrong entrance. But then they just walked past him! He could not confirm the reports that some security were reading the paper and drinking tea.

The case was adjourned until tomorrow, when we will hear the principle defence expert witness; a climate scientist, and Royal Society Research Fellow.

The case continues .....

## **Ratcliffe Power Station Court Case**

### **Nottingham Magistrates [day 2]**

The prosecution case having closed yesterday. The defence opened today with their expert witness: Dr Simon Lewis, a climate scientist at the University of Leeds and Royal Society Research Fellow.

Scientific evidence suggests CO<sub>2</sub> add to global warming temperatures and if reduced, would minimise climate fluctuations. There is no doubt that there is a causal relationship between CO<sub>2</sub> and climate change. It is however difficult to unambiguously associate rise in CO<sub>2</sub> with specific changes in weather events, and thus mortality of any individual. So, scientists talks about statistical probabilities.

He cited various examples of catastrophes across the globe from every continent. World Health Organisation figures say that currently 150,000 people per year die of effects directly attributable to climate change. Closer to home, the 2003 heat-wave across Europe is probably responsible for 35,000 additional deaths over the 'background' death-rate, that might have been expected.

The United Nations Framework Convention on Climate Change (UNFCCC) says that there is a direct link between the increases in CO<sub>2</sub> emissions and an increase in mortality. They are concerned and acknowledge the idea of 'tipping points'. Thresholds of irreversibility. Put simply 'points of no return'. An example of which would include the loss of the polar icecaps. As they continue to melt, there is thus a smaller area to reflect sunlight, there is thus a consequential rise in temperature that further results in yet a greater increase in the rate of ice melting. There are different tipping point thresholds for different earth systems, the Amazon Basin, the Arctic, coral reefs etc.

There is no doubt, that to reduce these tipping point thresholds, there is a need to reduce carbon emission. What is a safe limit? It is difficult to say but suggests a tipping point might be crossed at global average temperature of 2 degC above pre-industrial levels. Currently we're at 0.74 to now with 1.34 left to this point.

Tyndall Centre for Climate Change Research reports point out that not only is it necessary to prevent further emissions, it is further necessary to remove some that is already there. Some CO<sub>2</sub> will remain in the atmosphere for centuries. But there would be some relief in taking immediate action to ameliorate emissions. We are always playing 'catch-up'.

On being asked to comment on the prosecution opening statement, that the protesters action could not have had the result of 'avoiding death or serious injury'. Dr. Lewis said that yes, that it defiantly could have had such a result.

Asked for his views on future trends, Dr Lewis said the scale of future threats could see a global average temperature of 4 degC above pre-industrial levels. This would result in exceeding the capacity of resilience of many global systems. Species numbers collapse, widespread agricultural failure and events like the 2003 heat-wave being a statistically normal event by the 2080's.

Climate change increases the mortality risks for all peoples. However, disproportionately affects such vulnerable groups including the young, old, and the poor. Britain has been one of the largest CO2 emitters since the industrial revolution. We have been emitting longer than many other countries in the developing world. It simply is a fact that the majority of emissions are caused by a richer minority of people.

Is current international action and agreement sufficient to avoid dangerous climate change? The Kyoto Protocol is resultant from United Nations Framework Convention on Climate Change. It was signed in 1997. But, since this date, there has been a substantial increase in emissions in spite of UNFCCC limits, and are still increasing.

We need substantial reductions within the next 10 years. Some experts say that if we want to mitigate major climactic events, we are 25 years to late. But with some immediate actions we may be able to make small changes.

Asked if he thought all experts agree on these matters, he referred to the Intergovernmental Panel on Climate Change, pointing out figures and predictions were quite conservative in estimates, to keep the most consensus of 2 – 3000 academics in public universities. There are of course some that are outside of this consensus, but these work for private business.

After his initial evidence, Mr Kevin Tomlinson, acting for 4 of the defendants, then asked Dr Lewis about the targets set worldwide and the generally accepted views of what's dangerous. Are the current UK targets achievable? To keep below the 2 degC increase on pre-industrial levels, there has to be a 60% cut in emissions. However to give some scope for other countries to have some increase in their emission, to alleviate their poverty, UK targets should be much greater than this 60% already targeted.

Mr Cunningham for the Crown Prosecution Service then suggested to Dr Lewis, that we are not dealing with an exact science, there is very much room for error? Of course, we have to deal with probabilities, however there is a consensus from 2 – 3000 climate scientists in the field say the existing climate systems are showing the changes I've described. Mr Cunningham points out that the for the defendants to succeed in the defence of necessity, they have to show essentially they were engaged in rescue. He makes efforts to draw parallels between Indonesian illegal logging and forest clearances for biofuels and demonstrating similar risks here. Dr Lewis then reminded the court of the 150,000 people per year that die of effects directly attributable to climate change.

First of the defendants representing himself, AW then gave evidence. He had an obvious concern for his family and friends on the future effects of climate change. The facts and further reading obviously add to this concern. Personally he takes all measures he can to minimise his 'carbon footprint'. Over the previous week, he had attended the week of activities 'Spring into Action'. Became scared by the concept of 'tipping point' that appeared to indicate matter were even more urgent than previously thought. Further he believed that Ratcliffe Power Station was an obvious local cause of concern and was the 3rd largest CO2 emitter in the UK. Thus with others, walked into the power station and locked onto the nearest bit of machinery. The intention being to stop CO2 emissions for as long as possible. He knew of 15 other such stations had been the subject of actions all over the world. Quoted a statement by Al Gore who had said he couldn't understand why there is not more action to close down power stations worldwide.

Mr Cunningham for the Crown wanted to know what level of criminality is acceptable in pursuit of aims? He also returns to his continued argument that if you really has serious believe in this defence of necessity, with the 'imminent dangers' you describe, then you really would have offered more resistance than you actually had!

Mr Cunningham had returned to this theme with most of the defendants as they gave their evidence in chief. The distinction he was trying to draw was between people who really believe in such imminent dangers would take extraordinary measures to effect a 'rescue action'. As yesterday, he cited the earlier case of Abdul Hassain, an Iraqi national who fearing persecution had hijacked an aircraft to escape oppression in that country. He appeared to be suggesting that by taking less severe measures, the defendants were simply looking for a 'legal cloak' for their criminality of the offences for which they were charged, aggravated trespass. They were in fact simply protesting. This was rebutted by all the defendants saying that if they were simply protesting, they wouldn't have done so there, It would have been more appropriate to do so in public, visible by many and in front of a media presence to attempt to get maximum exposure and thus to draw attention to their concerns. All said that their motive was in fact to shut the power station down for as long as they could to minimise CO2 emissions.

Next to give evidence was SB. She said she simply walked into the station and took action because of her concerns. She has a degree in Ecology, and with that awareness takes all step that she can personally to minimise her own contribution to CO2 emissions. Also attended the Spring into Action week of events and further already knowing about the concept of tipping points and the ecological threats and the associated millions of deaths by the end of the century, represented by the 2degC previously referred to. Said she thought that it was her duty to take action to attempt to reduce CO2 emission personally. Saying that fear for herself, family and the future and that she also knew about the issues displacing so many people to effectively make them climate refugees. With such worries, wonders if it is right for her to consider bringing a child into 'this world'.

Mr Cunningham pointed out that the defendants accepted they had committed the offence. In spite of their efforts, they didn't succeed in their aim to reduce CO2 emissions, but in fact, had triggered the firing up of another power station. However, SB didn't know anything of government and company emergency planning that would have resulted by such interruption. Cunningham again put the notion, that they were just simply protesting. The idea that they really did believed that they were preventing death or serious injury could not be sustained, since the effects were just too remote. This was denied.

Third defendant TA said the intention was to simply walk into the power station and shut it down. He had been campaigning on environment, climate change and social issues for 15 – 20 years. It is obvious to him that climate change is resulting in many deaths. Influenced by the earlier event 'Spring in Action' held in various locations around Nottingham which drew attention to the issues of concern. He had read information produced by James Hanson, a climate scientist from NASA who is of the opinion that the burning of coal is one of the principle causes of CO2 emissions. The practice needs to be eliminated since it is at least 80% of the problem. It is so frustrating knowing that Ratcliffe, located locally, is such a major part of this problem.

The plant manager, Mr Smith, in his evidence yesterday said that the firing up of Ironbridge station had created more CO2 than if Ratcliffe operations had not been shutting down over the 5 hours of operation. Simply didn't believe this. No figures were produced to support this as the defence had requested. In fact Smith had simply said that he had not had time to produce them!

The crown put it that surely, you would realise that the authorities would not allow, the successful closing of a power station. There was bound to be a contingency plan. Mr Cunningham makes yet another attempt to show that really, by any measures, they are simply protesters and not taking the rescue action they claim. Yet again, this was denied.

A few more defendants gave their evidence in turn, broadly reiterating most of the arguments as already covered.

The case continues .....

*Dr. Simon L. Lewis is Royal Society Research Fellow, Dept of Geography University of Leeds. <http://royalsociety.org/page.asp?tip=1&id=4689>*

Simon L. Lewis - Research Interests  
<http://www.see.leeds.ac.uk/ebi/people/simon-lewis-research.htm>

Royal Society - A guide to facts and fictions about climate change  
<http://royalsociety.org/downloaddoc.asp?id=1630>

Tyndall Centre for Climate Change Research <http://www.tyndall.ac.uk>

IPCC - Intergovernmental Panel on Climate Change <http://www.ipcc.ch>

United Nations Framework Convention on Climate Change <http://unfccc.int>

## **Ratcliffe Power Station Court Case**

### **Nottingham Magistrates [day 3]**

Now starting day 3 of the trial of the 11 defendants, accused of aggravated trespass at the Ratcliffe-on-Soar power station. Prosecution and defence case having been heard, today was about final statements and the summaries of evidence given over the last couple of days. A number of defendants were defending themselves and hence conducted the closing statements themselves.

First defendant to speak SB. She is convinced that many death and serious injury are directly resulting from climate change. Believes that there can be little doubt about it. Thus an obvious case has been made out to use the defence of necessity. Therefore, it is reasonable in such circumstances to take responsibility and to do all we can to minimise CO2 emissions.

Next EF reiterated her belief that these events where not simply a protest but a direct action, to stop CO2 emissions for as long as they could. All defendants have said this under oath.

According to calculations made equating quantities of CO2 emissions, to the resultant deaths, she believes that the action of shutting down the burning of coal for the duration of the occupation had directly saved 10 lives. We would have remained as long as we possible could, and that this was obvious to E-On staff. Matters were brought to a close by police action, and the cutting of locks, not by voluntarily giving up the occupation.

She concluded by reiterating that it was the defendants intention that was important here. The fact that we could not remain as long as we liked is not relevant. It is the authorities action that drew matters to a close, not ours.

The crown had been seeking to suggest that by the action finishing as it did, earlier than intended and without people being more vociferous in their resistance, made their defence of necessity harder to sustain.

Another defendant AW pointed out that no one action can stop climate change. However the cumulative efforts of many people might do so. This opinion was supported by Dr Lewis in his evidence yesterday. He then reminded the court that Mr Smith, the Ratcliffe station manager, had been unable to produce figures that the defence had asked for on the operations of the station during that time. Remember he had simply said: "he hadn't had the time to produce them". We should thus look on the claim that the Ironbridge plant that had been fired up to compensate for the lack of generation from Ratcliffe during the period, and had produced greater emissions than Ratcliffe, with some suspicion. It is perhaps true that Ironbridge had not in fact produced more CO2 emissions than Ratcliffe during this time.

Dr Lewis had said that it was reasonable to take actions that reduce CO2 emissions. Further, unless immediate action was taken, then it is obvious that death and serious injury would result. He had said that the time for action was now. In fact more action should have been taken already. There is now only a 50 – 50 chance of meeting the 2 degC target that had previously been referred to without very significant efforts.

He reminded the court of the earlier analogy that had been cited, to describe the belief of necessity the defendants are relying on: If Anne Frank had stolen a car to escape from the Nazi's, then would she really have committed a crime and be guilty of an offence? Or should she have waited for a knock on the door?

Many other have tried to shut down coal-fired power station all over the world. There have been at least 14 other attempts. In 2006, over 600 people had also tried to occupy and shut down the Drax power station, situated near Selby in North Yorkshire. This was in fact, the UK's leading CO2 emitter. Those people were not of a violent nature, and neither are we. He again reminded the court of the sentiment express by Al Gore: That he could not understand why many more people are not trying to shut down all coal-fired power stations.

Next to give his closing statement was TA. He said that he did reasonably believe that CO2 emissions did pose a threat to life. The sole purpose of his actions that day were to do all within our power to stop emission for as long as possible. That we were not simply protesting about the issue, and our actions were reasonable and proportionate in all the circumstances. We engaged in the biggest action that we could have taken there. I do feel the immediacy of peril. It is also a long term threat and feel that our immediate families and friends are at a significant risk.

The action wasn't pre-planned as an advanced, highly organised military operation. We simply bought a few chains and locks and went and did it.

Mr Cunningham for the crown put it to him, that you're just a specialist interest group, aren't you? We should rely on our democratic structures to deal with these matters and concerns.

TA replied that we are simply a group of individuals with concerns.

The rest of the defendants reiterated most of the points that had already been covered here, with Mr Cunningham continuing to seek to put to each that by any measures, they are all simply protesters and not taking the rescue actions they claim that would be required to make out for the defence of necessity that they were seeking so to do. All had denied this.

One of the eleven defendants had not given any evidence in the trial. Further he had not made a closing speech. In fact he had said nothing throughout the hearing. It transpired that on his arrest he had not made a statement or answered any questions. Further, that in the preparations of the case, the



police had not correlated their statements that described what he had done, where he had been, and who arrested him!

District Judge Morris Copper said the charge had not specified what he did within the trespass. No evidence of location, further that there is no evidence of being in a building. He said that the crown might say that an inference can be drawn from the surrounding circumstances that he was involved in and being part of a common enterprise. However, I can't see his specific links to this action. It is however proper for me to draw adverse inferences from his actions. He did enter land as a trespasser and that there was evidence to suggest he was involved in the joint enterprise.

However, in my opinion, the prosecution has not proved matters to my satisfaction. The case having not been proved against him, I thus dismiss the charges against him.

Wooooowah!

There was much congratulation from all the other defendants and supporters, and he then danced a small jig around the court. Mr Cunningham smiled

DJ Cooper returned to court saying that he needed a few days to write his considered judgement on the rest. He would only need a few days to do this, but because of the court calendar he could not do it until Monday 25 February at 10.00am when he would deliver his written judgement. All were bailed to return.

Before rising, he said that he wished to compliment all the defendants on the way they had handled themselves and on the presentation of their case.

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This author also wishes to associate myself with the Judges comments.

Bloody well done each!

I wish all well and that the right verdict does get finally get returned.

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ALAN LODGE

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Collected Web: <http://tinyurl.com/2gf3mf>

Member of the National Union of Journalists [No: 014345]

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"It is not enough to curse the darkness.

It is also necessary to light a lamp!!"

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<ends>

## Press Reports



**BBC NEWS | England | Nottinghamshire | Protest is held at power station - Mozilla Firefox**

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## Protest is held at power station

**Police have arrested 11 people on suspicion of aggravated trespass after environmental campaigners protested inside a Nottinghamshire power station.**

The group gained access to the coal-fired plant in Ratcliffe-on-Soar on Tuesday. Some claimed to have chained themselves to machinery.

The Eastside Climate Action group said it was protesting against the facility in the face of climate change.

Plant owner E.ON said the power station was operating as usual.

"We're campaigning against climate change and CO2 emissions and these sources of energy are massively polluting and are contributing massively to climate change," said one of the protesters.

**Climate concerns**

"We feel that not enough is happening quickly enough. If we want a future for our planet, we really need to act now."

"We understand that people do have concerns about climate change but Ratcliffe Power Station does an incredibly important job to keep the lights on for about 1.5 million homes," said Emily Highmore, from E.ON.

"But as a company we are investing hundreds of millions of pounds into making sure that Ratcliffe is one of the cleanest and most efficient coal-powered power stations in the UK."

The protesters did not cause damage to buildings or equipment on the site, she added.

Insp Glenn Harper of Nottinghamshire Police said: "A number of arrests have been made. There are no protesters left on the site now. However a number still remain outside the power station."

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## **Power station demonstration was 'necessity'**

GREEN campaigners denied trespassing at a power station by saying that their actions were "a necessity".

Eleven activists are on trial at Nottingham Magistrates Court for allegedly trespassing at Ratcliffe-on-Soar power station on April 10.

All deny the charge of aggravated trespass, and insisted the action they took was "a necessity to prevent the death and serious injury of others due to CO2 emissions."

They are hoping for a landmark ruling in the case.

In their evidence they said they had intended to shut down the power station to reduce carbon emissions.

In his cross-examination, Ian Cunningham, prosecuting, told the court that the defence was: "We have committed a crime but we believe it was necessary."

The defendants agreed they had gone onto the site.

Mr Cunningham told the court that because of the actions of the campaigners another power station had been fired up to make up for the loss of output from Ratcliffe, and that this had caused an overall increase in CO2 emissions.

But the defendants all stated this was not their fault, it was because of E-ON's decision to start up the second plant.

**Proceeding**

Blake, Victoria (Retail) [Victoria.Blake@eonenergy.com]  
Subject: Observer and Guardian articles  
Sent: Tue 22/01/2008 16:57

Please find below links to articles with the Observer and Guardian newspapers as discussed.

Kind regards

Victoria

Global Eco Pledge – Observer 16/12/08  
<http://business.guardian.co.uk/windofchange/story/0,,2227853,00.html>

Healthy Eco Balance  
<http://business.guardian.co.uk/windofchange/story/0,,2218876,00.html>

Greens Corporate Face  
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**Observer 16<sup>th</sup> December 2007**

<http://business.guardian.co.uk/windofchange/story/0,,2227853,00.html>

[defence cited this advertisement during the summing up]



# Global eco pledge

**This month's UN Climate Change conference in Bali will pave the way for a more committed and cohesive worldly promise to tackle climate change in business**

**O**n the idyllic island of Bali, world leaders spent most of the last fortnight debating the future of our planet. But climate change is not something that might happen in the future. It is already occurring, and responsibility for tackling it lies not just in the hands of political leaders, but with businesses and their customers.

Whereas five years ago we were seeing evidence of climate change only in certain parts of the world, now we're seeing global effects on plants, animals and the hydrology of the earth's surface. No one can say with certainty that global warming is the cause of any single hurricane, heat wave, flood or drought. But, taken together, the increase in frequency and intensity of such events during the last 10 to 15 years provides strong evidence that climate change is already occurring.

The latest report published by the Intergovernmental Panel for Climate Change (IPCC), which was awarded the Nobel peace prize this year, has predicted that we only have until 2015 to reverse the trajectory of greenhouse gas emissions. Otherwise we will suffer dangerous climate change of up to a 2°C global warming and 60cm of sea-level rise by the end of this century.

According to the IPCC, 11 of the past 12 years rank among the dozen warmest years since records began in 1850, up to 30 per cent of the world's species are at increased risk of extinction after a 2°C temperature rise, and between 75 million and 250 million people in Africa could suffer water shortages by 2020.

Heavily populated 'mega-deltas' in Asia have a greatly increased risk of flooding and the tropical forest in eastern Amazonia will turn to savannah by the middle of this century.

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Under the Kyoto agreement, countries in the developed world, including Britain, have pledged to cut their emissions (as of 1990) by 5 per cent on average before 2012. Countries that fail to meet their targets can instead buy carbon credits from low or zero-carbon energy projects, such as wind farms in the developing world, or buy excess credits from nations that have lower emissions than their cap allows.

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But with the economies and industries



Above left: the United Nations Climate Change Conference has just concluded in Nusa Dua, Bali, top right: Biomass - the fuel for greener energy, bottom right: one of E.ON's 21 wind farms in the UK



of China and India developing fast, these countries will now be expected by the rest of the international community to make some commitment to cutting their emissions.

'Kyoto was all about the developed countries taking a lead,' says Pyke. 'Now the challenge is to get everyone to acknowledge that they must play a part.'

'China's argument, for example, is that it is still trying to tackle problems of poverty and attain decent living standards. It points out that its emissions per capita are much lower than the UK, let alone the US. We need to agree a principle of common but differentiated responsibilities — everyone has a common objective of sorting global warming out, but we need to recognise in the solution that different countries will have different responsibilities in tackling it.'

It should be recognised that China and India were not required to accept targets under Kyoto — what was not expected was the growth in their economies. Both the US and Australia controversially initially refused to ratify Kyoto. However, a change of government in Australia, following Kevin Rudd's election win over John Howard, marked a significant shift in the country's attitude towards fighting global warming and led to an almost immediate ratification of Kyoto on December 3, just nine days after Rudd came to power.

#### A committed business world

Similarly, with George W Bush leaving office next year, there are growing expectations that the new administration, whether Republican or Democrat, will support UN efforts on securing a new climate change treaty. It is Europe which has been taking the lead on emissions reductions. The EU has set targets of a 20 per cent cut in emissions and 20 per cent of primary energy to be delivered by renewables by 2020. It is prepared to move to a 30 per cent cut in greenhouse gases by 2020 depending on a successful international replacement to Kyoto post-2012.

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## 'Climate change is a reminder for businesses of the need to be more energy efficient'

target of cutting carbon dioxide emissions by 26-32 per cent from 1990 levels by 2020 and 60 per cent by 2050.

But Prime Minister Gordon Brown has said he will ask for an independent climate change monitoring committee to be set up by the bill to look at the possibility of raising the end target to 80 per cent.

Where once businesses might have resisted such climate change initiatives, most are now eager to see a successor to Kyoto put in place.

Indeed the leaders of 150 global companies, including Nike, Nokia, Tesco and E.ON, called on Bali delegates to 'make the tough decisions the world so urgently needs.' In a statement, dubbed the 'Bali

communiqué', the 150 bosses, who included some from China, said that tackling climate change is the only way for growth to continue. 'Ignoring it will ultimately undermine economic growth,' they added.

'Businesses like E.ON want governments to provide some long-term certainty on carbon reductions,' explains Pyke.

'The European carbon trading scheme, for example, helped businesses because it put a price on carbon which meant businesses could put a monetary value on investing in low carbon technology.'

But, according to Pyke, there are other added and very welcome benefits for businesses when they sign up for the fight against climate change. This is great news on two levels, not only for being recognised externally for taking a lead on climate change, but also for motivating staff and attracting informed staff at every level.

'Climate change is a reminder to businesses of the need to be more energy efficient — you make your business more energy efficient and you reduce your costs. It's something businesses should be doing anyway, but often making existing business processes

more energy efficient does not get the level of attention it deserves.

'Increasingly customers are seeking out businesses that are energy efficient. We're starting to see some big companies say that they only want to deal with suppliers who are committed to tackling their carbon footprint. And it's often the same message when you are trying to recruit or retain your best staff. People will increasingly want to work for organisations that are acknowledging their responsibilities and playing their part. They want to know what you are doing about climate change. No one person has the answer — it's down to the government, business and of course, the community.'

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**e.on**

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# Global eco pledge

*This month's UN Climate Change conference in Bali will pave the way for a more committed and cohesive worldly promise to tackle climate change in business*

*Sunday December 16, 2007*

*Observer*

On the idyllic island of Bali, world leaders spent most of the last fortnight debating the future of our planet. But climate change is not something that might happen in the future. It is already occurring, and responsibility for tackling it lies not just in the hands of political leaders, but with businesses and their customers.

Whereas five years ago we were seeing evidence of climate change only in certain parts of the world, now we're seeing global effects on plants, animals and the hydrology of the earth's surface. No one can say with certainty that global warming is the cause of any single hurricane, heat wave, flood or drought. But, taken together, the increase in frequency and intensity of such events during the last 10 to 15 years provides strong evidence that climate change is already occurring.

The latest report published by the Inter-Governmental Panel for Climate Change (IPCC), which was awarded the Nobel peace prize this year, has predicted that we only have until 2015 to reverse the trajectory of greenhouse gas emissions. Otherwise we will suffer dangerous climate change of up to 4C global warming and 60cm of sea-level rise by the end of this century.

According to the IPCC, 11 of the past 12 years rank among the dozen warmest years since records began in 1850, up to 30 per cent of the world's species are at increased risk of extinction after a 2C temperature rise, and between 75 million and 250 million people in Africa could suffer water shortages by 2020.

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No 2494 February 2008

## Putting climate change on trial

**Legal breakthrough in Nottingham court case**



Activists outside Ratcliffe-on-Soar power station, 10 April 2007

PHOTO ALAN LODGE

● **Andrea D'Cruz**

**East Midlands climate change activists who managed to shut down Ratcliffe-on-Soar power plant for several hours in early 2007 won two significant legal victories in a Nottingham court in January.**

In a trial which began at the magistrate's court on 14 January, the 11 activists (some defending themselves) were allowed to put forward an unprecedented legal defence, and to call as a defence witness an earth systems scientist who said the defendants' taking action attempting to make large reductions in emissions was "not unreasonable".

The activists pleaded not guilty to the charge of "aggravated trespass", though they admitted entering the coal-powered plant on 10 April 2007 and locking themselves to machinery.

Raymond Smith, the station manager, told the court: "People had chained themselves to the conveyor system and the filtration system. They were nonviolent and non-confrontational."

Assistant shift leader Christopher Marsh said: "One unit of coal

was lost due to the protestors. There was a reduction in CO<sub>2</sub> emission and loss of generation."

### **Defence of necessity**

The trial marked the first time defendants have been allowed to put forward the legal argument known as "defence of necessity" – that an action is "proportionate, fearing peril of death or serious injury" – in relation to climate change.

The defence called as an expert witness Dr Simon Lewis, a scientist at the University of Leeds and Royal Society Research Fellow.

Dr Lewis told the court of the scientific evidence relating CO<sub>2</sub> to climate change and cited the World Health Organisation estimate that 150,000 worldwide annual deaths are attributable to health impacts of climate change.

He described the scientific consensus that increasing CO<sub>2</sub> emissions increases the probability of death and injury to humans, and therefore that reducing the rate of such emissions would reduce the probability of such suffering.

Dr Lewis concluded by saying that unless immediate action was taken, it was obvious that death

and serious injury would result.

The defendants concluded the trial by saying that they had not been protesting, but taking direct action with the sole intent of reducing CO<sub>2</sub> emissions for as long as possible in order to protect lives.

### **Saving 10 lives**

One defendant estimated that their action that day had directly saved 10 lives.

He quoted former US vice-president Al Gore who said "I can't understand why there aren't rings of young people blocking bulldozers... and preventing them from constructing new coal-fired power plants."

District Judge Morris Cooper, closing the case on 17 January, announced that his written judgement would be given on 25 February. He complimented the defendants' presentation of their case.

At the end of the trial, one defendant was found not guilty and released for lack of evidence.

Based on an interview with Dr Simon Lewis and an account by Indymedia journalist Alan Lodge: <http://tinyurl.com/2n37kc>



See centre pages



**"SEEK TO DESTROY NOT THE ABUSERS OF POWER, BUT THE SOURCES OF THAT POWER." – BARBARA DEMING**



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**"SEEK TO DESTROY NOT THE ABUSERS OF POWER, BUT THE SOURCE"**



'Trespassers chained themselves to station systems'

# 'Output reduced' in power protest

**THE manager of a power station has revealed that a protest where people chained themselves to equipment caused serious disruption to production.**

Eleven climate-change protesters who allegedly trespassed at the Ratcliffe-on-Soar plant are on trial at Nottingham Magistrates' Court.

They were arrested on April 10 last year and all 11 deny aggravated trespass in November.

The activists were allegedly trying to shut down the power station in a bid to reduce the amount of CO2 emissions.

During cross-examination by Ian Cunningham for the Crown Prosecution Service, station manager Raymond Smith said his secretary told him there were protesters on site on April 10 at about 9.15am.

**By TANYA HOLDEN**

He said: "People had chained themselves to the conveyor system and the filtration system. They were non-violent and non-confrontational but none had permission to be on the site."

He told the court the protest affected the amount of power and emissions produced, and that another station, Iron Bridge, in Shropshire, was ready to make up for the reduction in Ratcliffe's output.

He said: "If the protest had continued to the extent that the power station ran out of coal, we would have had to shut it down. But we called the police and all protesters were arrested and removed from the site."

Assistant shift leader Christopher Marsh and services engineer Nicholas Hollick were also called as witnesses for the CPS.

During cross-examination, Mr Marsh told the court: "One unit of



**SUPPORT:** Environmental campaigners outside the magistrates' court for the people arrested during the power station protest C140108JC1-6

coal was lost due to the protesters. There was a reduction in CO2 emission and loss of generation."

The 11 accused are: Garry Glass, 23 from Dalkeith, Scotland, Ian Parker, 25, of Villiers Road, West Bridgford, Emma Robinson, 29, from Edinburgh, Andrew Cook, 41 from Norwich, Andrew Woodcock, 31, Timothy Allman, 39, Stuart Barnes, 31, Samantha Brown, 33, all of Al-

bany Road, Forest Fields, Peter Nelson, 24, of Radford Boulevard, Eleanor Fairbrother, 30, of Gladstone Street, Forest Fields and Tim Gallagher, 26, of Burwell Street, Hyson Green.

Supporters of the protesters demonstrated outside the court at 9.30am yesterday.

**Proceeding**

tanya.holden@nottinghameveningpost.co.uk



## Ratcliffe Power Station Court Case

### Nottingham Magistrates [The Verdict]

On the 10th April 2007, 11 people walked into the Ratcliffe-on-Soar power station and locked on to the coal conveyor and assorted plant there.

Their objective was to take direct action to halt operations and thus to diminish the CO<sub>2</sub> emissions of the E-on plant, the greenhouse gas thought to be largely responsible for climate change.

They were all charged with aggravated trespass "trespassing on land and entering into buildings with the intention of obstructing or disrupting persons engaged in a lawful activity, contrary to section 68(1)(b) of the Criminal Justice and Public Order Act 1994.

Throughout the court case [described in the links below], the defendant argued that yes, they did take these actions, but employed the defence of "duress of circumstances" or necessity, and pleaded not guilty.

At the beginning of the case, there was legal argument on if the court would hear this defence. It did and the case was proceeded with in making such argument. It is thought to be the first case dealing with environmental matters, that this defence had been employed.

On Monday 25th Feb, 10 defendants [one having had the charges dismissed due to lack of evidence] returned to court to receive the judgement. He had earlier said that he wished to compliment all the defendants on the way they had handled themselves and on the presentation of their case. However all were found guilty.

The District Judge Morris Cooper said that he had rejected the defence of necessity, this being so, and the defendant had all admitted their action they were thus guilty of these offences.

There had been extensive evidence presented to court by an expert witness Dr Simon Lewis. The court had accepted this without contention. In the written judgement DJ Cooper points out that ...

*"The law relating to this subject is far from clear as to scope of such a defence. I am not aware of any legal authority that addresses the question of whether a global threat brought about or contributed to by global human activity is within the scope of such a defence. This case, therefore, goes into uncharted legal territory".*

Also, I was struck by a quote from one of the authorities relied on in making the decision. London Borough of Southwark V. Williams [1971].

*"Well one thing emerges with clarity from the decisions, and that is that the law regards with the deepest suspicion any remedies of self-help, and permits those remedies to be resorted to only in very special circumstances. The reason for such circumspection is clear, necessity can easily become simply a mask for anarchy".*

So, there you have it!

They were fined varying amounts between £100 - £250. Additionally, the prosecution asked for £100 costs each and the victim surcharge of £15. The total bill coming to £2670. All were given time to pay.

Ratcliffe Power Station Court Case : Nottingham Magistrates [day 1]  
<http://indymedia.org.uk/en/regions/nottinghamshire/2008/01/389467.html>

Ratcliffe Power Station Court Case : Nottingham Magistrates [day 2]  
<http://indymedia.org.uk/en/regions/nottinghamshire/2008/01/389535.html>

Ratcliffe Power Station Court Case : Nottingham Magistrates [day 3]  
<http://indymedia.org.uk/en/regions/nottinghamshire/2008/01/389654.html>

'Clean' Coal On Trial [Feature]  
<http://indymedia.org.uk/en/regions/nottinghamshire/2008/01/389386.html>  
>> check here for links to the action and surrounding issues

Guardian Tuesday 26<sup>th</sup> February 2008

## It's time for a body count

Simon Lewis

Climate change is killing us. So why are we still so reluctant to quantify the deaths it has caused?

In April last year a group of environmentalists shut down E.ON's coal-fired power station in Ratcliffe-on-Soar. The goal: to reduce carbon dioxide emissions and, in their words, "save lives". Yesterday judge Morris Cooper presented a 20-page judgment accepting there was an "urgent need for drastic action", but convicted them of aggravated trespass, saying their defence, that their crime was necessary to save lives, could not be substantiated. In the trial, for which I was an expert witness, crucial questions were how many people does climate change kill, and what proportion is the UK responsible for? I was surprised to discover that nobody knows. Scientists such as myself are involved in programmes to measure CO<sub>2</sub> emissions, air temperatures, sea-ice loss and the much more complex impacts on birds, rainforest trees and coral reefs. We know that climate change-related events are killing people, yet there is no comprehensive global monitoring program to document the lives lost due to climate change. There is no official climate-change body count.

Admittedly, the impact of climate change on human health and mortality is difficult to quantify. There is no comparison group of people not exposed to climate change. Deaths are often due to multiple causes. And while the probability of a particular event occurring under modified climate conditions can be estimated, no single event can be solely attributed to climate change. The biggest obstacle is the sheer variety of effects it has on health. These include direct effects such as drowning in floods and

complex indirect effects, such as falling crop yields which increases malnutrition and changes in the spread of infectious diseases such as malaria. Furthermore, care must be taken to subtract any positive health impacts on climate change, such as the reduced effects of cold weather on health in a warming world.

The World Health Organisation publishes the only global estimate of the number killed by climate change – about 150,000 annually. Worryingly, this estimate comes from a single modelling study in 2002, and includes only four impacts of climate change (deaths from one strain of malaria, malnutrition, diarrhoea-type diseases and flooding). It is, as the authors point out, a highly conservative first estimate and, by now, considerably out of date.

Why are we relying on a single, limited, out-of-date study for our information on the numbers of people killed by climate change? This is not a criticism of the WHO; the real question is why they are apparently alone in this effort.

The core of the climate-change community, of course, is that group studying the atmosphere. Their questions therefore don't often relate directly to human health. The medical profession is obviously more interested in saving lives now than in the slower and longer term effects of climate change, and so have been late in engaging with the question.

Naturally, funding influences which questions are answered. Politicians have not asked for a body count. But why not? Perhaps there are parallels with another politically charged issue involving widespread mortality, where nobody counted: the war in Iraq. Governments

probably do not want to hear about people dying in foreign lands because of their own choices. Who is going to fund comprehensive studies when the headline might read "British carbon emissions responsible for 3,000 deaths last year"?

The precise relationship between greenhouse gas emissions and deaths that both the environmentalists and Judge Cooper wanted information on should not be beyond scientists in the future. Equivalent statements are routinely made by medical specialists, such as the proportion of all stroke deaths attributable to hypertension in a given year, or attributing lung cancer deaths to passive smoking. It is merely a question of deciding whether it is an important question to answer.

Such an understanding is essential for two quite different reasons. First, it is a basic issue of justice. The dead should be remembered and their families and friends should understand the factors involved in their deaths. Second, it seems likely that the numbers of people killed by climate change has been significantly underestimated. This means that, in addition to issues of the morality of equating human lives with the time spent waiting in airport queues, such cost-benefit analyses used to shape government policy with major climatic impacts, such as building a new runway at Heathrow, are likely to be biased by underestimating the cost in human lives of such decisions.

*Dr Simon Lewis is a Royal Society research fellow at the Earth and Biosphere Institute, University of Leeds*  
[s.l.lewis@leeds.ac.uk](mailto:s.l.lewis@leeds.ac.uk)

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Guardian 26<sup>th</sup> February 2008

*Climate change is killing us. So why are we still so reluctant to quantify the deaths it has caused?*

In April last year a group of environmentalists shut down E.ON's coalfired power station in Ratcliffe-on-Soar. The goal: to reduce carbon dioxide emissions and, in their words, "save lives". Yesterday judge Morris Cooper presented a 20-page judgment accepting there was an "urgent need for drastic action", but convicted them of aggravated trespass, saying their defence, that their crime was necessary to save lives, could not be substantiated.

In the trial, for which I was an expert witness, crucial questions were how many people does climate change kill, and what proportion is the UK responsible for? I was surprised to discover that nobody knows. Scientists such as myself are involved in programmes to measure CO<sub>2</sub> emissions, air temperatures, sea-ice loss and the much more complex impacts on birds, rainforest trees and coral reefs. We know that climate change-related events are killing people, yet there is no comprehensive global monitoring program to document the lives lost due to climate change. There is no official climate-change body count.

Admittedly, the impact of climate change on human health and mortality is difficult to quantify. There is no comparison group of people not exposed to climate change. Deaths are often due to multiple causes. And while the probability of a particular event occurring under modified climate conditions can be estimated, no single event can be solely attributed to climate change. The biggest obstacle is the sheer variety of effects it has on health. These include direct effects such as drowning in floods and complex indirect effects, such as falling crop yields which increases malnutrition and changes in the spread of infectious diseases such as malaria. Furthermore, care must be taken to subtract any positive health impacts on climate change, such as the reduced effects of cold weather on health in a warming world.

The World Health Organisation publishes the only global estimate of the number killed by climate change - about 150,000 annually. Worryingly, this estimate comes from a single modelling study in 2002, and includes only four impacts of climate change (deaths from one strain of malaria, malnutrition, diarrhoea-type diseases and flooding). It is, as the authors point out, a highly conservative first estimate and, by now, considerably out of date.

Why are we relying on a single, limited, out-of-date study for our information on the numbers of people killed by climate change? This is not a criticism of the WHO; the real question is why they are apparently alone in this effort.

The core of the climate-change community, of course, is that group studying the atmosphere. Their questions therefore don't often relate directly to human health. The medical profession is obviously more interested in saving lives now than in the slower and longer term effects of climate change, and so have been late in engaging with the question.

Naturally, funding influences which questions are answered. Politicians have not asked for a body count. But why not? Perhaps there are parallels with another politically charged issue involving widespread mortality, where nobody counted: the war in Iraq. Governments probably do not want to hear about people dying in foreign lands because of their own choices. Who is going to fund comprehensive studies when the headline might read "British carbon emissions responsible for 3,000 deaths last year"?

The precise relationship between greenhouse gas emissions and deaths that both the environmentalists and Judge Cooper wanted information on should not be beyond scientists in the future. Equivalent statements are routinely made by medical specialists, such as the proportion of all stroke deaths attributable to hypertension in a given year, or attributing lung cancer deaths to passive smoking. It is merely a question of deciding whether it is an important question to answer.

Such an understanding is essential for two quite different reasons. First, it is a basic issue of justice. The dead should be remembered and their families and friends should understand the factors involved in their deaths. Second, it seems likely that the numbers of people killed by climate change has been significantly underestimated. This means that, in addition to issues of the morality of equating human lives with the time spent waiting in airport queues, such cost-benefit analyses used to shape government policy with major climatic impacts, such as building a new runway at Heathrow, are likely to be biased by underestimating the cost in human lives of such decisions.

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Guardian 26th February 2008

<http://www.guardian.co.uk/commentisfree/2008/feb/26/climatechange.carbonemissions>

## **Ratcliffe Power Station Raiders Claim Moral Victory**

Hurtej Kaur

Nottingham Evening Post 26 February 2008

Green campaigners who stormed Ratcliffe-on-Soar power station in a bid to shut it down have been fined - but claim it was worth it to highlight their environmental fears.

They were arrested on April 10 after a protest over carbon dioxide emissions.

They got into the coal plant and other buildings, where some chained themselves to machinery.

The ten found guilty of aggravated trespass yesterday at Nottingham Magistrates' Court were: Gary Glass, 23, from Dalkeith, Scotland; Ian Parker, 25, from, Villiers Road, West Bridgford; Emma Robinson, 29, from Edinburgh; Andrew Cook, 41, from Norwich; Andrew Woodcock, 31, from Albany Road, Forest Fields; Timothy Allman, 39, from Albany Road, Forest Fields; Samantha Brown, 33, from Albany Road, Forest Fields; Peter Nelson, 24, from Radford Boulevard, Radford; Eleanor Fairbrother, 30, from Gladstone Street, Forest Fields; and Tim Gallagher, 26, from Wildman Street, Arboretum.

All admitted going on to the site but denied the charges, saying their actions were necessary to highlight climate change.

District Judge Morris Cooper said: "It was not the intention that any individual person should be harmed... [but] it should be clear that they were acting unlawfully."

Afterwards, protester Samantha Brown said: "I'm really pleased with the action we took. I'm pleased the case went to trial. Hopefully this will help raise awareness of climate change."

Glass, Robinson, Woodcock, Fairbrother and Nelson were fined £115 each. Brown was fined £135, Gallagher and Allman £165 each, Parker £215 and Cook £265. Each must pay £100 costs.

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# 'Ratcliffe ten' handed fines

By HURTEJ KAUR

**GREEN** campaigners who stormed Ratcliffe-on-Soar power station in a bid to shut it down have been fined – but claim it was worth it to highlight their environmental fears.

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**FLASHBACK:** The protest held last April

# 'Power station protest was right thing to do'

## **Judgement**

District Judge (Magistrates' Court) M. Cooper





IN THE NOTTINGHAM MAGISTRATES' COURT

Before District Judge (Magistrates' Court) M. Cooper

**Regina v. Garry GLASS**  
**Regina v. Ian PARKER**  
**Regina v. Emma ROBINSON**  
**Regina v. Andrew COOK**  
**Regina v. Andrew WOODCOCK**  
**Regina v. Samantha BROWN**  
**Regina v. Timothy ALLMAN**  
**Regina v. Eleanor FAIRBROTHER**  
**Regina v. Peter NELSON**  
**Regina v. Timothy GALLAGHER**

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## **JUDGMENT**

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1. The ten defendants in this case are all charged with the same offence of aggravated trespass, namely on 10<sup>th</sup> April 2007 at Ratcliffe on Soar in the County of Nottingham trespassing on land and entering into buildings with the intention of obstructing or disrupting persons engaged in a lawful activity, contrary to section 68(1)(b) of the Criminal Justice and Public Order Act 1994 ("the 1994 Act"). All entered pleas of not guilty earlier in the proceedings. The trial commenced on 14<sup>th</sup> January 2008 and continued on 15<sup>th</sup> and 16<sup>th</sup> January. After defence speeches, I reserved judgment in respect of the ten defendants listed above. An eleventh defendant, Stuart BARNES, had been tried along with these defendants, but I dismissed the charge relating to that defendant, due to inadequate evidence of participation by him in the alleged joint enterprise.

2. The defendants GLASS, PARKER, ROBINSON and COOK are all represented by Mr. Tomlinson, of Messrs. Kieran Clarke, Solicitors. The other defendants are unrepresented. Mr. Cunningham appears for the Crown.
3. At a previous case management hearing each defendant made it clear that he or she would rely on a defence of necessity, or duress of circumstances. It was decided that, consistent with the efficient management of the case, it would be appropriate to list the case for argument with a view to a pre-trial binding ruling on the question of whether, on the facts asserted by the defendants, such a defence is available to them. Directions were given for the service of skeleton arguments and legal authorities and the case was listed on 13<sup>th</sup> November 2007 for argument on the point.
4. Prior to the hearing on 13<sup>th</sup> November 2007, skeleton arguments were submitted on behalf of the Crown and by Kieran Clarke Solicitors on behalf of their clients. The defendants WOODCOCK, BROWN, ALLMAN and FAIRBROTHER also submitted skeleton arguments that are very similar to each other in their terms. No skeleton arguments were submitted by the defendants BARNES, NELSON and GALLAGHER, but they made it clear at the hearing on 13<sup>th</sup> November 2007, that they seek to rely on and associate themselves with submissions made in writing by other defendants.
5. The case came before me on 13<sup>th</sup> November 2007 and, although there was some argument upon the point, Mr. Cunningham, on behalf of the Crown conceded that there was an evidential basis for the issue of duress of circumstances or necessity to be considered at the trial. In the light of that, I left the issue open for consideration at trial.
6. The trial has been conducted by all parties in a very orderly fashion.
7. Three witnesses gave live evidence on behalf of the Crown as to the events at Ratcliffe on Soar Power Station on 10<sup>th</sup> April 2007, namely Raymond SMITH (Plant Manager at the power station), Christopher MARSH (Assistant Shift Team Leader) and Nicholas HOLLIICK (Services Engineer and Head of Security), all of them employees of E-on, the company operating the power station. In addition, written statements of the following police officers were agreed: P.C. Brendan GAYNOR, PC Philip ENGLAND, P.C. Jon RAYNOR, p.c. James DICKINSON, P.S. Glenn CHAMBERS, P.C. Scott SAXTON, D.C. Darran OWEN and D.S. Peter SHAW. That agreed evidence related to the arrest, detention and charging of the defendants. Records of tape-recorded interviews with the defendants were also agreed.

8. All ten defendants gave evidence. All admitted entering land at Ratcliffe on Soar Power Station as trespassers and then entering buildings with the intention of interrupting the supply of coal to the boilers and thereby reducing the amount of carbon dioxide emitted. They all admitted the elements of the offence charged, but asserted that their actions were legally justified in order to prevent death and serious injury caused by global warming. With the agreement of the Crown, the defendants produced a considerable amount of published, written material on the subject of global warming, containing some alarming information.
9. An expert witness was called to give evidence on behalf of the defendants. He was Dr. Simon LEWIS, a scientific researcher employed by the Royal Society, based at the Earth & Biosphere Institute at the University of Leeds. He is an expert on the interactions of climate change and ecosystems. He is the author of many peer-reviewed technical papers in the world's leading journals, several of which are cited by the United Nation's Intergovernmental Panel on Climate Change. He is a member of the Royal Society's Climate Change Advisory Network and the United Nations ad hoc Expert Working Group on Biodiversity and Climate Change. He advised the Government of the United Kingdom during preparations for the G8 and UN meetings discussing climate change. Dr. LEWIS's evidence about the effect of human activity on global warming was not challenged by the Crown.

### **FACTS**

10. I found the following facts in respect of the events of 10<sup>th</sup> April 2007 at Ratcliffe on Soar Power Station:
  - (i) Ratcliffe on Soar Power Station is operated by E-on and is a large, coal-fired power station providing electrical power to the National Grid.
  - (ii) Over the Bank Holiday weekend prior to Tuesday 10<sup>th</sup> April, 2007, Ratcliffe on Soar Power Station had been shut down, as there was no call for it to generate power at that time.
  - (iii) By the time the defendants entered the premises on 10<sup>th</sup> April, 2007, three out of the four generators at the power station were back on line, generating electricity; the remaining generator being out of action for maintenance and overhaul. The three generators that were operating were producing their maximum output of electricity, being a total of 1,500 megawatts (500 per unit).

- (iv) As a consequence of generating the electricity referred to, above, the boilers at the power station were emitting considerable quantities of carbon dioxide gas (CO<sub>2</sub>) in the exhaust gases.
- (v) At the time that the defendants entered the premises, the coal bunkers, supplying the boilers at the power station, were full and were capable of continuing to supply the boilers for seven to eight hours without replenishment.
- (vi) At approximately 9 am on Tuesday 10<sup>th</sup> April, 2007, the ten defendants, acting in concert, entered as trespassers the land upon which Ratcliffe on Soar Power Station is situated. Having done so, all ten defendants then entered buildings on that land, namely the Coal Plant and the Coal Plant Junction Tower, where some defendants attached themselves, by chain or other form of locking device, to items of machinery, whilst others positioned themselves in places calculated to interfere with the working of the Coal Plant or to assist their associates. Some defendants had put themselves in danger by the position in which they had chosen to attach themselves and were permitted by power station staff to move to a different location
- (vii) All ten defendants intended, by their actions, to reduce or prevent the emission of CO<sub>2</sub> by the boilers at the power station, by obstructing the delivery of coal. The processes which the defendants intended to obstruct or disrupt amounted to a lawful activity by employees of the power station. They had no permission or lawful authority to take this action.
- (viii) Another group of people had, at the same time, mounted a demonstration at the entrance to the power station.
- (ix) The function of the Coal Plant and Coal Plant Junction Tower relates to the movement of coal, delivered by road, rail or from stock, to the bunkers supplying the boilers, by conveyer belt systems.
- (x) At the time that the defendants took these actions, the coal bunkers were full, following the weekend when the power station was not generating, and the conveyer systems were not operating. However, it would have been necessary to operate these systems later in the day, in order to maintain generation of electricity, failing which it would have been necessary to shut the power station down.

- (xi) As a result of the actions of the defendants, generation of electricity at Ratcliffe was reduced by approximately 100 megawatts only and in order to provide for the possible need to close down generation at Ratcliffe, steps were taken by E-on to fire up another coal fired power station at Ironbridge. It was not clear what stage had been reached in preparing Ironbridge by the time the defendants had been removed, nor was I able to form any conclusion about what effect the defendants actions would have had on overall production of CO<sub>2</sub> by E-on.
- (xii) In order to ensure the safety of the defendants and staff at the power station, steps were taken to ensure that the machinery in the Coal Plant and the Coal Plant Junction Tower would not operate until after the defendants had been removed.
- (xiii) Police officers attended the incident and the defendants were removed with the assistance of power station employees and were arrested. Although the defendants refused to leave voluntarily, and those attached to machinery had to be released by cutting or dismantling items to which they had attached themselves, the defendants were otherwise acting in an entirely peaceful and non-violent way.
- (xiv) The period of time over which the defendants were on the power station premises was between four and five hours.
- (xv) During the week preceding the date of the alleged offence, the defendants had attended a series of educational workshops entitled "Spring into Action", where they had received the latest information about the impact of human activity on climate change, the number of deaths and other adverse consequences already occurring as a result of extreme weather events linked to climate change, together with scientific predictions for the future. They all formed the belief that climate change, brought about by human activity resulting in the emission of greenhouse gasses, is already causing such extreme weather events and that they had a responsibility to take action. They believed, most probably correctly, that Ratcliffe on Soar Power Station was the largest emitter of CO<sub>2</sub> in the East Midlands and that preventing such emissions for a period of time would make a contribution to reducing the impact of greenhouse gas emissions on climate change and thus, they hoped, save lives. I am satisfied, having heard each defendant give evidence,

that each felt, and continues to feel, genuine fear as to the effects of climate change and that their beliefs were genuine.

11. From the evidence of Dr. LEWIS, I found the following facts with regard to climate change:
  - (i) Carbon dioxide (CO<sub>2</sub>) is the dominant one of a number of 'greenhouse gases', so called because they allow the Sun's rays to reach the Earth's surface but then prevent some of that heat escaping back to space.
  - (ii) By burning fossil fuels, including coal, and cutting down forests, human activity has increased the amount of CO<sub>2</sub> in the atmosphere from about 280 parts per million before the Industrial Revolution to about 380 parts per million today, higher than it has been for at least 650,000 years. This increase is enhancing the greenhouse effect, heating up the Earth.
  - (iii) Small amounts of CO<sub>2</sub> have large effects and, because the Earth is an inter-connected and inter-dependent system, the increase in temperature is affecting many other processes from rainfall to which plants are able to grow where.
  - (iv) The effect of adding CO<sub>2</sub> to the atmosphere is cumulative, as the molecules of the gas will, on average, reside in the atmosphere for decades and some for centuries. While ever the gas is present, it has an effect on increasing temperature.
  - (v) Predicting the future impacts of CO<sub>2</sub> emissions and resulting climate change and attributing specific changes that have already occurred is fraught with difficulties. Attribution is based on the change in the probability of an event occurring (eg an extreme weather event). Objective probabilities cannot be given, only subjective probabilities based on clearly stated assumptions. Scientists refer to statistical probabilities.
  - (vi) Any addition of CO<sub>2</sub> to the atmosphere contributes to an increase in the probability of extreme weather events. Any reduction in such emissions has the opposite effect.
  - (vii) The consensus scientific view is that rapid climate change is having substantial effects on many processes

now. The World Health Organisation estimates that, globally, 150,000 people die every year as a result of climate change, eg. due to extreme weather events such as heat-waves, floods and draughts.

- (viii) The impact of CO<sub>2</sub> emissions from human activity has doubled the probability of an extreme weather event. However, it is not possible to attribute any particular extreme weather event to the increase in global warming brought about by human activity, because some extreme weather events would occur in any event.
- (ix) Consistent with climate change predictions was the heat-wave in Europe in 2003, which was calculated to have killed 35,000 (mostly old) people from nine countries, including the UK, in excess of the number expected to die at that time of year. It is reasonable to assume that the impacts of climate change will affect people in the UK in the near future.
- (x) The rapid rise in greenhouse gases in the atmosphere could set in motion large-scale and potentially abrupt changes in the Earth's natural systems that may be irreversible, including "surprises". Studies suggest that the Amazon rainforest could be replaced by savannah and that the entire West Antarctic Ice Sheet could melt, triggering massive sea-level rises. Breaching one such threshold may increase the probability of then crossing another.
- (xi) The majority of scientists agree that it is necessary to limit temperature increases to a maximum of 2 degrees centigrade above pre-industrial levels to avoid "dangerous interference with the climate system", which is the target for the European Union and the British Government. There has already been an increase of 0.6 degrees, which is continuing at a rate of 0.2 degrees per decade. The timescale for achieving the 2 degree target is concerned with probabilities. To give a reasonable chance of achieving it, CO<sub>2</sub> in the atmosphere would have to be stabilised at 400 parts per million (the current concentration of 380 ppm is rising by 1.9 ppm per year). This would require that global emissions peak within the next seven years, and globally to decline by between 50% and 85% by 2050, which represents a reduction in developed countries of about 90% by 2050 or sooner (or at least 5% every year).
- (xii) As to the contribution to global CO<sub>2</sub> emissions made by Ratcliffe on Soar Power Station, Dr. LEWIS stated that

total global emissions were in the region of 28 billion tonnes per year, roughly 9 million tonnes of which was believed to be emitted at Ratcliffe.

### **DURESS OF CIRCUMSTANCES / NECESSITY**

12. All of the defendants have asserted that their actions were justified under the law relating to so called “duress of circumstances” or necessity. For present purposes it seems to me that the former may be regarded as a form of the latter. The law relating to this subject is far from clear as to the scope of such a defence. I am not aware of any legal authority that addresses the question of whether a global threat brought about or contributed to by global human activity is within the scope of such a defence. This case, therefore, goes into uncharted legal territory.
13. The Crown conceded that there is an evidential basis for the defence in this case and is, therefore, required to prove to the criminal standard of proof that the defence is not made out.
14. The defendants have aligned themselves firmly together in relation to both facts and law. They have presented their arguments cogently and effectively.
15. I have been referred by the parties to **Archbold 2007, Chapter 17, paragraphs 124 to 132** inclusive (reproduced at the same place in the 2008 edition). The following cases have also been cited by one side or another:

**R v Jones and others** [2004] EWCA Crim 1981

**R v Jones and others** – Judgment of Grigson J at Bristol Crown Court on 12<sup>th</sup> May 2007 (transcript provided)

**Lord Advocate’s Reference No. 1 of 2000**, Appeal Court, High Court of Justiciary (transcript provided)

**R v Martin** 88 Cr App R 343, CA

**R v Abdul Hussain** [1999] Crim L R 570

**R. v. Shayler** [2001] 1 WLR 2206

**R v Hudson and Taylor** [1971] 2 QB 202

**R v Hutchinson** Court of Appeal of New Zealand, 7<sup>th</sup> July 2003 (transcript provided)

16. I have been invited on behalf of the Crown and the defendants to adopt the statement of the law relating to necessity, as distilled from the decided cases, set out at **paragraph 17-132 of Archbold**, where it is stated,



**“A person will have a defence to a charge of crime if (a) the commission of the crime was necessary, or reasonably believed to have been necessary....., for the purpose of avoiding or preventing death or serious injury to himself or another; (b) that necessity was the *sine qua non* of the commission of the crime; and (c) the commission of the crime, viewed objectively, was reasonable and proportionate having regard to the evil to be avoided or prevented. It will not avail the defendant that he believed what he did to have been necessary to avoid the evil if, viewed objectively, it was unnecessary, or, though necessary, was disproportionate”**

17. The defendants rely upon the decision of the Court of Appeal (Criminal Division) in **R v Abdul Hussain [1999] Crim L R 570**. The appellants in that case had been convicted of hijacking an aeroplane. They had admitted what they had done at their trial, but contended that they had done so as a last resort to escape death, either of themselves or of their families, at the hands of Iraqi authorities. The trial judge had refused to allow the defence of necessity or duress of circumstances to go to the jury, ruling that the threat was insufficiently close and immediate to give rise to a virtually spontaneous reaction to the physical risk arising. The Court of Appeal decided that the defence was available in the circumstances of this case. Rose LJ, Vice President, stated as follows:

*“In our judgment, although the judge was right to look for a close nexus between the threat and the criminal act, he interpreted the law too strictly in seeking a virtually spontaneous reaction. He should have asked himself, in accordance with Martin, whether there was evidence of such fear operating on the minds of the defendants at the time of the hijacking as to impel them to act as they did and whether, if so, there was evidence that the danger they feared objectively existed and that hijacking was a reasonable and proportionate response to it. Had he done so, it seems to us it that he must have concluded that there was evidence for the jury to consider.”*

18. Earlier in his judgment in that case, Rose LJ summarised the law on the subject in question as follows:

*“ In the light of the submissions made to us, we derive the following propositions from the relevant authorities:*

*1. Unless and until Parliament provides otherwise, the defence of duress, whether by threats or from circumstances, is generally available in relation to all substantive crimes, except murder, attempted murder and some forms of treason (R v*

Pommell [1995] 2 Cr App R 607 at 615C). Accordingly, if raised by appropriate evidence, it is available in relation to hijacking aircraft; although, in such cases, the terror induced in innocent passengers will generally raise issues of proportionality for determination, initially as a matter of law by the judge and, in appropriate cases, by the jury.

2. The courts have developed the defence on a case-by-case basis, notably during the last 30 years. Its scope remains imprecise (Howe, 453G-454C; Hurst [1995] 1 Cr App R 82 at 93D).

3. Imminent peril of death or serious injury to the defendant, or those to whom he has responsibility, is an essential element of both types of duress (see Southwark LBC v Williams (1971) 1 Ch 734, per Lord Justice Edmund-Davies at 746A; Loughnan, by the majority at 448 and the dissentient at 460; and Cole at page 10).

4. The peril must operate on the mind of the defendant at the time when he commits the otherwise criminal act, so as to overbear his will, and this is essentially a question for the jury (Hudson and Taylor at 4; and Lynch at 675F. It is to be noted that in Hudson and Taylor Lord Parker CJ presided over the Court, whose reserved judgment was given by Widgery LJ (as he then was).)

5. But the execution of the threat need not be immediately in prospect (Hudson and Taylor at 425). If in Cole the Court had had the advantage of argument, as to the distinction between imminence, immediacy and spontaneity which has been addressed to us, it seems unlikely that the second half of the paragraph at page 10 of the judgment which we have cited would have been so expressed. If, and in so far as anything said in Cole is inconsistent with Hudson and Taylor, we prefer and are, in any event, bound by Hudson and Taylor, as, indeed, was the Court in Cole.

6. The period of time which elapses between the inception of the peril and the defendant's act, and between that act and execution of the threat, are relevant but not determinative factors for a judge and jury in deciding whether duress operates (Hudson and Taylor; Pommell at 616A).

7. All the circumstances of the peril, including the number, identity and status of those creating it, and the opportunities (if any) which exist to avoid it are relevant, initially for the judge, and, in appropriate cases, for the jury, when assessing whether the defendant's mind was affected as in 4 above. As Lord Morris of Borth-y-Gest said in Lynch at 675F in the passage

*previously cited, the issue in Hudson and Taylor was "whether the threats were so real and were at the relevant time so operative and their effect so incapable of avoidance that, having regard to all the circumstances, the conduct of the girls could be excused."*

*8. As to 6 and 7, if Anne Frank had stolen a car to escape from Amsterdam and been charged with theft, the tenets of English law would not, in our judgment, have denied her a defence of duress of circumstances, on the ground that she should have waited for the Gestapo's knock on the door.*

*9. We see no reason of principle or authority for distinguishing the two forms of duress in relation to the elements of the defence which we have identified. In particular, we do not read the Court's judgment in Cole as seeking to draw any such distinction.*

*10. The judgment of the Court, presided over by Lord Lane CJ and delivered by Simon Brown LJ, in Martin, at 345 to 346 (already cited) affords, as it seems to us, the clearest and most authoritative guide to the relevant principles and appropriate direction in relation to both forms of duress. Subject to questions of continuance (which did not arise and as to which, see Pommell at 615D), it clearly reflects Lord Lane's judgment in R v Graham (1981) 74 Cr App R 235 at 241, which was approved by the House of Lords in Howe in 458G. It applies a predominantly, but not entirely, objective test, and this Court has recently rejected an attempt to introduce a purely subjective element divorced from extraneous influence (see Roger and Rose, 9th July 1997).*

*11. Clauses 25 and 26 of the Law Commission's draft Criminal Law Bill do not represent the present law. Accordingly, reference to those provisions is potentially misleading (see the forceful note by Professor Sir John Smith QC [1998] Crim LR 204, with which we agree)."*

19. The passage in **R v Martin (1989) 88 Cr App R 343** at 345 referred to in paragraph 10 of the above passage, is as follows:

*"The principles may be summarised thus. First, English law does, in extreme circumstances, recognise a defence of necessity. Most commonly this defence arises as duress, that is pressure upon the accused's will from the wrongful threats or violence of another. Equally, however, it can arise from other*

*objective dangers threatening the accused or others. Arising thus it is conveniently called 'duress of circumstances.'*

*Secondly, the defence is available only if, from an objective standpoint, the accused can be said to be acting reasonably and proportionately in order to avoid a threat of death or serious injury.*

*Thirdly, assuming the defence to be open to the accused on his account of the facts, the issue should be left to the jury, who should be directed to determine these two questions: first, was the accused or may he have been, impelled to act as he did because as a result of what he reasonably believed to be the situation he had good cause to fear that otherwise death or serious physical injury would result? Secondly, if so, may a sober person of reasonable firmness, sharing the characteristics of the accused, have responded to that situation by acting as the accused acted? If the answer to both those questions was yes, then the jury acquit: the defence of necessity would have been established."*

20. In **R. v. Shayler [2001] 1 WLR 2206**, Lord Woolf CJ, giving the judgment of the court provided some assistance as to whom a defendant can claim to have responsibility for in relying on a defence of necessity. He stated at paragraph 49 of his judgment,

*"we extract the following ingredients as being required if the defence of necessity is to be relied on: (i) the act must be done only to prevent an act of greater evil; (ii) the evil must be directed towards the defendant or a person or persons for whom he has responsibility or, we would add, persons for whom the situation makes him responsible; (iii) the act must be reasonable and proportionate to the evil avoided. We make the addition to (ii) to cover, by way of example, the situation where the threat is made to set off a bomb unless the defendant performs the unlawful act. The defendant may not have had any previous connection with those who would be injured by the bomb, but the threat itself creates the defendant's responsibility for those who will be at risk if he does not give way to the threat."*

He continued at paragraph 63,

*"So in our judgment the way to reconcile the authorities to which we have referred is to regard the defence as being available when a defendant commits an otherwise criminal act to avoid an imminent peril of danger to life or serious injury to himself or towards somebody*



*for whom he reasonably regards himself as being responsible. That person may not be ascertained and may not be identifiable. However, if it is not possible to name the individuals beforehand, it has at least to be possible to describe the individuals by reference to the action which is threatened would be taken which would make them victims absent avoiding action being taken by the defendant. The defendant has responsibility for them because he is placed in a position where he is required to make a choice whether to take or not to take the action which it is said will avoid them being injured. Thus if the threat is to explode a bomb in a building if defendant does not accede to what is demanded the defendant owes responsibility to those who would be in the building if the bomb exploded."*

21. In the New Zealand case of **R. v. Hutchinson** (Court of Appeal of New Zealand, 7<sup>th</sup> July 2003), referred to in the Crown's skeleton argument, (a case relating to a defendant who sought to justify his criminal actions by reference to the need to protect the environment from a pesticide) the New Zealand Court of Appeal agreed with the judge at first instance that there was a need for strict control of the defence of necessity in such cases. The Court referred, in particular, to dicta in a case concerning civil trespass, **London Borough of Southwark v. Williams** [1971] Ch 734 at 746 (Edmund-Davies LJ):-

*"Well, one thing emerges with clarity from the decisions, and that is that the law regards with the deepest suspicion any remedies of self-help, and permits those remedies to be resorted to only in very special circumstances. The reason for such circumspection is clear, necessity can very easily become simply a mask for anarchy."*

22. In the same case, at page 743, Lord Denning MR had this to say:-

*"The doctrine so enunciated must, however, be carefully circumscribed. Else necessity would open the door to many an excuse. It was for this reason that it was not admitted in [Reg. v. Dudley and Stephens](#) (1884) 14 Q.B.D. 273, where the three shipwrecked sailors, in extreme despair, killed the cabin boy and ate him to save their own lives. They were held guilty of murder. The killing was not justified by necessity. Similarly, when a man, who is starving, enters a house and takes food in order to keep himself alive. Our English law does not admit the defence of necessity. It holds him guilty of larceny. Lord Hale said that "if a person, being under necessity for want of victuals, or clothes, shall upon that account clandestinely, and animo furandi, steal another man's food, it is felony ...": Hale, Pleas of Crown, i. 54. The reason is because, if hunger were once allowed to be an excuse for stealing, it would open a way through which all kinds of disorder and lawlessness would pass. So here. If homelessness were*

*once admitted as a defence to trespass, no one's house could be safe. Necessity would open a door which no man could shut. It would not only be those in extreme need who would enter. There would be others who would imagine that they were in need, or would invent a need, so as to gain entry. Each man would say his need was greater than the next man's. The plea would be an excuse for all sorts of wrongdoing. So the courts must, for the sake of law and order, take a firm stand. They must refuse to admit the plea of necessity to the hungry and the homeless: and trust that their distress will be relieved by the charitable and the good."*

### **THE CROWN'S SUBMISSIONS**

23. Mr. Cunningham, on behalf of the Crown submitted that the law requires an objective assessment of the danger and that, on a common sense analysis of the evidence regarding global warming, the defendants' actions were not necessary, could not have been effective for the purpose intended and that the defendants' belief in the need to take such action was unreasonable. It was argued on behalf of the Crown that the evidence does not reveal any imminent threat of death or serious injury to the defendants themselves or to anyone for whom they could properly claim to be responsible.
24. Mr. Cunningham further submitted that necessity was not the *sine qua non* of the defendants' actions, because the closing for a short period of time of the power station would not have been capable of averting the threat perceived by the defendants. He submitted that the court should conclude that the real purpose of the defendants' actions was to draw attention to the defendants' beliefs by way of publicity.
25. Mr. Cunningham referred me to the test identified in **R v Martin** (1989) 88 Cr App R 343 at 345 (see above). This, he said, requires an objective assessment of the danger and an objective assessment of the actions taken by the defendants and the results of those actions. On a common sense analysis, Mr. Cunningham submitted that the belief asserted by the defendants was not objectively reasonable and a sober person of reasonable firmness, sharing the characteristics of the defendants would not have responded to the situation by acting as they did.
26. Referring to the case of **R v Abdul Hussain** [1999] (see above), Mr. Cunningham submitted that the operation of Ratcliffe on Soar Power Station does not carry with it "imminent peril of death or serious injury to the defendants" and the defendants are not responsible for the rest of the population. He said the court should conclude that the peaceful nature of the occupation of the premises demonstrates that the will of the defendants was not overborne

such that they were compelled to act as they did; they simply chose to do so.

27. The facts in the case of **R v Abdul Hussain** [1999], said Mr. Cunningham, are very different from the instant case. The threat to the hijackers was specific to them and their families. In the instant case, he stated, there was no immediacy about the action, no decision in the agony of the moment, no choice between two evils. The actions of the defendants in the instant case, he submitted, would have had a minimal effect on greenhouse gas emissions, did not avoid death or serious injury and could never have had such a result.
28. Mr. Cunningham stated, “In a democracy, members of society expect each other to abide by the law laid down by Parliament and to respect and comply with decisions of judicial or administrative bodies required to resolve disputes. Dilution of that expectation risks undermining the rule of law”. His words echo those of Lord Denning MR in *London Borough of Southwark v. Williams*, referred to above.

### **DEFENCE SUBMISSIONS**

29. The defendants have structured their arguments according to the formula set out in Archbold, set out above. As I have already said, the defendants have aligned themselves firmly together in relation to both facts and law. They each rely on the same facts and the same submissions on the law.
30. The defendants argued that their actions were necessary and / or they reasonably believed they were necessary because of what they believe is the actual and potential harm (death and serious injury) caused by climate change that is brought about or substantially contributed to by carbon emissions from sources such as the coal-fired power station at Ratcliffe on Soar. They acted, they asserted, in the belief that the world is facing a global humanitarian and ecological disaster of previously unheard of proportions. The evidence of Dr. LEWIS, they argued, demonstrates that this belief is a reasonable one.
31. The defendants asserted that the sole purpose of their actions was stopping CO<sub>2</sub> emissions. They acknowledged that there was a demonstration at the gates of the power station that was well attended by the press, but they referred to this as a “separate demonstration” by people who were not on trial. They responded to the Crown’s argument by asserting that, if their purpose was publicity, they would have put themselves in a more visible location and attempted to communicate with the press. Their purpose, they

asserted, was to shut down the power station to prevent as much CO<sub>2</sub> as possible being emitted. I have found that to be so.

32. The defendants all argued that their actions were reasonable and proportionate when compared to the enormity of the danger. They referred to the fact that they entered the premises in a peaceful fashion and at no time used any force, violence, or threat of violence. The defendants refer to their feelings of alarm arising from what they learned when they attended the educational week called "Spring into Action" in Nottingham, immediately prior to the date of the alleged offence. They rely on the evidence of Dr. LEWIS as to the effect that global warming, exacerbated by human activity, is already having and his evidence that any reduction in greenhouse gas emissions will contribute to reducing the probability of human loss of life from extreme weather events, etc. They say that they are not a special interest group, but are a group of right thinking individuals who felt compelled to act to save life.
33. On the question of proportionality, the defendants compared their actions to the people who hijacked an aeroplane (R. v. Abdul Hussain, above). If the defence is available to those who take such extreme action, they argued, it must be available to the defendants for their crime, which was peaceful and created no immediate danger to others.
34. The defendants argued that the threat to life from climate change is both imminent and immediate and that the human cost will become much greater as temperatures rise, unless immediate action is taken to cut carbon emissions drastically. They submit that, if the court does not accept the immediateness of the threat, it is nevertheless imminent, because it is hanging over all of us. Reference was made to the Anne Frank analogy referred to by Rose LJ in R. v. Abdul Hussain (above).
35. Ms. BROWN submitted that it was reasonable for the defendants to believe that they have a responsibility towards people who are at risk of dying from the effects of global warming on the climate. She pointed out that there is authority in the case of R. v. Shayler (above) for the proposition that it is not necessary for the defendants to show that they knew the persons under threat. She argued, relying on the evidence of Dr. LEWIS that, on an objective analysis, a link can be established between CO<sub>2</sub> emitted at Ratcliffe on Soar Power Station and deaths already occurring and that extreme weather events were increasing in frequency and intensity.
36. Mr. WOODCOCK, in his submissions, acknowledged that no one person and no one action could prevent climate change happening, but he drew my attention to the evidence of Dr. LEWIS to the effect that CO<sub>2</sub> emissions have a cumulative effect and any reduction in emissions reduces the risk. He pointed out that the Crown had



produced no evidence to prove that the actions of the defendants could not have saved lives.

## **CONCLUSIONS**

37. I have listened to all of the defendants in this case giving evidence and to the majority, who are not represented, making erudite submissions on law and fact. They are all intelligent, articulate individuals, who are genuine in their deep-seated fears with regard to the consequences of global warming. Their arguments have been taken seriously by the Crown, Mr. Cunningham having decided not to pursue an argument that there is no foundation for a defence of necessity in this case. They present as a set of individuals who have a profound social conscience and felt compelled to act as they did after becoming seriously alarmed by what they learned about the effect that CO<sub>2</sub> emissions are bringing about. The peaceful nature of their action was acknowledged by the witnesses who gave prosecution evidence and by Mr. Cunningham on behalf of the Crown.
38. The scope of the defence of necessity is, as I have said earlier, unclear. What I must do is to address the elements of the defence that have been identified in the case law that has been drawn to my attention and to form conclusions in respect of those elements on the facts that I have found in the instant case. The analysis in Archbold forms a sensible framework for this as a starting point.
39. The first question is whether the defendants' actions were necessary, or reasonably believed by them to have been necessary for the purpose of avoiding or preventing death or serious injury to themselves or another or others. This also imports the question of whether the defendants can properly be regarded as responsible for protecting any person who might be at risk of death or serious injury from an extreme weather event.
40. My conclusion, on the facts that I have found, is that the defendants' actions cannot be regarded in law as necessary in the context of the defence of necessity. I have no doubt at all, having heard the alarming evidence of Dr. LEWIS, that there is an urgent need for drastic action to be taken globally to reduce greenhouse gas emissions. This, however, is a matter for political control and concerted action by the governments of responsible countries.
41. In considering the defence of necessity, it is relevant to have regard to the timescale over which the peril operates and to all of the circumstances of the peril, including the number, identity and status of those creating it, and the opportunities which exist to avoid it (per Rose LJ in *R. v. Abdul Hussain*, referred to at paragraph 18, above). The timescale, with regard to the human contribution to

global warming, began with the industrial revolution and will continue for decades. The peril was created by global human activity, predominantly in the industrialised countries. There is an existing international protocol and international negotiations continue concerning necessary action to deal with the problem. These are all factors that I have considered in concluding that it was not necessary for the defendants to take the action they did.

42. It is impossible on the evidence before the court, in my judgment, to conclude that preventing emissions from Ratcliffe on Soar Power Station for several hours would in fact result in preventing any death or serious injury to a person from happening. The evidence of Dr. LEWIS, alarming though it was, concerns probabilities. It is impossible, on that evidence, to link CO<sub>2</sub> emissions from any particular source to any particular extreme weather event. The emissions from Ratcliffe over a period of hours are miniscule when compared to global emissions. It was clear from prosecution evidence that, if the defendants had been successful in their aim, the company operating the power station would have simply generated the lost electricity elsewhere, which may have resulted in a net increase or a net reduction in overall emissions of greenhouse gases; I found it impossible to form any conclusion on that. Even if the defendants had prevented emissions for several hours at Ratcliffe and such emissions had not been compensated for elsewhere, it would have been impossible to demonstrate that any particular lives would be saved, or any particular serious injury would be prevented, by that alone.
43. I am, however, satisfied, as should be evident from my findings of fact, that each of the defendants actually did believe that the action they took was necessary and believed that what they intended to achieve was capable of influencing the probability of extreme weather events, whether by way of occurrence or intensity thereof, such that some person or persons somewhere at some time might be saved from death or serious injury. I entirely accept that, on the evidence of Dr. LEWIS it is reasonable to suppose that there is a causal link between CO<sub>2</sub> emissions and extreme weather events causing death and serious injury and that it is reasonable to believe that, on a global scale, people are dying now and will die in the future as a result of such events. In that sense, the belief of the defendants was reasonable, but in the sense that the defendants believed it was their responsibility to take the action such as they did, it was not a reasonable belief.
44. Although I am satisfied that, subjectively, the defendants genuinely believed it was necessary for them to take some action to reduce emissions of CO<sub>2</sub>, I am not satisfied that they did so because the peril operated on their minds so as to overbear their will in the sense referred to by Rose LJ at paragraph 4 of his summary of the law on this subject in *R. v. Abdul Hussain* (see paragraph 18,

above). I have concluded on the evidence of the defendants that their will was fuelled by their knowledge of the peril rather than overborne by it.

45. I have taken into account the remarks of Lord Woolf CJ at paragraphs 49 and 63 of his judgment in *R. v. Shayler* (above) on the question of whether the defendants can properly regard themselves as having a responsibility to act. The scenario quoted by Lord Woolf is very different from the instant case. Where a person threatens to detonate a bomb unless a defendant performs an unlawful act, there is clearly a risk to life and limb that depends on the defendant's actions and it is clear and obvious that a defendant would be justified in taking responsibility for avoiding that risk, even to persons whose identity was not known. In contrast with that scenario, global warming is being brought about as a result of the cumulative actions of human societies around the world. Responsibility for ameliorating the situation, to limit its consequences, is a communal responsibility that must be exercised through good governance. Although I accept that each individual has a responsibility to contribute so far as possible to the reduction of greenhouse gas emissions in his personal life, this cannot, in my judgment, extend to interference with a national electricity supply system on the basis that the individual feels responsible for those who suffer from climate change.
46. The Anne Frank analogy, referred to by Rose LJ in *R. v. Abdul Hussain*, and to which the defendants have drawn my attention, represents a wholly different scenario to the threat from global warming. That was a specific threat to a specific group of people within a particular geographical area in which they were effectively trapped. The threat was to Anne Frank herself, as well as her family, and an attempt to escape would have been a real alternative to running the risk of continuing to hide.
47. My conclusion on the second question in the Archbold formula, as to whether necessity was the *sine qua non* of the commission of the offence, is apparent from my findings of fact. The defendants in their evidence have persuaded me that their aim was to prevent CO<sub>2</sub> being emitted from Ratcliffe Power Station in the belief that this could save life. They acknowledged in their evidence that there was a contemporaneous demonstration, mounted by others at the gates of the power station, but they distanced themselves from the group involved in that. Other than the coincidence of the two events taking place together, which is a compelling coincidence, there was no evidence linking the two. The defendants, in their evidence, agreed that publicity arising from their actions was inevitable, but they were adamant that publicity was not their aim.
48. The third question, following the formula in Archbold, is whether the commission of the offence, viewed objectively, was reasonable and

proportionate, having regard to the evil to be avoided or prevented. My conclusion on this follows on from my conclusion on the first question.

49. It is clear beyond doubt that the evil to be avoided or prevented, being the catastrophic effects of global warming, is enormous. The actions of the defendants, as they have emphasised throughout, were performed in a peaceful and completely non-violent way. Indeed, I detected a hint of what might be described as guarded understanding, if not sympathy, for their cause in the responses of prosecution witnesses to certain questions, particularly with regard to certain defendants being advised to move their positions for their own safety. No-one, other than the defendants, was put in danger by the defendants' actions. If the defendants' actions had been objectively reasonable and necessary, therefore, they would have been proportionate, having regard to the enormity of the threat from global warming.
50. I am not satisfied, however, that the actions of the defendants, viewed objectively, were either necessary or reasonable. As I have previously stated, the evidence did not satisfy me that the defendants' actions, even if they had achieved what they set out to do, would have been capable of having an identifiable effect on saving life or serious injury. Furthermore, adopting the formula proposed in the extract from the judgment in *R. v. Martin* (above), I am not satisfied that a sober person of reasonable firmness, sharing the characteristics of the defendants, would have responded to the situation by acting as the defendants did. A reasonable person would not, in my judgment, consider himself compelled to act as the defendants did in the current situation.
51. There is still, as Dr. LEWIS acknowledged, a great deal of debate and disagreement about the whole issue of global warming and what should be done about it, although the science seems now to be firmly established. Taking action is the responsibility of those in government. Reasonable people may take action to limit their own "carbon footprint" and may campaign for more urgent action by governments, but attempting to stop a large power station from functioning is, in my judgement, a step too far for the reasonable person. If the law permitted the type of action taken by the defendants in this case, it would authorise a route to chaos. As Edmund-Davies LJ said in *London Borough of Southwark v. Williams* (above), "*....necessity can very easily become simply a mask for anarchy*".
52. The defendants have argued that they were responding to a peril that is both immediate and imminent (as interpreted by the Court of Appeal in *R. v. Abdul Hussain*). I have found as a fact, on the unchallenged scientific evidence that the impact of CO<sub>2</sub> emissions from human activity has doubled the probability of an extreme

weather event. Extreme weather events kill many thousands of people across the world at the present time and the threat is an increasing one. To that extent, therefore, there is a very substantial peril that is both immediate and imminent in the sense that it is hanging over us.

53. Mr. Cunningham argued that the imminent peril of death or serious injury would have to emanate from the operation of Ratcliffe on Soar Power Station for the defendants' actions to be justified. There is logic in the defendants' argument, based on the evidence of Dr. LEWIS, that any significant contribution to CO<sub>2</sub> emissions will increase the probability of adverse effects resulting from the level of that gas in the atmosphere. However, that chain of reasoning does not, in my judgment, sufficiently establish that life would have been saved by preventing the operation of that particular power station for a limited period. Dr. LEWIS made it clear that it was not possible to attribute any particular extreme weather event to any particular human activity; it is all a question of probabilities.
54. Any right thinking person would, I am sure, share the defendants' concerns about global warming. Indeed, I believe that the majority of people who examined the scientific evidence in as much detail as has been put before this Court would share the defendants' fears. In my judgment, however, the actions the defendants took were not legally justified.
55. I am satisfied so that I am sure that each of the ten remaining defendants committed the offence charged. I am equally sure, on the evidence I have heard and the facts I have found, that the defendants' offence was not justified under the law relating to the defence of necessity. Accordingly, I find each of the ten defendants guilty of the offence charged.

Morris Cooper  
District Judge (Magistrates' Courts)

25<sup>th</sup> February 2008.