IN THE SUPREME COURT OF THE UNITED KINGDOM

HER MAJESTY'S ATTORNEY GENERAL

Applicant

-v-

TIM CROSLAND

Respondent

RESPONDENT'S SUBMISSIONS

See also the Respondent's Written Evidence:
https://planb.earth/wp-content/uploads/2021/04/SC-Written-Evidence-FINAL.pdf

See also the Respondent's Exhibit to these submissions:
https://planb.earth/wp-content/uploads/2021/04/SC-EXHIBIT.pdf

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A. INTRODUCTION

1. The Attorney-General ("the Applicant") applies for the committal to prison of Tim Crosland ("the Respondent"), on the grounds that the Respondent's decision to break the embargo on the outcome of the Supreme Court judgment in favour of Heathrow expansion was a contempt of court.[1]

2. The case will be heard by the Supreme Court, sitting at the Royal Courts of Justice, on 10 May, 2021.

3. The Respondent recognises the rationale for and public interest in the confidential circulation of draft judgments.

4. The principal difference between the positions of the Respondent and the Applicant is as follows:

    a. The Respondent considers there to be a public interest in both: (i) maintaining the confidentiality of draft judgments and (ii) preserving the conditions which make the planet habitable, which, according to the political and scientific consensus, depends upon maintenance of the Paris Agreement temperature limit. In the unusual circumstances of this case, these competing considerations collided. It would be artificial and unreal to assess this case on the basis of wilful blindness to (ii) above, given that the Respondent's action cannot be understood without reference to (ii) above. Without understanding the Respondent's action, the legal principles cannot be correctly applied.

    b. The position of the Applicant, by contrast, is that it is only (i) that is relevant; and that (ii) can be safely ignored. The Applicant does not dispute that the Respondent's intention was to prevent serious harm to his children and to the public. Nevertheless, he contends that the Court should:

        i. exclude all evidence to that effect;

        ii. disregard the Respondent's intentions, beliefs and motivations, and the circumstances giving rise to those intentions, beliefs and motivations, in determining whether the *mens rea* for contempt of court is satisfied;

        iii. disregard the Respondent's intentions, beliefs and motivations, and the circumstances giving rise to those intentions, beliefs and motivations, in determining sentence.

5. The Applicant's position, which is that it is irrelevant that the Respondent was taking reasonable and proportionate action to protect his children and to prevent mass loss of life is not only inhuman. It is inconsistent with:

[1] The Applicant notes, however, that *"[i]t is not the Applicant's role to press for any particular type of penalty*", Applicant Submissions (**"AS"**), §60

a. centuries of common law; and

b. Article 2 of the European Convention on Human Rights (ECHR), as implemented into national law by the Human Rights Act 1998.

6. At odds with his primary position, the Applicant also contends that:

> **"There was no pressing urgency that required [the Respondent] to disclose the result of the appeal some 22 hours before its formal promulgation …"[2]**

7. The Applicant wants to eat his cake and have it. He seeks to:

a. exclude the Respondent's evidence as to why his disclosure was a reasonable and proportionate measure; and simultaneously

b. contend for himself that it was not a reasonable and proportionate measure.

8. Contrary to this alternative position of the Applicant, there is compelling evidence that the Respondent's action was a reasonable, proportionate and effective measure to prevent serious harm to his children and the public.

9. In particular, it was directly in consequence of the Respondent's disclosure, that Professor Sir David King, the Government's former Chief Scientific Adviser and Special Representative on Climate Change, Professor Jeffrey Sachs, the former Special Adviser to the UN Secretary General, Dr James E. Hansen, the the ex-NASA scientist and "godfather of climate science", and a great many others, from all corners of the world, wrote to the Supreme Court to say:

> **"We urge you to consider the grave implications of this judgment. The highest court in the United Kingdom has set a precedent that major national projects can proceed, even where they are inconsistent with maintaining the temperature limit on which our collective survival depends. Indeed, the precedent goes further still. It says that the Government is not bound even to consider the goals of an Agreement that is near universally agreed. Not only does that undermine the UK's status as a "champion of the Paris Agreement," just ahead of the critical climate talks in Glasgow later this year (COP26). <u>It also substantially reduces humanity's prospects of maintaining that limit and hence, averting disaster</u>.**
>
> **The rule of law, including international law, is a vital part of the fabric of a democratic society and it is key to securing the safety of our interconnected world. We understand why Tim Crosland of Plan B. Earth felt it necessary to raise the alarm about the goals of the Paris Agreement being ignored by British courts. <u>We remind the Court of its own obligations under the Human Rights Act 1998 to safeguard the right to life</u>. That entails**

[2] AS, §49

taking all reasonable measures to ensure respect for the entirety of the Paris Agreement.

The climate crisis jeopardizes civilization and the natural world alike, with those who have contributed least to the crisis, the younger generation and the Global South, on the frontline. With all that is at stake, in the UK and beyond, <u>we urge the Court to take appropriate steps to mitigate the profound harm its judgment has caused</u> and to consider the actions of Tim Crosland in this light."[3] (emphasis added)

10. That letter, from so many expert and credible figures, is sufficient to engage the Supreme Court's positive obligation under the Human Rights Act 1998 and ECHR Article 2, such that it is now bound to:

    a. review the implications of its judgment; and

    b. consider what steps may be necessary to avert the risk to life.

11. So far as the Respondent is aware, the Supreme Court has not previously received such an open letter. In the ordinary course of events such a letter would not have been written.

12. It was the Respondent's course of action, which involved the assumption of substantial personal risk, that served to highlight the devastating implications of the Supreme Court's judgment and hence opened up a pathway to a remedy.

13. In the words of Lord Bingham:

> **"Sometimes, inevitably, those involved in the conduct of government, as in any other walk of life, are guilty of error, incompetence, misbehaviour, dereliction of duty, even dishonesty and malpractice. Those concerned may very strongly wish that the facts relating to such matters are not made public. Publicity may reflect discredit on them or their predecessors. It may embarrass the authorities. <u>It may impede the process of administration. Experience however shows, in this country and elsewhere, that publicity is a powerful disinfectant. Where abuses are exposed, they can be remedied.</u> Even where abuses have already been remedied, the public may be entitled to know that they occurred. The role of the press in exposing abuses and miscarriages of justice has been a potent and honourable one. But the press cannot expose that of which it is denied knowledge."**[4] (emphasis added)

[3] https://planb.earth/wp-content/uploads/2021/03/Supreme-Court-Expert-Letter.pdf
[4] *R v Shayler [2002] UKHL 11, para. 21*

B. CLARIFICATIONS REGARDING MATTERS OF FACT

The Respondent's belief

14. The Applicant states at para. 48 of his submissions:

> **"As to the argument that the Respondent's public-spirited motives meant that he lacked the required mens rea for contempt: first, that is forensically difficult for him, since his own statement shows he believed he was committing a contempt."** (emphasis added)

15. That is incorrect. In his statement, the Respondent made a *prediction* about how the authorities would respond to his disclosure:

> **"This will be treated as a "contempt of court" and I am ready to face the consequences."** (emphasis added)

16. That prediction has so far turned out to be accurate.

17. The Respondent's prediction had nothing to do with his interpretation of the law of contempt. It was based on:

    a. his experience of how those in positions of power tend to respond to perceived challenges to their authority; and

    b. the Government's overt political objective, formed in response to a climate protest against the Murdoch press in September 2020, to suppress and criminalise the climate protest movement[5].

18. On 16 December, the Independent newspaper invited the Respondent to write an Op Ed concerning his action. The Respondent submitted an article under the title, ***"Why I broke the court embargo on the Heathrow judgment"***[6]. The editor at the Independent changed the headline to ***"I am the lawyer who committed contempt of court over Heathrow's expansion plans – this is why I did it***". The Respondent neither wrote nor approved that headline.

19. As to the legal position, the Respondent's belief was at all material times that reasonable and proportionate action to avert serious harm, including mass loss of life, is lawful, and that the criminalisation of such action is contrary to public policy, centuries of common law and ECHR Article 2.

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[5] Exhibit/1 ("TC/1")
https://www.dailymail.co.uk/news/article-8702157/Extinction-Rebellion-protestors-classified-organised-crime-group.html

[6] TC/2:
https://docs.google.com/document/d/1hMYFvhkCCELu3Cl1xmE2pkRsCF52TyifXJ2rA6o3iKg/edit?usp=sharing

20. The Respondent's belief is informed in part by his previous experience as a legal adviser to various law enforcement and intelligence gathering organisations (such as the National Crime Agency). He advised on a great many operations in which the objectives of confidentiality and safeguarding life came into conflict. The principle established in the case of *Osman* is to make a disclosure where that would be a reasonable and proportionate measure to safeguard life ("an *Osman* warning"). Over more than a decade of work in this area, the Respondent never advised (and would never have advised) that considerations of confidentiality should take priority over reasonable and proportionate action to safeguard life.

The content of the disclosure

21. The Applicant appears to realise that the Respondent disclosed only the *outcome* of the judgment as opposed to the draft judgment itself[7].

22. Yet he goes on to imply that the seriousness of the Respondent's conduct relates to the consequences of leaking *draft judgements*:

> **"Premature leaks of drafts, potentially different in content from the final version, seriously undermine the ability of the Court's judgments to command respect …"[8]**

23. The Respondent did <u>not</u> leak the draft judgment, which was liable to change. He leaked only the outcome of the judgment, which was not liable to change. The Applicant does not advance his case by invoking alternative facts.

The Respondent's position on the facts

24. The Applicant states[9]:

> **"The Respondent does not appear to dispute that he disclosed the outcome of the judgment prematurely, knowing that this was prohibited from doing so …"**

25. The Respondent has at all times been open that:

    a. He disclosed the outcome of the judgment

    b. He knew the outcome was subject to embargo.

26. It is <u>not</u> correct, however, to say he knew he was "prohibited from doing so". The terms of the Court embargo were as follows:

> **"Those to whom the contents are disclosed must take all reasonable steps to preserve their <u>confidentiality</u>. No action is to be taken in response to**

[7] see AS, §42
[8] AS, §43(1)
[9] AS, §42

them before judgment is formally pronounced unless this has been authorised by the Court. A breach of any of these obligations may be treated as a contempt of court." (emphasis added)

27. The Respondent regarded the embargo as a statement of confidentiality. In the Respondent's professional experience, statements of confidentiality do not amount to a prohibition. To the contrary, the general principle is that confidentiality, including legal and medical confidentiality, may be overridden to prevent serious harm.

28. The Respondent requested, but was denied, permission to take external legal advice.

29. In summary, while the Respondent was aware that i) he was breaking the Court's confidentiality; and ii) that in practice the authorities were likely to pursue him for contempt of court; at all times he considered his action to be lawful.

C. IMPARTIALITY AND APPEAL COURT

30. The Respondent acknowledges his actions have caused embarrassment, inconvenience and irritation to the Court (as distinct from interfering with the course of justice). That was not his objective, but it was no doubt the result. Embarrassing, inconveniencing and irritating the Supreme Court is not usually prudent. Nor, however, is it a crime.

31. On behalf of the Supreme Court, Lord Reed submitted formal complaints concerning the Respondent to a) the Attorney General; and b) the Bar Council. For completeness it may be noted that, following a complaint, the Charity Commission has also commenced an investigation into this matter (the Respondent does not know who raised the complaint in that case), such that a three-tiered response to the Respondent's action is underway.

32. The Respondent does not invite the Court to recuse itself because he does not have an alternative proposal as to how to proceed. There would be equally obvious difficulties with the case being tried by a lower court.

33. He does, however, submit that the Court should be mindful of its own interests and preconceptions regarding this matter.

34. The Respondent has an automatic right of appeal and, given the status of the Supreme Court, seeks clarity on the appropriate forum for appeal.

D. TIME ALLOCATION

35. ECHR Article 6 requires that the Respondent be afforded a reasonable opportunity to present his case. The case for the Applicant is relatively straightforward. The Respondent submits that time should be allocated as follows:

10-11am: Case for the Applicant
11am-12.30pm: Case for Respondent
12.30-1pm: Cross-examination of Respondent
2-3pm: Applicant's closing submissions
3-4pm: Respondent's closing submissions.

E. THE LEGAL PRINCIPLES

ECHR Article 10

36. As recognised by the Applicant, the starting point for the legal analysis is ECHR Article 10, the right to freedom of expression, which provides:

> **"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers . . ."**

37. The importance of this right is emphasised by HRA 1998, section 12:

> **"(1)This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression …**
>
> **(4)The court must have particular regard to the importance of the Convention right to freedom of expression …".**

38. The European Convention recognises that the right is not absolute: article 10(2) qualifies the broad language of article 10(1) by providing:

> **"The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as <u>are prescribed by law</u> and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, . . . for the protection of the . . . rights of others, for preventing the disclosure of information received in confidence . . ."** (emphasis added)**.**

39. The statement at the top of the draft judgment fails to satisfy the "prescribed by law" criterion. It is self-evidently a statement of confidentiality, to be interpreted in accordance with the ordinary principles concerning confidentiality.

ECHR Article 2 - the right to life

40. As recognised by the Supreme Court in *Rabone v Pennine Care NHS Trust*[10], Art. 2 imposes both a negative duty on the state to refrain from taking life and a positive duty to protect life.

41. The ECtHR emphasised this principle in *Öneryildiz v Turkey ECtHR*[11]:

> **"In this connection, the Court reiterates that Article 2 … lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction …"**

42. The Grand Chamber of the European Court of Human Rights, helpfully summarised its case law on the positive obligations arising under Article 2 in its recent judgment, *Nicolae Virgiliu Tănase v Romania*[12]. They include the primary substantive procedural obligation to put in place an appropriate legislative and administrative framework, including the making of regulations to compel institutions, whether private or public, to adopt appropriate measures for the protection of people's lives:

> **"This substantive positive obligation entails a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life (see *Öneryıldız v. Turkey [GC], no. 48939/99, § 89, ECHR 2004-XII; Budayeva and Others v. Russia, nos. 15339/02 and 4 others, § 129, ECHR 2008* (extracts); *Kolyadenko and Others v. Russia, nos. 17423/05 and 5 others, § 157, 28* February 2012, and *Fernandes de Oliveira*, cited above, §§ 103 and 105-07). It applies in the context of any activity, whether public or not, in which the right to life may be at stake (*Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], no. 47848/08, § 130, ECHR 2014, and Lopes de Sousa Fernandes v. Portugal [GC], no. 56080/13, § 165, 19 December 2017*). It also requires the State to make regulations compelling institutions, whether private or public, to adopt appropriate measures for the protection of people's lives …"[13]** (emphasis added)

43. A prohibition which serves to deter or prevent those within the jurisdiction from taking reasonable and proportionate measures to safeguard life would therefore constitute a violation of ECHR Article 2.

Human Rights Act 1998, section 3

44. Section 3 of the HRA requires the courts, so far as possible, to interpret legislation in accordance with Convention rights:

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[10] AB/9: Rabone v Pennine Care NHS Trust [2012] UKSC 2 at §§12-16
[11] AB/11: *Öneryildiz v Turkey ECtHR 30 November 2004, no. 48939/99* at §89
[12] Nicolae Virgiliu Tănase v Romania [GC], No 41720/13, 25 June 2019
[13] *Ibid.* §135

3 Interpretation of legislation.

(1)So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights. (emphasis added)

45. Consequently the courts must interpret the law in a way that is compatible with and gives effect to both Articles 2 and 10.

46. Specifically, Courts must interpret the law in such a way that it does not deter or prevent the taking of reasonable and proportionate measures to safeguard life.

Contempt of Court Act 1981

47. In relevant part, the Contempt of Court Act reads as follows:

1 The strict liability rule.

In this Act "the strict liability rule" means the rule of law whereby conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so.

2 Limitation of scope of strict liability.

(1)The strict liability rule applies only in relation to publications, and for this purpose "publication" includes any speech, writing, programme included in a cable programme service or other communication in whatever form, which is addressed to the public at large or any section of the public.

(2)The strict liability rule applies only to a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced. (emphasis added)

48. It is only if the publication in question creates a substantial risk of justice being impeded or prejudiced "in the proceedings in question" that the strict liability rule applies.

49. Thus, in so far as the Applicant contends that the strict liability rule applies, he must show that disclosing the outcome of the Heathrow decision 22 hours early, created a substantial risk that the course of justice would be seriously impeded or prejudiced in that particular case.

Public Interest Disclosure Act 1998, section 43B

50. The Public Interest Disclosure Act 1998 applies to disclosures by employees and does not apply directly to this case. But since information in the possession of employees is typically subject to obligations of confidentiality, its provisions are indicative of public policy in this area and the considerations which may justify a breach of confidence:

“Disclosures qualifying for protection.

(1)In this Part a “qualifying disclosure” means any disclosure of information which, <u>in the reasonable belief of the worker</u> making the disclosure, tends to show one or more of the following—

(a)that a criminal offence has been committed, is being committed or is likely to be committed,

(b)that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c)that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d)that the health or safety of any individual has been, is being or is likely to be endangered,

(e)<u>that the environment has been, is being or is likely to be damaged</u>, or

(f)that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.” (emphasis added)

51. In the circumstances of this case, each one of the above considerations is potentially applicable.

The common law and the preservation of life

52. Bracton, writing in the thirteenth century *On the Laws and Customs of England*[14] said:

> **"Of necessity, and here we must distinguish whether the necessity was avoidable or not; if avoidable and he could escape without slaying, he will then be guilty of homicide; if unavoidable, since he kills without premeditated hatred but with sorrow of heart, in order to save himself and his family, since he could not otherwise escape [danger], he is not liable to the penalty for murder."**

53. In his *Elements of the Common Laws of England (1630),* Lord Bacon wrote:

> **"Necessity is of three sorts – <u>necessity of conservation of life</u>, necessity of obedience, and necessity of the act of God or of a stranger. First, of causation of life; if a man steal viands to satisfy his present hunger this is no felony nor larceny. So if divers be in danger of drowning by the casting away of some boat or barge, and one of them get to some plank, or on the boat's side to keep himself above water, and another to save his life thrust**

[14] Selden Society Edition 1968, at Vol 2, 340-341

him from it, whereby he is drowned, this is neither se defendendo nor by misadventure, but justifiable". (emphasis added)

54. Thomas Hobbes wrote in *Leviathan*:

> **"If a man by the terror of present death, be compelled to doe a fact against the Law, he is totally Excused, because <u>no Law can oblige a man to abandon his own preservation</u>."** (emphasis added)

R v Martin [1989] R.T.R. 63[15]

55. In R v Martin, the appellant had driven whilst disqualified from driving. He claimed he did so because his wife had threatened to commit suicide if he did not drive their son to work. His wife had attempted suicide on previous occasions and the son was late for work and she feared he would lose his job if her husband did not get him to work. The appellant pleaded guilty to driving whilst disqualified following a ruling by the trial judge that the defence of necessity was not available to him. He appealed the ruling to the Court of Appeal, which accepted his appeal, explaining the defence of "duress of circumstances" as follows:

> **(1) "[W]as 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 injury would result"**
>
> **(2) "[I]f so, would a sober person of reasonable firmness, sharing the characteristics of the accused, have responded to that situation by acting as the accused acted?"**

Re A (conjoined twins) [2001] 2 WLR 480[16]

56. In the case of Re A (conjoined twins), the Lord Justice Brooke set out the key principles to be applied to a defence that the lesser of two evils was being avoided, in circumstances where one of two conjoined twins would lose their life following a separation procedure:

> **"There are sound reasons for holding that the existence of an emergency in the normal sense of the word is not an essential prerequisite ....**
>
> **There are also sound reasons for holding that the threat which constitutes the harm to be avoided does not have to be equated with "unjust aggression" …**
>
> **According to Sir James Stephen, there are three necessary requirements for the application of the doctrine of necessity:**
>
> **(i) the act is needed to avoid inevitable and irreparable evil;**

[15] http://www.e-lawresources.co.uk/cases/R-v-Martin.php
[16] http://www.bailii.org/ew/cases/EWCA/Civ/2000/254.html

(ii) no more should be done than is reasonably necessary for the purpose to be achieved;

(iii) the evil inflicted must not be disproportionate to the evil avoided.

… I consider that all three of these requirements are satisfied in this case."[17]

F. THE RESPONDENT'S KNOWLEDGE AND BELIEFS

57. Sir David King, the Government's Former Chief Scientist, has said publicly concerning the climate crisis:

    "It's appropriate to be scared."[18]

58. It was at all material times the Respondent's belief, based on his understanding of the climate science, that if the Paris Temperature Limit is breached:

    a. His children will suffer unspeakable harm

    b. The United Kingdom will suffer serious and irreversible harm, including mass loss of life.

    c. The international community will suffer serious and irreversible harm, including mass loss of life.

59. It was at all material times the Respondent's belief, based on the Government's evidence, which was uncontested in Court, that the expansion of Heathrow Airport would cause the Paris Temperature Limit to be breached.

60. It was at all material times the Respondent's belief, based on detailed consideration of the documentary evidence, that the Rt Hon Chris Grayling MP, the Secretary of State for Transport at the relevant time, concealed from both public and Parliament the fact that Heathrow expansion was inconsistent with the Paris Temperature Limit.

61. It was at all material times the Respondent's belief, based on a careful consideration of the ruling, that the Supreme Court's judgment on Heathrow expansion legitimises breach of the Paris Temperature Limit and consequently that it tends to the destruction of the conditions on which our collective survival depends.

[17] See concluding remarks of Lord Justice Brooke
[18] TC/3 https://www.standard.co.uk/news/world/climate-change-it-s-right-to-be-scared-says-top-uk-scientist-a4237706.html

62. It was at all material times the Respondent's belief that his disclosure was a reasonable and proportionate measure to prevent serious and irreversible harm to his children and to the public, including the mass loss of life.

63. It was at all material times the Respondent's belief that if the Supreme Court had properly understood the implication of its judgment, which is to advance the loss of the conditions on which the habitability of the planet depends, it would have consented to the Respondent's course of action.

64. It was at all material times, the Respondent's belief that reasonable and proportionate action to prevent serious and irreversible harm, including mass loss of life, is lawful.

65. In support of his beliefs, the Respondent refers to his bundle of written materials as evidence[19] and to the context and history of suppression set out at Section G below.

G. CONTEXT AND HISTORY OF SUPPRESSION

66. Fossil fuel companies and Governments have known for decades that the carbon-based economy was driving humanity to disaster. In the early 1980s, Exxon was leading the research and investigative journalists have since unearthed the evidence.

67. On February 29, 1980, for example, the American Petroleum Institute (API) hosted a meeting with its CO2 and Climate Task Force, composed of fossil fuel industry representatives from Exxon, Texaco, and Standard Oil. The meeting was called to discuss research needs regarding the rise in atmospheric CO2, to establish API's position on "climate matters," and to edit API's technical letter to the US Department of Energy. The following assessment was given regarding the "likely impacts" of anthropogenic climate change :

> **"LIKELY IMPACTS:**
>
> **1˚C RISE (2005) : BARELY NOTICEABLE**
>
> **2.5˚C RISE (2038): MAJOR ECONOMIC CONSEQUENCES, STRONG REGIONAL DEPENDENCE**
>
> **5˚C (2067): GLOBALLY CATASTROPHIC EFFECTS".[20]**

68. From the perspective of 2021, that assessment appears prescient.

69. On 14 July, 1982, Exxon decided to terminate its research project[21]. Along with others in the industry, it turned its resources instead to "PR", designed to delay the regulation that

[19] https://planb.earth/wp-content/uploads/2021/04/SC-Written-Evidence-FINAL.pdf
[20] TC/4
http://www.climatefiles.com/climate-change-evidence/1980-api-climate-task-force-co2-problem/
[21] TC/5, http://www.climatefiles.com/exxonmobil/cutback-co2-research-project-1982/

would hit its vast profits, hiring the same PR companies who had worked so successfully on behalf of the tobacco companies to sow artificial doubt about the causal link between tobacco and lung cancer[22].

70. Despite its knowledge of the science and its devastating implications, the industry's PR machine pushed the line summarised below:

> **"Climate Change: Don't ignore the facts**
>
> **...Proponents of the global warming theory say that higher levels of greenhouse gases … are causing global temperatures to rise … Yet scientific evidence remains inconclusive as to whether human activities affect global climate …"[23]**

71. Tragically, this set the frame for the best part of four decades: on the one hand there was the science and the overwhelming evidence of the enveloping crisis; on the other, there was the immense power of the vested economic interests and their PR operation. For most of those four decades, it was the latter that maintained a firm grip on the media and the political economy.

72. It was only in 2018 that the true gravity of the situation began to land more widely, as three factors combined to steer awareness of the climate emergency into the public mainstream:

    a. The report of the Intergovernmental Panel on Climate Change into 1.5˚C[24]

    b. The school strikes, led by Greta Thunberg

    c. Extinction Rebellion's campaign of non-violent civil disobedience.

73. Forced to confront the overwhelming scientific evidence, Parliament declared a state of climate emergency on 1 May 2019[25], early 2 years ago.

74. A few years earlier, in 2016, the Respondent had spoken to Sir David King, the Government's former Chief Scientific Adviser. At the time Sir David was the UK's Special Representative for Climate Change, working under Boris Johnson who had just been appointed Foreign Secretary. Sir David informed the Respondent that Sir David's efforts to publicise the true scale of the climate threat were being thwarted by a Special Adviser at 10 Downing Street, who believed any such publicity risked alienating the Government from Rupert Murdoch and his media empire.

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[22] See TC/6, the comprehensive and rigorous research by the scientific historians, Naomi Oreskes and Erik Conway, *Merchants of Doubt,* https://en.wikipedia.org/wiki/Merchants_of_Doubt
[23] TC/7, http://www.climatefiles.com/exxonmobil/1996-exxon-lee-raymond-climate-change-dont-ignore-the-facts/
[24] TC/8, https://www.bbc.co.uk/news/science-environment-45775309
[25] TC/9, https://www.bbc.co.uk/news/uk-politics-48126677

75. Rupert Murdoch sits on the Board of Genie Oil & Gas alongside Dick Cheney[26]. Murdoch exercises unusual influence over the political process in the US, Australia and the UK. Tony Blair is the godfather to one of Murdoch's daughter's[27]. When Andy Coulson, one of Murdoch's editors, was under investigation for phone-hacking, he was sent to the safe haven of 10 Downing Street to be David Cameron's Head of Communications[28]. In 2018, Matt Hancock axed the second part of the Leveson inquiry into the relationship between the media and the police[29].

76. In 2020 James Murdoch, Rupert Murdoch's son, resigned from the Board of News International over the company's ongoing misinformation campaigns concerning the climate crisis, including its concerted campaign to spread doubt about the cause of the Australian wildfires[30].

77. In September 2020, Extinction Rebellion staged a protest at the Broxbourne printing press, to focus attention on the ongoing role of Rupert Murdoch's media empire in misleading the public over the climate crisis. The Respondent was invited to talk about this protest on the Today Programme[31].

78. It was immediately following this protest that the Government announced its intention to treat those demanding action on the climate science as organised criminals: ***"Extinction Rebellion protestors could be classified as an 'organised crime group' as Boris Johnson promises to clamp down on climate anarchists with tough new laws"***[32]***.***

79. That intention has been brought close to reality with the Police, Crime, Sentencing and Courts Bill 2021, s.59, which threatens peaceful protestors with 10 years imprisonment.

80. The Rt Hon Priti Patel MP is leading work on the Bill. A recent BBC documentary shows her attending Rupert Murdoch's wedding to Jerry Hall[33].

81. The Respondent interpreted the Rt Hon Chris Grayling's suppression of the evidence that Heathrow expansion would breach the Paris Temperature Limit against this background and history of suppression and deliberate misinformation concerning the climate crisis. It was also in this light that he evaluated what was reasonable and proportionate in terms of raising awareness of what had occurred.

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[26] TC/10, https://en.wikipedia.org/wiki/Genie_Energy
[27] TC/11, https://www.bbc.co.uk/news/uk-politics-14785501
[28] TC,12 https://www.bbc.co.uk/news/uk-politics-27998411
[29] TC/13, https://www.bbc.co.uk/news/uk-politics-43240230
[30] TC/14 https://www.bbc.co.uk/news/business-53617966
[31] TC/15 https://www.youtube.com/watch?v=zgh8HJQfGw4
[32] TC/1, https://www.dailymail.co.uk/news/article-8702157/Extinction-Rebellion-protestors-classified-organised-crime-group.html; TC/17 https://www.independent.co.uk/news/uk/politics/priti-patel-accused-of-undermining-democracy-with-planned-crackdown-on-protests-b1817607.html
[33] TC/16, https://www.bbc.co.uk/iplayer/episode/m000l9yp/the-rise-of-the-murdoch-dynasty-series-1-3-the-comeback

H. APPLICATION OF LEGAL PRINCIPLES TO THE FACTS OF THE CASE

82. The Respondent's action in disclosing the outcome of the Heathrow judgment, shortly before it was due to be published, does not amount to contempt of court for the following reasons:

    a. Since the Respondent's action was a reasonable and proportionate measure to prevent serious and irreversible harm to his children and to the public, including the mass loss of life, criminalisation of that action would be contrary to established principles of the common law and would breach ECHR Article 2.

    b. The Applicant contends that: *"A person may have an intention to interfere with the administration of justice even if they act with the intention of securing what they consider to be a just outcome overall"*[34]. The authorities he cites in support of that proposition are i) a case in which a police officer prepared a false witness statement to secure a conviction[35]; and ii) a case in which a police officer unlawfully impeded a solicitor from making reasonable inquiries to trace alibi witnesses for his client[36]. These cases, which concern egregious dishonesty and abuse of power, serve only to highlight the absence of such elements from the conduct of the Respondent.

    c. The *actus reus* for criminal contempt is not satisfied in this case. The *actus reus* for a criminal contempt is ***"conduct which goes beyond mere non-compliance with a court order or undertaking and involves a serious interference with the administration of justice"***[37]. It is clear from the case-law that that criterion is not satisfied by action which causes administrative inconvenience to the courts. (emphasis added).

    d. The *mens rea* for criminal contempt is not satisfied in this case, because the Respondent had no intention to interfere with the course of justice. His intention was at all times confined to preventing serious and irreversible harm to his children and to the public.

    e. The wording on the draft judgement is insufficient to meet the "prescribed by law" criterion for interfering with the Respondent's right to freedom of expression, as protected by ECHR Article 10.

    f. In particular, the phrase *"A breach of any of these obligations may be treated as a contempt of court"* communicates only that a breach of confidentiality might be treated as a contempt of court; or that it might not be treated as a contempt of court.

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[34] Para. 39(2)
[35] Attorney General's Reference (No.1 of 2002) [2002] EWCA Crim 2392
[36] Connolly v Dale [1996] QB 120
[37] *Director of the Serious Fraud Office v O'Brien [2014] AC 1246*, para. 39

g. It is relevant in this context that the Respondent requested, but was refused, permission to obtain external legal advice.

I. THE SUPREME COURT'S PRESUMED CONSENT

83. It was at all material times the Respondent's belief that had the Supreme Court properly understood the implications of its judgement on Heathrow expansion it would have consented to the Respondent's course of action. The Respondent's belief is based on the following circumstances:

    a. It is the purpose of the Supreme Court to uphold the rule of law.

    b. The judges of the Supreme Court are public servants, working in the public interest.

    c. Breaching the Paris Temperature Limit is inconsistent with maintaining the rule of law and inconsistent with serving the public interest.

    d. Given that the reasonably foreseeable consequence of breaching the Paris Temperature Limit is mass loss of life and destruction and suffering on an unimaginable scale, it cannot conceivably have been the Supreme Court's intention to legitimise breach of the Paris Temperature Limit.

    e. If the Supreme Court properly understood the harm its judgment had caused, it would be more concerned with mitigating that harm than with punishing and repressing the steps taken to draw its attention to that harm.

J. CONCLUSION

84. The Respondent's maternal grandmother was a German Jew, who fled to England in the 1930s.

85. It should never be forgotten that under National Socialism, what happened to the Jewish people was "legal" under German law; while it was "illegal" to aid and comfort a Jew.

86. Consequently, Churchill and others advanced the European Convention on Human Rights to ensure that national laws could never again be so perverted as to legitimise complicity in projects of mass death, while criminalising action to safeguard life.

87. The Attorney General is wrong to contend that reasonable and proportionate action to prevent mass loss of life may constitute a serious crime under the laws of the United Kingdom. It would be a dark day for justice were the Supreme Court to endorse such a proposition, contrary to centuries of common law.

88. Any ruling to that effect would also be objectionable as a violation of the right to life, as protected by ECHR Article 2.

89. The battle continues to rage between on the one hand, the greed, corruption and misinformation propagated by the vested economic interests of the carbon economy; and on the other, the scientific community, academia and policy experts, urging immediate political action to match the terrifying scale and urgency of the climate threat. Given the inequality of arms, in terms of influence, power and financial resources, the latter are increasingly ready to take reasonable and proportionate risks for the sake of their children, for the sake of the international community and for the sake of life on earth.

90. As should be evident from the various correspondence before the Court, the Respondent is firmly aligned with, and supported by, the latter.

91. With literally everything at stake, young people everywhere (together with their parents and grandparents) are counting on the courts' to consider the evidence, and to take reasonable and proportionate measures to safeguard their lives.

Tim Crosland
The Respondent
28 April 2021