

118/98

18 December 1998

ITC IMPOSES £2M FINANCIAL PENALTY
FOR
“THE CONNECTION”

Members of the ITC have imposed a financial penalty of £2 million on Central Independent Television plc (Central) for grave breaches of the Programme Code in the documentary **The Connection**, made by Carlton UK Productions and broadcast by Central on the ITV Network on 15 October 1996. Central, which has admitted the breaches, has also been directed to broadcast an apology on the ITV network, the terms of which must be agreed by the Commission. The ITC has made it clear to the Board of Carlton Communications plc, the parent company of Central, that the Commission had seriously considered whether Central's licence should be shortened and that they would have no hesitation in applying that sanction were Code breaches of a similarly serious nature to be identified concerning any other programme.

In a statement on the issues raised by **The Connection**, Sir Robin Biggam, ITC Chairman said: “The facts revealed even in the investigation instituted by Carlton demonstrate that **The Connection** was not only comprehensively in breach of the ITC Programme Code, but involved a wholesale breach of trust between programme-makers and viewers. The programme set out with ambitious claims to demonstrate the existence of a major new route for drug-running into the UK. But much of what was offered as evidence used to substantiate this was fake. In relation to this major section of the programme, little was as it seemed.

“The size of the financial penalty imposed by the ITC reflects the scale of the programme's ambition and the consequent degree of deception of viewers. The Board of Carlton Communications plc should be in no doubt that such an unprecedented breach of compliance must not be allowed to recur.

“The ITC has been given assurances by Carlton that new procedures and personnel are in place to prevent a repetition of such breaches of the Code. The Commission note these. However, Carlton needs to consider further its mechanisms and culture, in so far as they relate to the commissioning and production of documentary and current affairs programming.”

Commenting on the wider implications of this case Sir Robin continued:

“This case demonstrates all too clearly that care is needed where filming, remote from management supervision, is involved. The same applies where key personnel in a production have little or no prior TV experience. The broadcasting industry has been subject to a process of casualisation, with many fewer people employed on staff, and more on a freelance basis. There are lessons here for all broadcasters, who must ensure that the mistakes revealed in the implementation of our Code are not repeated.

“This particular incident must not discourage broadcasters from the objective of providing high quality documentary programmes on international topics. Such current affairs programming is not only fundamental to public service broadcasting, but is a specific legislative requirement in relation to Channels 3, 4 and 5.”

The ITC also considered *The Guardian's* allegations that publicity for a previous Central documentary had made false claims as to the exclusivity of an interview with President Castro of Cuba. No such claims were made in the programme or in on-screen trailers. As the ITC Programme Code refers only to broadcast material, no breach can have taken place. The ITC has no locus to intervene.

Notes for Editors:

1. Carlton's response admitted breaches of the Code in ten of the eleven areas cited by the ITC which are listed below. These related either to Code section 3.1, on respect for the truth, or to Code section 3.7, which refers to reconstructions in factual programmes and the requirement to label them on screen, or to both sections.
2. The eleven main areas of potential breaches of the ITC Programme Code, were:
 - (i) the evidence for a new heroin route to the UK does not exist;
 - (ii) the programme-makers did not risk their lives in the manner claimed;
 - (iii) the raid on a cartel leader's house was a reconstruction;
 - (iv) this cartel leader was not the person interviewed in the programme, and the 'secret location' for the interview was the producer's hotel bedroom;

- (v) the person interviewed was in fact a retired bank cashier with low-level drugs connections;
 - (vi) the drug-runners shown were acting the parts, and the 'heroin' shown was sweets;
 - (vii) the drug-smuggling mission was not arranged by the cartel; the producer paid for the 'mule's' airline ticket;
 - (viii) the 'mule' was seen apparently boarding a plane in Colombia with a destination of London, but in fact never left Colombia;
 - (ix) the second half of the flight sequence was in fact filmed six months later and, contrary to claims, no drugs were being carried;
 - (x) the mule did not get through customs and immigration at Heathrow, but was detained and sent home;
 - (xi) the programme was unfair to a man in Manchester, whose home was shown being raided for drugs.
3. The ITC found that the Code had been breached under ten of the eleven headings above. The exception is item (iii), where the ITC accepts the Carlton panel's conclusions that the raid was not reconstructed.
 4. The only previous financial penalty imposed on a terrestrial licensee was £500,000, which was imposed on Granada in 1994, following a series of Code breaches for undue prominence in **This Morning**.
 5. The proceeds of the financial penalty are paid to the Exchequer.
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CARLTON

Carlton Communications Plc 25 Knightsbridge, London SW1X 7RZ. Tel: 0171-663 6363 Fax: 0171-663 6300

27 November 1998

[REDACTED]
Independent Television Commission
33 Foley Street
London
W1P 7LB

STRICTLY CONFIDENTIAL

Dear [REDACTED]

The Connection

The Panel appointed by Carlton Communications Plc to investigate the allegations made against this programme has now completed its work and I enclose 30 copies of its unanimous report. The report draws upon the information gained by the fact-finding team set out in the main and supplementary reports that have already been supplied to you. As we had previously agreed, we are sending these copies of the Panel's report to you confidentially in advance of publication. Our current intention is to make the report publicly available on or about 4th December 1998. If there are any points you wish to discuss before publication please do not hesitate to let me know. From our earlier conversations I believe that these arrangements are acceptable to you.

I refer to your letter of 29 May 1998 to [REDACTED] which sets out thirteen specific questions the ITC wished to be addressed in the course of Carlton's investigation.

I set out below the Panel's conclusions in respect of each of those questions, together with references to the paragraphs of the Panel's report at which the points are addressed.

- 1. The programme claimed to demonstrate a new heroin route to London, of which the authorities had no knowledge. However, the evidence to support this claim does not exist.**

The Panel concludes that the programme did not have sufficient evidence to make this important claim as confidently as it did, if at all: see paragraphs 121 and 122.

2. **It was claimed that members of the production team had risked their lives to make this film. However, there were no such risks involved.**

No doubts backed by evidence have been cast on the crop-spraying sequence and the Panel is satisfied that this sequence - and the attendant dangers for both police and film crew - were genuine: see paragraph 127. The Panel also notes that during filming, and even recently, members of the film crew have expressed fear for their safety and that of their families: see paragraphs 40, 58 and 93. However, in spite of this, the Panel concludes, on the balance of the evidence it has reviewed, that the claim in the programme that the film crew were blindfolded and taken by armed escort to an unknown location to interview the cartel number three was false: see paragraphs 113 and 117.

3. **A police raid was made on a cartel leader's home and it was stated "as usual, he's not at home". The reality was that the house had been empty for a long time, and had been raided previously by the police. What was filmed was a reconstruction for the cameras.**

The Panel is satisfied that the scene showing the raid on the cartel leader's mansion was genuine: see paragraph 128.

4. **The man it was said the police were trying to catch in this raid was not, contrary to the claim made, the man who spoke to the programme. The interview with the latter was not conducted at a secret location; it was in [REDACTED] hotel room. There were no blindfolds or armed escorts.**

The Panel concludes that the programme's claim that the man interviewed in the programme was the man being sought by the Colombian police during the raid on the mansion was false: see paragraph 79.

As to the circumstances leading up to and the location of the interview, the Panel concludes, on the balance of the evidence it has reviewed, that the claim in the programme that the interview was filmed at an unknown location and that the film crew were blindfolded and taken there by armed escort was false: see paragraph 113 to 117. The Panel prefers the version of events given to the fact-finding team by the participants in the programme (supported by photographic evidence) namely that the interview took place in [REDACTED] hotel room: see paragraph 116.

5. **This man was not the "third member" and financial controller of the Cali cartel, but was a retired bank cashier with low-level connections to the drugs underworld. The three real cartel leaders were in prison at the time.**

The Panel concludes that the man interviewed was not a member of the Cali Cartel, let alone its financial controller: see paragraphs 76 to 78. The Panel considers that, on the balance of the evidence it has reviewed, the cartel number three was acting: see paragraphs 86 to 106.

6. **The "mule" and "loader" were not cartel operatives, but were friends recruited by [REDACTED] and paid to play the parts. The 'heroin' shown was mint sweets. It was claimed that the mule had swallowed 60 packets of these, but he had in fact swallowed only eight. He was no "walking time-bomb".**

The Panel considers that, on the balance of the evidence it has reviewed, the mule and loader were also acting: see paragraphs 86 to 106. The Panel concludes that, at the time of filming, the scenes involving the loader, the mule, the cartel number three and the mule's journey to London, the producer believed the scenes to be genuine but that he must have had doubts later which he suppressed. The Panel's conclusions about [REDACTED] knowledge of and/or complicity in the fake scenes are set out in paragraphs 140 to 142 and 206.

The Panel believes that payments over and above reimbursement of expenses or compensation for inconvenience were made to achieve the scenes in the programme involving the mule, the loader and the Cartel number three. The Panel also concludes that the payments were made,

[REDACTED]
see paragraphs 36, 110 to 112.

As to whether the heroin shown in the film were sweet mints, the Panel found that there was no objective or compelling evidence that the fingers swallowed by the mule were made of heroin rather than, for example, mints or some other substance: see paragraphs 71 to 73. As to the number of fingers swallowed by the mule, the Panel notes that, although the testimony provided to the investigation is contradictory, the rushes show the mule swallowing more than twenty fingers: see footnote 15 (page 16).

As to whether the mule was a "walking time-bomb", the Panel concludes that this was almost certainly false: see paragraphs 81 to 83.

7. **The drug-smuggling mission was not arranged by the cartel; the mule's airline ticket was paid for by [REDACTED]**

The Panel concludes that the mule's trip was almost certainly not organised by the cartel and that the mule's airline ticket was in fact paid for by [REDACTED] see paragraphs 107 to 109.

8. **The mule was seen boarding a plane at Pereira, and it was stated he was destined for Heathrow. However, he did not leave Colombia.**

The Panel believes that the claim that the mule went on to London on the first occasion was false: see paragraphs 74 and 75.

9. **The second half of the flight sequence was in fact filmed six months later. Although the mule was portrayed as carrying drugs - and was seen avoiding food and alcohol for this reason - he had no packages in his stomach.**

The Panel knows for certain that the second half of the flight sequence was filmed six months after the first (this was acknowledged by the film makers before the investigation began): see paragraphs 62 to 67. As to the claim in the programme that the mule was carrying drugs in his stomach, the Panel concludes that this was almost certainly false: see paragraphs 81 to 83. As a result, the Panel also concludes that the scenes in flight of the mule eating little, putting food in a sick bag and sprinkling whisky on his clothes were almost certainly a pretence for the camera: see paragraphs 84 and 85.

10. **The mule did not, as suggested, get through Customs and Immigration at London Heathrow. He was detained and deported.**

The Panel concludes that the film led viewers to believe that the mule was allowed through immigration and customs at Heathrow and that this claim was false since he was refused entry: see paragraphs 68 to 70.

11. **A [REDACTED] was shown, apparently being arrested for heroin possession. However, [REDACTED] was only cautioned for possession of a small amount of cannabis. The heroin seizure that appeared to have taken place at [REDACTED] home in fact occurred elsewhere. In addition to a response relating to the truth and fairness requirements of Code section 3.1, could you also comment on measures taken to ensure compliance with Code section 2.2(ii).**

The Panel concludes that the film was wrong in suggesting that [REDACTED] was being arrested for possessing heroin when in fact he was only cautioned for having cannabis but accepts that this was the product of a mistake. The Panel also concludes that the heroin seizures shown

in the film occurred at addresses other than [REDACTED]. However, the Panel concludes that Carlton followed appropriate procedures and at Carlton's request [REDACTED] viewed both the rushes and broadcast version of the programme prior to transmission with the purpose of, among other things, identifying those people raided and what happened to them afterwards. [REDACTED] did not draw attention to any mistake: see paragraph 119. As to the measures taken to ensure compliance with the ITC Code, Section 2.2(ii), see paragraph 197.

12. **The current ITC Programme Code section on payments to criminals was not in force at the time of transmission. However, it is alleged that payments were made to certain past or present criminals, and we would welcome comments on this aspect.**

The Panel believes that payments over and above the reimbursement of expenses or compensation for inconvenience were made to achieve some of the drug trafficker scenes in the programme but that these were not authorised by Carlton: see paragraphs 110 to 112. The Panel also notes that since it now appears that the participants were acting parts, no payments were, in fact, made to criminals. So far as the fact-finding team was able to establish, neither the loader nor the cartel number three [REDACTED]

13. **Lastly, would you describe fully the internal compliance procedures that were applied to this programme prior to the transmission.**

This aspect is dealt with in Part three of the Panel's report and in particular paragraphs 181 to 205.

Part 4 of the Panel's report contains the Panel's recommendations about measures that Carlton Television should take to improve its internal compliance and supervisory arrangements for the future. Carlton Television intends to adopt all these recommendations with immediate effect.


Yours sincerely



CARLTON

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27 November 1998


Independent Television Commission
33 Foley Street
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Dear 

Inside Castro's Cuba

I refer to your letter of 15 July 1998 addressed to Clive Jones.

We have been able to find the voice-over scripts for the two on-air promotions for this programme. I enclose copies, from which you will see that neither promotion refers to exclusive interviews and the longer of the two accurately refers to "unseen footage of life in Cuba". The other publicity material referred to in your letter of 16 June is included in the fact-finding report at exhibits volume III, tab 4, which has already been supplied to you.

The Panel's conclusions with regard to the programme and the attendant publicity material are set out in Appendix 1 and paragraph 206 of its report.

Yours sincerely,


encl.

PROGRAMME: Net First: Inside Castros Cuba
CP/CT NO.: CP018007-10 CT943935-38
DURATION: 30
TX DATE: 27.9
VERSION: Next Tues/Tues/Tom/Ton
NET/LOC: Net/Loc/Car
DIRECTOR: JS

SOUND OFF TAPE

VOICE OVER

This is a chance to see into a
forbidden world.

A world that time forgot.

Fidel Castro is the charismatic
leader of a left-wing government
against whom America has enforced
the longest economic blockade in
history.

Network First brings you unseen
footage of life in a proud but
embattled country.

Inside Castro's Cuba

Tues/Ton at 10.40 on ITV.

Tues/Ton at 10.40 on Central.

Next Tues/Tues/Tom/Ton at 10.40 on
Carlton.

PROGRAMME: Inside Castro's Cuba
CP/CT NO.: CP018011-13 CT943941-43
DURATION: 10
TX DATE: 27.9
VERSION: Tues/Ton/Vogen/Tom/Next Tues
NET/LOC: Net/Loc/Car
DIRECTOR: JS

SOUND OFF TAPE

VOICE OVER

Why do the people of Cuba cling to
their ideals?

And why does America want to crush
them?

Inside Castro's Cuba

your Tuesday Network First at 10.40
on Central.

Next Tuesday's/ Tonight's/
Tomorrow's/ Tuesday's Network First
at 10.40 on Carlton.

ATTACHMENT 3 TO
ITC INFORMATION PAPER 87(98)

"The Connection"

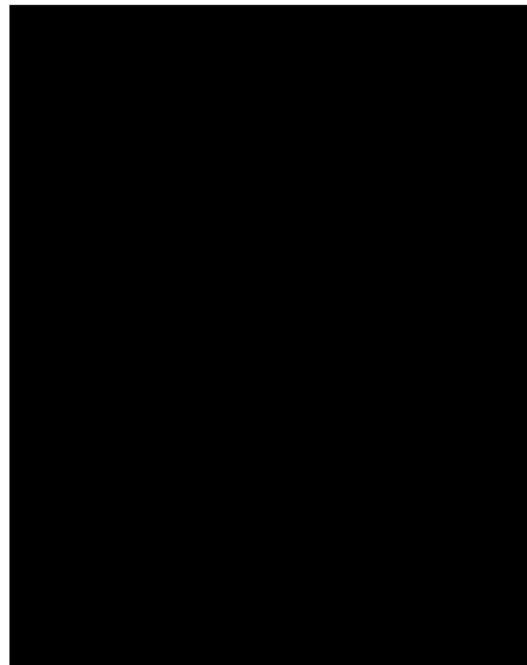
**Report of the Investigation Panel appointed
by Carlton Communications Plc**

December 1998

"THE CONNECTION"

**REPORT OF THE INVESTIGATION
PANEL APPOINTED BY
CARLTON COMMUNICATIONS Plc**

The Panel appointed by Carlton Communications Plc has now completed its consideration of this matter and presents this report of its findings, conclusions and recommendations.



December 1998

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PART ONE

PURPOSE, SCOPE AND METHOD OF THE INVESTIGATION

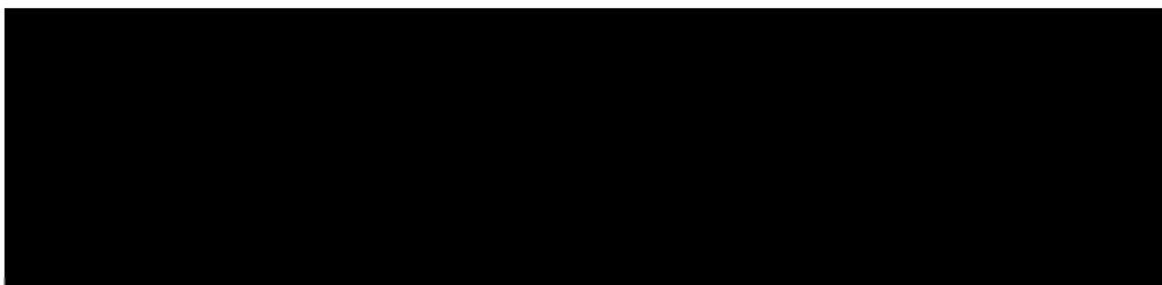
Introduction and main allegations against the programme

1. On 15th October 1996 the Central Television documentary *'The Connection'* was screened as part of the ITV Network First series. It purported to describe how heroin was smuggled from Colombia to Britain by a new route unknown to the responsible authorities. Central Television was then and is now part of Carlton Television.
2. Events portrayed included the cultivation of poppy seeds; efforts by the Colombian authorities to suppress the trade, including dangerous crop-spraying missions over poppy fields and the destruction of a drugs laboratory in the Colombian jungle; a Colombian police raid on the house of a suspected boss of the notorious Cali Cartel; and a separate interview at an unknown location with a masked man identified as the 'number three' in the gang (the Cartel number three) and the same man being sought in the police raid.
3. The centrepiece of the programme purported to show sequences in which one drugs trafficker (the packer) made up heroin in small capsules, or fingers, and another trafficker (the loader) fed similar fingers to a third trafficker (the mule) who swallowed them and carried them in his stomach to London, by way of Bogota. The programme portrayed the mule's journey by plane to London and gave the impression that he had passed through customs and immigration at Heathrow airport to complete his mission successfully.
4. The programme also showed various scenes of drug abusers in Britain together with film of a police raid on suspected drug pushers and users in Manchester. It contained interviews with various experts, including a senior customs officer and a senior police officer, whose contributions added to the apparent authority of the programme.
5. On 6th and 7th May 1998 The Guardian newspaper published a series of allegations about the programme, describing it as "an elaborate fake" and disputing its claims to have uncovered a new heroin route. In particular, The Guardian alleged that:-
 - (i) the capsules swallowed by the mule did not contain heroin but were made from small packs of mints;
 - (ii) the loader, mule and Cartel number three were paid to play parts and the interview with the Cartel number three took place, not at an unknown location, but in the producer's room in the Melia Hotel in Pereira, Colombia;
 - (iii) the journey from Colombia was not a continuous event but was filmed in two stages six months apart;
 - (iv) on the second stage of the journey to London the mule did not have any heroin in his stomach and his airline ticket from Bogota to London was paid for by the producer;

- (v) the mule was stopped at Heathrow and returned to Colombia;
- (vi) the Colombian police raid on the house of the suspected Cartel boss was staged for the film crew.

6. The Guardian articles implied that the producer, Marc de Beaufort, had been party to these deceptions. It was also claimed that his executive producer and Head of Documentaries at Carlton, Roger James, and Carlton's in-house lawyer and compliance officer, Don Christopher, had access to claims made about the programme by the Colombian researcher, Ms Adriana Quintana, before the programme was broadcast, but failed to act on the information.¹

7. On 7th May 1998 Nigel Walmsley, Director for Broadcasting at Carlton Communications Plc, announced the company's intention to conduct an investigation into these allegations and to publish the conclusions.



9. A letter of 20th May 1998 from [redacted] to the ITC identified the remit and methodology of the investigation.

"The first stage is a fact-finding exercise which will be carried out by senior Carlton Television management unconnected with the making of the programme and its vetting prior to transmission. [redacted]"

The fact-finding will establish as far as it is possible what actually happened in the commissioning, making and transmission of the programme. It will also include a review of the verification procedures carried out to establish the truth and fairness of the programme, whether any reconstructions were involved, and the extent to which procedures for compliance with the ITC Programme Code were adhered to. This will involve interviews with those involved in the making and transmission of the programme, including Carlton employees, former employees and others connected with the programme. There will also be an extensive review of materials including, for example, rushes and sound tapes. [redacted]"

Carlton's internal auditors are also carrying out a detailed review of the programme budget.

[redacted] *The Panel's role is to prepare a separate report of its findings and conclusions and, if appropriate, recommendations to Carlton. The Panel will be at liberty to call for further information in the form of additional*

¹ Amongst The Guardian's sources of information for the main allegations in the articles were stated to be Ms Quintana herself and two of the main participants in the programme, namely the mule and the loader.

documents, and possibly first hand interviews with those involved. [REDACTED]

In all this we shall have full regard to the requirements of the Broadcasting Act, the ITC Licence and the relevant Codes and our independent advisers are being fully briefed on these aspects..."

10. This letter constituted, in effect, the Panel's terms of reference. On this basis the Panel's objectives were:

- (a) to determine whether the programme was flawed to the extent that it should not have been broadcast, or not broadcast in the form that it took;
- (b) to establish whether the editorial supervision and compliance arrangements were satisfactory; whether or not they were properly applied and, if not, to what extent; and whether the ITC Programme Codes were observed or breached; and
- (c) to make appropriate recommendations for the future.

11. On 9th June 1998 The Guardian published a further allegation against de Beaufort. It alleged that he had contributed misleading information to publicity material in connection with another documentary, 'Inside Castro's Cuba', which he had co-produced for Central and ITV and which was broadcast on 27th September 1994. In particular, The Guardian alleged that he sought to claim as an exclusive interview with President Fidel Castro material which was, in effect, archive footage supplied to him through official Cuban sources. The Panel has addressed this collateral matter also and its findings are set out in Appendix 1 to this report.

Modus operandi, the burden of proof and key issues

12. The first stage was to carry out an extensive fact-finding exercise. This exercise was conducted by [REDACTED]

[REDACTED] neither of whom participated in the making or vetting of the programme, in conjunction with [REDACTED]. The exercise involved interviewing and/or reviewing written statements of over 25 people [REDACTED]

[REDACTED] extensive enquiries and further interviews in Colombia and in Spain; and a financial audit of the programme budget and expenditure by Carlton's internal audit team. Further details of the scope of the fact-finding exercise are set out in Appendix 2.

13. The Panel members then individually considered the reports of the fact-finding team, the appendices and exhibits thereto. They also deliberated among themselves on numerous occasions. During these deliberations the Panel was able to call upon the fact-finding team for additional information and to require them to make additional enquiries. However the judgments made in this report are those of the Panel alone.

14. The investigation operated under certain constraints. Neither the Panel nor the fact-finding team enjoyed the compulsive powers of persons carrying out an investigation under legislative authority, e.g. DTI inspectors operating under the

Companies Act 1985, to obtain either oral or documentary evidence nor could they deploy the sanctions of statute or of committal for contempt of court to elicit truthful testimony.

15. Current employees of Carlton with any direct involvement in the programme might have been under a duty to co-operate with the investigation as part of their implied obligation to obey lawful and reasonable orders of their employer.² However, all but one of those contacted are no longer employed by Carlton or were only ever associated with Carlton on short-term contracts. The co-operation which they extended to the investigation was entirely voluntary and subject to conditions, inter alia, as to the extent to which their statements and associated material could be published to third parties.

16. One person [REDACTED] refused to be interviewed, but provided two brief written statements. He said that he had nothing more to tell the investigation than was set out in the statements and cited fears for his safety and that of his family as inhibiting him from further co-operation.

17. Other participants in the making of the programme were understandably concerned about their own future in the industry, or the possibility of involvement in legal proceedings, either as plaintiffs in libel suits for statements made about them by The Guardian or possibly as defendants to claims by Carlton for breach of contract. A number of those interviewed obtained separate legal representation and, at their request, their reasonable legal costs were paid by Carlton.

18. It was decided that if the Panel were minded to make criticisms of the programme-makers or their supervisors, those criticisms would be put to the individuals concerned in advance and they would be given the opportunity to respond to them in conformity with both the primary rule of natural justice and the practice of, inter alios, DTI inspectors.³ Although the course so taken inevitably added to the time taken to produce this report, the Panel deemed it both required by fairness and conducive to greater accuracy. [REDACTED]

[REDACTED] did provide comments, which the Panel carefully considered. It is appropriate to stress that each of them vigorously rejects such criticisms of him as nonetheless hereafter appear.

19. The Guardian was asked to furnish the Panel with all the information that it claimed to have about the programme. It was not prepared to do so unconditionally, partly and understandably because of the possibility of legal proceedings being instituted against it by any of those about whom the newspaper had made allegations in its articles. However, The Guardian made certain documents available, responded to specific questions put by the fact-finding team and made written comments, all of which were carefully considered by the Panel members.

20. Much of the programme was made in Colombia. It was impracticable to seek to retrace each and every step allegedly taken by the programme-makers. However, the fact-finding team was able to conduct its own extensive enquiries in Colombia

² Chitty: Contracts: Vol.1, 27th ed., para.37-050

³ See *Re Pergamon Press Ltd* [1971] Ch.388. DTI Investigations Handbook: HMSO 1990 ed

and elsewhere, in some cases with the help of locally-based accredited journalists. The team interviewed [REDACTED] in London; inspected the hotel room alleged to be the real location of the interview with the Cartel number three; found and interviewed both the loader and the Cartel number three in Colombia⁴; and found and interviewed the mule [REDACTED]

Neither the loader nor the Cartel number three would agree to be interviewed by the fact finding team unless paid to do so. [REDACTED]

21. Neither the Panel nor the fact-finding team (unlike, for example, a Tribunal of Inquiry set up under the Tribunal and Inquiries Act 1921) was able to require interviewees to be cross-examined under oath - the traditional common law means of establishing the truth about controversial issues of fact. The fact-finding team could - and did - question the programme-makers on the basis of The Guardian's and [REDACTED] allegations but the value of that exercise (well though it was performed) had inherent limitations compared with the full panoply of court proceedings.

22. The process of investigating any controversial matter can be never-ending. Whilst the Panel was not significantly impeded in its work by lack of either time or of resources, it had to recognise that there were practical limits to what it might be able to discover. The murky world of Colombian drugs trafficking does not offer ready access to facts : in some cases what may or may not have happened cannot be conclusively ascertained. The Panel therefore had to take a view at a point in time before it formulated its conclusions that it had been presented with as much information as it was likely to obtain within a reasonable period.

23. Having regard to the limitations described above, the Panel concluded that the reports of the fact-finding team and the supporting material constituted a satisfactory basis on which to base its conclusions. The fact-finding team was familiar with the Panel's terms of reference and, as noted above, maintained a dialogue with the Panel to ensure that it was exploring avenues which the Panel thought potentially fruitful.

24. The Panel determined that it would treat the findings of primary fact made by the fact-finding team in the same way as the Court of Appeal would treat the findings of a judge at first instance, i.e. it would be entitled to depart from those findings, but should make due allowance for the fact that it had not seen or heard at first hand the persons who were interviewed by the fact-finding team. The Panel did not in the event feel compelled to depart in any material way from those

⁴ The Panel is satisfied that the men interviewed for the investigation are those who appeared in the programme. As the mule's face was clearly seen in the film and the loader's in the rushes both could be identified by sight. This was not so with the Cartel number three because the only film of him has his head and face almost totally covered. He was located for the investigation by the loader. He was then interviewed by a member of the fact-finding team who had also interviewed the mule, the loader and [REDACTED] and who judged his testimony to be credible, especially as it was consistent in material ways with that of other interviewees. The Panel has confidence in the judgment of this highly experienced interviewer.

findings of primary fact, nor, given the focus of the exercise, did the Panel ultimately consider it necessary to conduct any interviews itself.

25. The Panel had also to assess its approach to The Guardian's allegations about the programme. It bore in mind that its mandate was not to verify or challenge The Guardian's critique but to assess the programme independently; and that is what it has done. The means by which this was done included reference to the compliance obligations upon Carlton and the ITC's codified requirements. However this did not entirely dispose of the question: upon whom did the burden of proof lie? The Panel decided that for the purposes of the investigation the forensic concept of burden of proof was inapposite. The Panel is not a court of law.⁵ The Panel bears in mind that no finding of fraud or gross impropriety ought to be made unless the evidence is of sufficient cogency to justify it.⁶ Subject to that, the Panel has sought to ascertain facts (or vouch for the fact-finding team's ascertainment of facts) and on the basis of those facts to determine whether a particular conclusion is more likely than not.

26. It would certainly not be fair to the programme-makers or supervisors to reach conclusions adverse to them without a sufficient substratum of evidence which the Panel (or the fact-finding team) could try directly to assess: but the Panel recognised that to reach a series of conclusions of "non-proven" would not help Carlton or the ITC in their quest to discover what (if anything) went wrong in the compilation or supervision of the programme.⁷

27. In fact, it proved possible to reach conclusions as to the main questions raised, albeit on the basis of evidence that was both less than complete and less than completely tested, even if such conclusions must inevitably be more vulnerable to attack than conclusions based on all relevant, strictly tested evidence. But where, for the reasons set out above, the Panel lacks sufficient material to form any conclusion, it says so.

28. The dominant theme of The Guardian's allegations is that the programme was a fake: false in its essential elements and known by the producer to be false. The Panel recognised at the outset that it *could* come to a conclusion as to falseness without forming a conclusion as to fakery. In fact, the emphasis of the Panel throughout was not only on whether the programme was false or faked but, importantly, on whether the programme-makers could justify the programme.

29. The Panel has also focused upon substantially the same issue as the Windlesham/Rampton report into the Thames Television programme "*Death on the Rock*"⁸; i.e. whether those involved in the making and broadcast of the programme acted in good faith and professionally. For example, it was not for the Panel to establish whether or not a new drugs trafficking route to Britain existed. The Panel's function was to establish whether the programme-makers (in asserting that it did)

⁵ Cf *R. v. Local Commissioner for Administration ex p. Croydon BC* [1989] 3 All ER 1033.

⁶ *In Re H (Minors)* [1996] 1 AC 563 per Lord Nicholls at p.586

⁷ Lord Denning MR instructively analyses the competing considerations which arise in this context at paragraphs 5-7 of his Profumo Report in 1963 (Cmnd 2152). He concluded (as does the Panel) that it was appropriate to elevate the interests of justice to the individual above those of resolving definitively all the issues, but he was conscious (as is the Panel) of the potential sacrifice involved to the utility of the inquiry.

⁸ Faber and Faber 1989 (referred to in this report as "*Windlesham/Rampton*")

and their supervisors (in permitting the assertion to be made) carried out their work conscientiously and with proper regard for the truth. At the level of the supervisors, in particular, this is a satisfactory way in which to approach the question. The relationship of Carlton and the programme-makers meant (as the Panel has perceived it) that Carlton executives could not be expected themselves to cross-check each and every item of evidence which constituted the programme: their role was supervisory, not creative. Accordingly, the issue which arises in relation to the supervisors - i.e. were the steps they took sufficient to ensure that the programme was accurate, fair and impartial - does not require a judgment to be formed as to whether the programme was in fact accurate.

30. Adopting the same approach towards the programme-makers, the Panel can be comfortable with the conclusions it has reached as to the falseness of the programme's main premise, the falseness of key scenes in the programme and the departure from appropriate standards by certain of the programme-makers.

31. Whilst it has had to be more cautious in reaching its conclusions as to the allegations concerning fakery on the part of [REDACTED] overall the Panel believes that, within the boundaries of the evidence it was possible to gather, it has travelled far enough and long enough to be sufficiently confident of the particular conclusions which it has drawn and sufficiently convinced as to the justification for abstaining from drawing other conclusions.

PART TWO

THE PANEL'S FINDINGS ABOUT THE PROGRAMME

Introduction

32. The Guardian's main allegations against the programme have been set out in paragraphs 5 and 6 above. Whilst these allegations were the starting point of the investigation, the Panel repeats that it saw its main function as being to establish whether the programme-makers could justify the programme as a whole and its constituent parts. The Panel's starting point was to ask who knows, or claims to know, the facts and to assess the credibility which could be attached to any information they gave. It then categorised its findings as follows:-

what was false

what was not proven

what was true

who knew what was false or not proven

who ought to have known what was false or not proven

33. The following key facts, which either the programme-makers have acknowledged or the investigation has established, contradict the programme's own claims:

the mule's journey to London was filmed in two stages, several months apart;

the mule was not carrying drugs in his stomach on the flight from Bogota to London;

the mule was stopped at Heathrow and returned to Colombia; and

the man interviewed was neither the 'number three' in the Cali Cartel nor the man being sought in the Colombian police raid.

In view of these facts alone the Panel concludes that the programme should not have been transmitted, or should not have been transmitted in the form it took.

34. Other important claims in the programme are more difficult to judge. The Panel believes, however, on the balance of the evidence it has reviewed:

that - as they themselves claim - the mule, the loader, and the Cartel number three were faking their roles when filmed; and

that the fingers swallowed by the mule before the first stage of the journey (the flight from Pereira to Bogota) did not contain heroin and, accordingly, that he was not, as claimed in the film, carrying 60 packets of heroin in his stomach at any stage.

35. In concluding that certain scenes in the programme were fake, the Panel was conscious of the dangers of hindsight and of the force of the point made by those variously criticised in this report that, to the extent that the Panel places weight on the evidence of participants in the programme as being credible, by the same token it should excuse the reliance placed on the same participants during the making of the programme. The Panel was not, however, persuaded by the point. In arriving at its conclusions the Panel has not relied on information provided by the mule, loader and Cartel number three alone but also upon other objective evidence gathered during the course of the investigation, as described elsewhere in this report. Moreover, to the extent that those so criticised now seek to cast doubt on the reliability of the participants as sources of information, then to the same extent they buttress the case that it was unwise to present so unqualified a thesis as did *'The Connection'* on the basis of the participants' involvement and evidence without sufficient support from other, objective sources.

36. The Panel also concludes that payments were made for the trafficker scenes, [REDACTED]. However, in the light of conflicting evidence, the Panel does not accept that [REDACTED] knew that the main characters were acting: although he was not above a certain amount of manipulation, he appears to have believed, however improbably, that he was observing [REDACTED] the real thing. Doubts which he may have had at a later stage he was apparently able to suppress.

37. As to matters at the same or similar level of significance, the Panel concludes that there is (and was) an inadequate factual basis for the thesis of the programme - that Colombian drugs cartels had established a major new heroin route into Britain.

38. A number of other claims in the programme are either certainly false, probably false, or not proven and cannot therefore safely be believed. These are examined in paragraphs 61 to 124 below.

Who knows, or claims to know, the facts

39. Six people might be expected to know for certain some or all of the facts and in particular whether the main characters were genuine or fake. These six are: (in the category of programme participants) the mule, the loader and the Cartel number three and [REDACTED].

40. The fact-finding team interviewed all of these except [REDACTED]. As explained above, he gave two written statements but would not be interviewed. The Panel also has a third party account of what was said when he was approached by The Guardian reporters. According to his comments, [REDACTED] did not know the true identities of those [REDACTED]. His statements say he was nervous and frightened [REDACTED] which, if true, would tend to suggest that he believed (and therefore that others might also have believed) the men to be dangerous drugs traffickers. Overall, however, the Panel cannot draw any helpful conclusions from his fragmentary evidence.

41. The mule (who said to the fact-finding team that he had not told The Guardian anything although the reporters say they interviewed him) was

interviewed for the investigation [REDACTED]. He said he acted the part for money, [REDACTED] that [REDACTED] gave him some of the money, [REDACTED] for the swallowing sequence; that the loader and the Cartel number three also acted their parts for money; that all three were recruited, directly or indirectly, by [REDACTED] whom he had known for years; and that they were told what to do by [REDACTED] who, with [REDACTED] and the mule himself, had made up the questions and answers for the Cartel number three's interview.

42. The mule also said that the fingers he was filmed swallowing did not contain heroin, but mints (as reported in The Guardian on the basis of what it says he and the loader told it). He said he and the loader had made the fingers for the filming; they had filed the mints to make the fingers the right size; both knew in detail what to do for the filming because so much of the operation of drugs trafficking is common knowledge in Colombia and, what is more, they had friends who knew the tricks of the trade.

43. The mule also said he had not swallowed any drugs before the flight to London: [REDACTED] told him what to do each time he was about to be filmed on the aircraft. This included hiding food in a paper vomit bag in his jacket pocket to distract attention from the fact that he was not eating, since on a real smuggling trip a mule cannot eat or drink with drugs in his stomach.

44. The loader also says that the swallowing sequence and other sequences in which he was directly involved were faked but asserts that [REDACTED] did not know them to be so: the mule, the loader himself and the Cartel number three staged the scenes at [REDACTED] request [REDACTED] and in return for payment from or on behalf of [REDACTED] which he believed was for the real thing. In summary, according to the loader [REDACTED] orchestrated the deception of [REDACTED] by all three of the main characters.

45. The Cartel number three supports the loader's version of events, including the deception of [REDACTED]. He adds that he agreed to play the part of the drugs boss on condition that his identity would not be revealed for fear of reprisals from real drugs traffickers; that [REDACTED] prepared him for the interview by suggesting answers to the questions provided in advance by [REDACTED] and that the interview took place in [REDACTED] room at the Melia Hotel. The Cartel number three told the investigation that [REDACTED] had stressed to him the importance of giving a convincing performance so that [REDACTED] would be fooled, and that his preparations for the interview included rehearsals with friends (whom he did not identify).

46. [REDACTED] must also know for certain whether the three central characters were or were not acting a role. Her account to the investigation agrees in essentials with the mule's story, although it is inconsistent on a number of details.⁹ [REDACTED] to arrange for actors to play the parts of the mule, the loader and the Cartel number three; that he told them what to do; that they were paid to act. The Panel noted, however, that there were occasions subsequent to filming

⁹ For example, [REDACTED] and the mule's accounts are inconsistent as to when and where the mule first met [REDACTED] as to the number of fingers the mule and the loader made; and also as to whether [REDACTED] knew about and paid for the false passport with which the mule travelled to London on the second journey.

when the mule and [REDACTED] could have colluded on their stories, for example in relation to the allegation they made of [REDACTED] complicity, an allegation which is not supported by the loader or the Cartel number three.

47. At her request [REDACTED] met with Carlton representatives on 9th October 1996, a few days before transmission. At the meeting, she produced a nine-page written statement (a statement not read by anyone during the meeting) which was concerned mainly with a complaint that she had not been paid in full for her work on the programme. But although her written statement was primarily devoted to her money claim, it also included eight separate references which bear on the content of the programme or the conduct of the programme-makers. They encompass references to the 'fake' mule, to the interview with the Cartel number three taking place in the Melia Hotel (as distinct from the unknown location claimed in the programme), to payments being made, and to the mule being refused entry to London. All these references in her statement are made in passing, none is prominent or made at length. Moreover, some of her written statement is contradictory and inconsistent. She claims, for instance, that in order to secure the confidence of the drugs traffickers she put her own safety at risk by acting as a hostage, a version of events notably not supported by the account of either the loader or the Cartel number three. However, the key references noted above would have alerted the vigilant reader of the statement to the need to subject the programme to far greater scrutiny than it in fact received.

48. In the discussion at the meeting (which covered alleged non-payment of her fees), the Panel is satisfied that [REDACTED] did not raise any of these points - although she says that she did - and that she had abandoned her money claims by the end of the meeting. The [REDACTED] evidence to the investigation supports the Panel's conclusion on this issue. Had she raised any of the points, it is inconceivable, in the Panel's judgment, that none of those present would have reacted to the points by pursuing them with her or by other means.

49. [REDACTED] vigorously asserts the general veracity [REDACTED]. He says that he continues to believe that the mule, loader and Cartel number three were real drugs traffickers, that the scenes in which they appeared were genuine and that the fingers swallowed by the mule for the film contained heroin.

50. However, he now acknowledges that the two part journey would have been better not presented as one, that the mule probably did not have drugs in his stomach on the London flight, that the mule was turned back at Heathrow, and that the Cartel number three was not a member of the Cali Cartel. [REDACTED] insists that none of the traffickers was paid. He talks also of the personal dangers he and the rest of the team faced in making the film.

51. As part of its deliberations, the Panel had to assess the credibility of the main witnesses - the mule, the loader, the Cartel number three, [REDACTED] - on the basis of the fact-finding team's reports, written statements and records of interviews.

52. The mule's credibility is low. He is [REDACTED] and who was caught out in lies in the interview for the investigation. He has a grievance against [REDACTED] for revealing his face in the programme and for not paying him everything he says he was

promised. At the same time, his account is detailed and important parts of it are intrinsically believable.

53. The loader's credibility is mixed. On the one hand, he agreed to be interviewed for the investigation and to contact the Cartel number three on behalf of the investigation only in return for payment (see paragraph 20 above). He says that he was paid by [REDACTED] for agreeing to be filmed and also by The Guardian in return for speaking to it. (The Guardian says it made no payments for any testimony). His claim not to have any involvement in drugs trafficking is supported by the local police and by police and intelligence sources in Bogota, although he is well-informed about the activities of drugs traffickers and The Guardian quotes him as having told them that he identifies suitable people to act as mules (something he denied when interviewed for the investigation). On the other hand, his account of his own involvement in the swallowing sequences is consistent with that of the mule and [REDACTED] except that he denies that [REDACTED] was complicit in faking those sequences. Moreover, unlike the mule and [REDACTED] he does not appear to have a grievance against [REDACTED] or a particular axe to grind. On balance, the Panel judges his testimony to be more reliable than that of the mule or [REDACTED]

54. The Cartel number three's credibility is on a par with that of the loader. He also agreed to be interviewed only in return for payment (see paragraph 20 above). He denies any involvement in drugs trafficking (police and intelligence sources in Colombia say he has not been arrested, convicted or investigated for drugs trafficking) but admits that he knew someone who could demonstrate how to make up realistic-looking fingers used in the swallowing sequences. He told the fact-finding team that [REDACTED] urged him and the other characters to act convincingly so that [REDACTED] would not know they were faking. He, like the loader, appears not to bear any grudge against [REDACTED]

55. [REDACTED] credibility is questionable. She has talked a great deal about the programme - to the investigation, to newspapers and to television in Colombia as well as to The Guardian. At some times, her account was less than coherent; at all times her motives are open to question. She complained bitterly about her treatment at the hands of [REDACTED] and Carlton and is reported by the loader to have made no secret of her satisfaction at having subsequently discredited [REDACTED]. In her interview with the fact-finding team she was confused and contradictory. However, as noted above, several references in her written statement given to Carlton prior to transmission are most telling.

56. [REDACTED] overall credibility is also questionable. On the one hand he is [REDACTED]. Although [REDACTED] he had been contracted [REDACTED] and was trusted by the company.¹⁰ On the other hand [REDACTED] repeated denials that any payments were made to the main characters and his insistence that the interview with the Cartel number three took place at an unknown location, not at the Melia Hotel, cannot be accepted. Moreover, there are serious inconsistencies or changes of mind in his various accounts of events. Although because the detailed facts of the affair are complex it would be unreasonable to expect none and unfair to condemn all, some give particular cause for concern. He is inconsistent about the circumstances surrounding the interview with the Cartel number three: he refers to the journey to the location of the interview

¹⁰ Though see Appendix 1, paragraph 7 concerning [REDACTED] involvement in 'Inside Castro's Cuba' and paragraph 156 below.

taking two hours in one account and three quarters of an hour in another although he said it seemed longer; he says in one account that [REDACTED] was already at the location when he arrived and in another that [REDACTED]. He has given a variety of explanations about the mule's claimed passage through customs and immigration at Heathrow and his own sources of information about it. In one account [REDACTED] says that [REDACTED] and the Cartel in Colombia told him that the mule had got through; in another he says that his own contact in Colombia told him that the mule had got through; and in yet another he says that his contact told him that the drugs had got through but did not mention specifically that the mule had got through.

57. On a number of other points [REDACTED] was reluctant either to admit [REDACTED] were or might be misleading. One was the claim in the programme that the mansion raided by police was owned by the Cartel number three interviewed for the film. Another was that the boss interviewed was in the Cali Cartel. Yet another was that Colombian cartels had opened a new heroin route to the UK. And he was slow to see that there was anything inappropriate in the portrayal of the mule's two part journey as continuous.

58. Another most troubling fact is that [REDACTED] destroyed the original recording (Tape No. 8) of the interview with the Cartel number three. Worse, he did so after the investigation was announced. He says by way of explanation that he had to destroy it because he had promised the Cartel number three to do so¹¹: he and his family would have been at great risk had he not done so. Yet he had kept it until destruction in a box under his desk in his office for well over two years.

59. Finally, in the Panel's view, [REDACTED] difficulty on the central issues of what was real and what was not is that at no stage can he provide any sufficient corroboration for his claims. He does not know that the man [REDACTED] was genuine. He does not know that either the loader or the Cartel number three was genuine. He does not have sufficient evidence or good reason to believe that the mule swallowed heroin. Repeatedly, his 'contacts' are his only justification.

60. Making all proper allowances for the difficulties involved in the verification of his assertions, the conclusion is irresistible: [REDACTED] is not able to provide sufficient reason to believe that highly important parts [REDACTED] were true.

What in the programme was false

61. In the following paragraphs the Panel identifies the relevant claims made by the programme. In each case, that Panel explains whether and, if so, to what extent, a claim was false, and the reasons for the Panel's conclusions. It identifies any aggravating or mitigating features and makes such further comments as seem in context appropriate.

11 The Cartel number three denied this when asked about it.

*The programme suggested the mule's journey to London was one continuous trip.*¹²

62. This was false. The programme-makers and their immediate editorial supervisors readily acknowledge that the journey was filmed in two parts, the second part being six months after the first. They say they had good reasons for two-part filming. One was legal, namely to avoid complicity in the illegal act of drugs trafficking. The other was to win the confidence of the drugs traffickers.

63. The clear impression in the programme that the mule took one trip (although false and known to be false) is not regarded by [REDACTED] as a deceit. They are [REDACTED] who during the making of the programme saw the portrayal of the two-part journey as one as a legitimate documentary device.

64. According to [REDACTED] it was a realistic portrayal: he says 'documentary techniques and the creative use of film grammar are not lies.' To [REDACTED] the mule's journey as shown was 'acceptable within the grammar of documentary making'. At the same time, [REDACTED] inclines to the view and [REDACTED] has acknowledged that, with hindsight, it would have been better not to have portrayed the journey as one.

65. This kind of approach to documentary-making is shared by other people in the industry in varying degrees. The argument would be to the effect that the film stated a general truth: mules have made many journeys such as that portrayed in the programme, are still making them and will make many more. Importantly in 'The Connection' the programme-makers and supervisors believed that the same loaded mule had made the complete journey to London on both occasions he was filmed.

66. The Panel knows that scenes in documentaries are not always what they seem to viewers and that some documentary-makers genuinely believe that they are entitled to edit reality. Notwithstanding this, the Panel is firmly of the view that the scenes depicting the mule's journey should not have been presented in this way. This avowedly serious programme should have opted without hesitation for strict reliability; that it failed to do so attacks trust and causes disillusion in viewers.

67. While it was within the legitimate discretion of the programme-makers to film the journey in two parts, they should not have portrayed it as one. Moreover, the two stage filming led to a serious error in as much as no meaningful steps were taken to establish whether, on the second stage of the journey, the mule was indeed loaded with drugs. What was conceived as a legitimate practical device concluded as a double falsehood.

12 "Within 24 hours he [the mule] will be in London ... Filming covertly, we will follow his trip from here [Pereira Airport] to Heathrow as he attempts to outwit the authorities." (Transmission script, pages 1 and 17).

*The programme led viewers to believe the mule was allowed through customs and immigration at Heathrow and that he entered London.*¹³

68. This was false. Official records leave no doubt that the mule was refused entry. He was sent back to Bogota via Miami on a flight the following day. The reason given for the refusal did not relate to either drugs trafficking or passport irregularity: immigration officials at Heathrow were not satisfied that he was a genuine short-stay visitor.

69. Doubts about the mule's entry were raised at meetings in the final stages of the making of the programme. [REDACTED] says he then checked with contacts in Colombia. They reported no problems. As a result, the narration became 'According to the cartel, the mule we'd been following got through.' This was a weak basis for an important factual element in the programme. Moreover, it misled viewers. The emphasis given to the cartel suggested that the conclusion was authoritative; it concealed the absence of any sighting of the mule after immigration control at Heathrow.

70. More thorough checks could and should have been made. Given [REDACTED] failure to find an effective method of checking whether the mule got through customs/immigration without arousing the suspicion of the authorities, the narration on the fate of the mule should have left the matter open.

*In the sequences shown the mule was claimed to be swallowing fingers of heroin.*¹⁴

71. No objective or compelling evidence exists for the claim that the fingers contained heroin, rather than (say) sugar, flour or mints. Conclusive evidence would have been difficult, perhaps impossible, to obtain in the circumstances. But a good reporter would either have found a way of identifying the contents of the fingers with more confidence than the producer could have had in this case, or would have qualified the story.

72. At best, the fingers swallowed by the mule on camera were in size, shape, feel and weight very much like the different fingers shown in a detailed packing sequence filmed months later. At that later session, the programme team was able to see, smell and taste the powder being packed, and had more reason to believe that the substance packed was heroin than earlier they had to believe the substance swallowed was heroin.

73. [REDACTED] says the fingers swallowed were made in the same way as a finger the mule had earlier expelled in a trial of his fitness for the job. This too assumes, without checking, that the expelled finger contained heroin. He also says he had seen and felt similar heroin fingers previously seized by the Colombian police. This was insufficient to justify the statements made. In the light of the testimony of the loader and the Cartel number three it appears most likely that [REDACTED] was duped [REDACTED]. Moreover, the loader's evidence supports the fact that (as [REDACTED] admits) [REDACTED] was not present in the room for the entire time that the mule

13 "Now he is on British soil, it's make or break for the mule... According to the cartel, the mule we'd been following got through." (Transmission script, pages 29 and 30).

14 "This man is a heroin mule. The cargo he is swallowing - a pound of pure heroin." (Transmission script, page 1).

was swallowing and this casts doubt on how much (of whatever substance) the mule actually swallowed.¹⁵

*The programme said that when the mule was shown boarding a plane at Pereira his destination was London.*¹⁶

74. The claim that the mule went to London on the first occasion cannot be accepted. The mule says he stayed briefly in Bogota before returning to his home area. [REDACTED] also says he did not go to London. This is supported by the loader. There is no record, [REDACTED] that he left the country. Without drugs in his stomach, he had no reason to.

75. Moreover, the rushes show that during his interview for the programme the loader at one stage inadvertently refers to the mule's destination as New York. [REDACTED] interrupts him and prompts him to refer to London instead. In his interview for the investigation the loader said that [REDACTED] thought the mule was travelling to New York, not London, on the first journey. In the Panel's view [REDACTED] may have believed that the mule was on this occasion bound for London via New York but did not know and cannot substantiate the claim that he was travelling to London. The Panel concludes that the claim was false.

*The programme suggested that the man interviewed with his head and face covered was the number three in the Cali Cartel, its financial controller.*¹⁷

76. This was false. The man was not on any view a member of the Cali Cartel, let alone its financial controller. [REDACTED] says that the Cali Cartel is not one big organisation, but is loosely made up of many smaller cartels. It is not led by a few people, three or five big bosses: other cartels have bosses just as big. In this way, his explanation avoids the problem that, as the main bosses of the Cali Cartel were [REDACTED]

15 As to the number of fingers swallowed by the mule, the transmission script states (at page 19) "Every mule is a walking time bomb. This mule is no exception. If one of the 60 packets in his gut bursts it will kill him." The testimony reviewed by the Panel offers various accounts of how many fingers were swallowed, not all of which were filmed; from 8 (the loader and [REDACTED] to 12 or 13 or as many as 20 (the mule). [REDACTED] the mule swallowing 25 and then he probably saw him swallow about 35. There is no corroborative evidence that 60 packets were swallowed. The rushes, which the Panel has studied carefully on several occasions, seem to show the mule swallowing at least 23 fingers and possibly as many as 25. (Of course on no view could these be the same fingers as the mule was allegedly carrying in his stomach on the flight to London). The Panel does not regard the apparent discrepancy between the evidence of the rushes and the loader's evidence on this point (even if the product of mendacity as distinct from memory failure) as seriously undermining the reliability of the loader's testimony on the central issues.

16 "Filming covertly, we will film his trip from here to Heathrow as he attempts to outwit the authorities. The mule's trail begins in Pereira, Central Colombia". (Transmission script, page 17).

17 "The Cali cartel was the first to traffic in heroin as well as cocaine... The mansion of one of the cartel leaders. As usual, he is not at home. But for the first time the man they are trying to catch has agreed to speak out about the Cali cartel... "I am the third member of the cartel. I have many men under my command and I am the financial controller of the organisation" (Transmission script, pages 2 and 3).

77. Nonetheless, [REDACTED] now acknowledges that the narration should have described the position of the man interviewed differently. He accepts that the man was not of the status suggested in the programme, though he says he believes the 'boss' was an important member of a drugs cartel in the Cali area. However, he provides no corroboration, nor any reasoning to convince the Panel of the soundness of his belief.

78. At best, [REDACTED] exaggerated the status of the man interviewed in the hierarchy of Colombian drugs cartels. At worst, it involved a far more serious misrepresentation. The Panel has indeed concluded that the Cartel number three was acting a part (see paragraph 86 *et seq* below).

*As related points, according to the programme the man interviewed owned the mansion the Colombian police were shown to raid and was the man they were trying to catch.*¹⁸

79. Both assertions were false and [REDACTED] now accepts this. Even though [REDACTED] he showed insight into the drugs trade, the way it is organised and the way it operates, this misstatement illustrates how [REDACTED] to cut corners, to reduce complications to unreliable simplicities and to compromise meaning to the point of falsehood. In a genre that calls for meticulous reliability, the narration departed from the truth by making statements it should not have made and which there was no need to make.

*In one extract of the interview with the Cartel number three, the voice-over attributed to him the comment: "Every month I am sending at least ten or twenty mules."*¹⁹

80. This attribution was false. The sound tape of the interview reveals that he did not say this. The man interviewed seems to be speaking in general terms: each provider may send ten or twenty mules a month. This casual inaccuracy was another example of bad reporting.

*The programme said the mule filmed on the flight to London was laden with 60 heroin fingers in his stomach and dramatically described him as a 'walking time-bomb'.*²⁰

81. This was almost certainly false. When stopped at Heathrow, the mule was tested for drugs. The test showed none. It is regarded by experts as a good test, even if not infallible. Had the mule been 'loaded', the test would probably have detected the fingers. The balance of evidence very strongly supports the conclusion that the mule was not carrying drugs in his stomach and [REDACTED] is now disposed to accept this. In consequence the mule cannot have been a "walking time bomb".

82. [REDACTED] says that he believed at the time that the mule had drugs in his stomach. But he has no evidence to support his belief, other than the fact - manifestly insufficient for this purpose - that the mule was the same man [REDACTED]

18 Ibid

19 Transmission script, page 20.

20 "This man is a heroin mule. The cargo he is swallowing - a pound of pure heroin. Within 24 hours he will be in London....." "Every mule is a walking time bomb. This mule is no exception. If one of the 60 packets in his gut bursts, it will kill him." (Transmission script, pages 1 and 19). (Even if the mule had swallowed 60 fingers on a previous occasion which the Panel does not accept - see footnote 15 above - it does not follow that he had 60 fingers in his stomach on this occasion. The Panel repeats that, in its view, he had none).

still maintains that the mule was carrying drugs, although probably in his luggage rather than in his stomach.

83. The Panel is struck by the observation, reinforced by the opinion of

that a real mule would not take the risk of swallowing heroin the night before and several hours' journey away from his international departure from Bogota. It is more likely that a real mule would have swallowed the heroin immediately before the flight in order to minimise the period of time that he was physically at risk.

The scenes in flight of the mule eating little, putting his food in a vomit bag in his pocket, and sprinkling whisky on his clothes to suggest he had been drinking²¹ were designed to depict him as a genuine mule.

84. This was almost certainly a pretence for the camera, for the reasons set out above.

85. says he believed at the time that the mule's behaviour was genuine because it was consistent with that of a drugs trafficker seeking to avoid suspicion. In the Panel's judgment, he had no means, then or now, of testing the truth of what he believed.

The programme presented the mule, the loader and the Cartel number three as genuine drugs traffickers.

86. On this most serious question - whether the mule, the loader and the Cartel number three were genuine or were acting the parts - the investigation has not been able to establish the facts beyond doubt because of the questionable credibility of the participants. The Panel concludes, however, that on the balance of the evidence it has reviewed the mule, the loader and the Cartel number three were all acting.

87. The Panel notes that a number of considerations might have suggested to those involved in the making and supervision of the programme that the main characters and some of the disputed scenes were genuine. These include: the convincing performances of the mule and the loader in particular; contemporaneous accounts of the production team's concerns for their own safety; and the views of independent experts as to the authenticity of what they saw in the programme. These matters are elaborated below. The mule's subsequent drugs-related conviction has also been stressed in comments to the Panel.

88. The main reason for accepting the programme's portrayal of them as real participants in a drugs trafficking operation is that, if they were acting, for amateurs they were remarkably convincing. The swallowing sequences shown in the programme were very realistic. The same sequences in the full rushes are even more so for the simple reason that the knowledgeable demeanour of the mule and the loader is sustained throughout. Not for a moment is either caught off guard. Expert

21 "Flight attendants on this route are asked to report any passenger who doesn't eat a meal. A mule carrying drugs cannot eat or drink alcohol...A sprinkle of whisky to pretend he has been drinking". (Transmission script, pages 27 and 29).

programme-makers and officials with experience of drugs trafficking also found the scenes convincing.

89. In the swallowing sequences, both the loader and the mule are very believable. The loader seemed to be familiar with what he was doing. In his separate interview for the programme his apparent knowledge of the trade and his part in it also come across with considerable conviction.

90. Moreover, the mule is [REDACTED]

He denies the claim attributed to him in The Guardian that it was his involvement in the programme that prompted him to take up the trade.

91. The mule's [REDACTED] therefore give firmer grounds for the belief that the mule was [REDACTED]

Moreover, when filmed swallowing the fingers, on the car journey the next day to Pereira airport, and (six months later) on the flight to London, he seemed to know in detail what to do, how to behave and how to talk convincingly about the trade. It would be a reasonable prima facie conclusion that he knew because he was experienced.

92. When [REDACTED] met Carlton executives a few days before the programme was broadcast, her comments may have been confusing and at times difficult to follow [REDACTED], but her insistence in support of her claim that she was underpaid, that [REDACTED] had been at great personal risk in making the programme, that she had at times been frightened, and that her involvement in the programme put her own safety at risk, came across clearly to those at the meeting.

93. There were similar pointers for the programme-makers as to the genuineness of the programme, long before anyone cast doubt on its veracity. [REDACTED] recalled comments by [REDACTED] about how frightened he and [REDACTED] had been [REDACTED] the Cartel number three. She also described a telephone call from [REDACTED] in Colombia during one filming trip in which he expressed fears for his personal safety as a result of his work on the film. [REDACTED]

94. While the necessary implication of their alleged involvement in fakery is that [REDACTED] were laying a trail for a concocted story, on the face of it their expressions of nervousness and fear were convincingly spontaneous to those who observed them at the time.

95. The investigation was supplied with opinions by two people whose experience in the detection and arrest of drugs traffickers is extensive and respected - [REDACTED]

They suggest the programme showed drugs trafficking as it actually happens.²²

²² [REDACTED] denied the abusive condemnation attributed to him in The Guardian.

Neither [REDACTED] is in a position, however, to say that those claimed to be drugs traffickers in the programme were actually involved in drugs trafficking at the time they were filmed.

96. Notwithstanding all these matters, which the Panel has carefully considered, other more persuasive factors point to a contrary conclusion, namely that the three main characters acted the parts of drugs traffickers when filmed for the programme. In this context the Panel also recognises the relevance of such factors to the issue of the knowledge of [REDACTED] which is separately dealt with below.

97. One key cause for concern is that the main characters (as well as [REDACTED]) all now insist that the scenes portraying them as drugs traffickers were faked. In accepting what they have said, the Panel bore in mind the argument that a confession of fakery on the part of the main characters was more likely to be forthcoming than a confession of involvement in criminal activity. However, no-one amongst those primarily involved in making or approving the film can give convincing reasons why three men allegedly participating in a dangerous, highly lucrative criminal trade should jeopardise themselves, their activities and their organisations by candid appearances on television in the first place.

98. The issue as to the main characters' voluntary appearance on the programme exercised the programme company during the making of the film. Various explanations for believing what the programme said were and still are put forward by those involved.

99. One is that the drugs traffickers were people who knew [REDACTED] and were doing her a personal favour to [REDACTED]

100. Other explanations were that criminals have previously talked for the camera in defiance of risks, that ego and machismo were at play, that the traffickers thought they were untouchable, that they may have been scoring points against other cartels, that they saw the programme as an opportunity to 'talk up' their UK market, and that the mule might have wanted to quit the drugs trafficking business or had earned enough to do so. All are speculative; not one has persuasive substance given that they are sought to be applied - on this hypothesis - to active members of criminal groups who are ruthlessly dealt with by their own kind, whose families may be violently victimised, and who are targeted by international and national law enforcement agencies.

101. Furthermore, as to the loader and the mule, the Panel's view is that in the circumstances genuine traffickers would have insisted, as did the Cartel number three, on being filmed in such a way that they could not be recognised. The mule was easily identifiable throughout. The loader was clearly identifiable at times in the rushes, and in the programme his half-shadow disguise was more dramatic than adequate.

102. Finally, amongst these factors, the investigation has established that the mule was almost certainly not carrying drugs in his stomach on the flight to London and it

23 Bizarre as this may seem, it appears from what the loader says that [REDACTED] may well have had this in mind as her principal objective, [REDACTED]

is reasonable to suppose that he was not carrying drugs in his stomach on the earlier flight to Bogota. There is no record that he left the country on that previous occasion, which undermines the claim in the film that he was "loaded" with drugs to be smuggled into Britain. It would follow from this that the swallowing sequences filmed immediately before the journey to Bogota were faked.

103. ██████ said that in his experience, scenes shown in 'The Connection' chimed with scenes shown in other programmes on the drugs business. This, combined with ██████ description of the filming, reassured him that the three main characters were real. For reasons discussed below, whilst the Panel accepts ██████ good faith, it considers that he ought to have been more sceptical and inquisitive.

104. ██████ relied on ██████ to put him in contact with those involved in the trade. She says she introduced ██████ to the mule, who found the loader, who in turn found the Cartel number three. ██████ says that some time after filming his contacts assured him that the Cartel number three was real. Although his account is inconsistent (see paragraph 56 above), he also says that his contacts said that the mule had passed through customs and immigration, which, by implication and if true, would have confirmed that the mule was real.

105. In this as in other aspects of the film, ██████ cannot provide any further corroboration, which in particulars is not surprising given the murky sensitivities of the subject but which, in sum, is a problem that weighs heavily in assessing ██████. Although he asserts that he relied mainly on the evidence of his own eyes and ears, it seems to the Panel that he took ██████ on trust, though he had known her for only a short time. In turn ██████ took him on trust, which was, the Panel accepts, more reasonable at that time ██████ even if in the final analysis it was insufficient for them to give 'The Connection' the green light.

106. Because drugs traffickers are not likely to agree to appear on television, because they are even less likely to be filmed identifiably, because the witnesses who ought to know the truth are broadly consistent with each other, and because ██████ produces no adequate corroboration, the Panel cannot accept that the three criminal characters at the heart of his production were genuine. On the contrary, it considers that the mule, the loader and the Cartel number three were acting:

The mule's trip was organised by a drugs cartel.²⁴

107. This claim in the programme was almost certainly false. ██████ maintains that if the mule was not carrying drugs in his stomach, he had drugs in a bag that was taken over by another mule on the same flight to be smuggled into Frankfurt. The Panel sees no reason to accept this alternative scenario, which is based on surmise. Colombian emigration records show that the mule's final destination was entered as Frankfurt, but this does not prove that he was a real drugs smuggler or in league with one.

108. The Panel does see reason to implicate ██████ in the organisation of the mule's journey. He admits to making a booking for the mule on the London flight. He indicates that it was a contingency arrangement to make sure the mule was on

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"A heroin mule, heading for London via Bogota. His contact phones the boss as he boards the plane for the Colombian capital." (Transmission script, page 17).

overnight as a guarantee that the production team were not laying a trap with the security forces.

115. Against this The Guardian alleged the interview took place in [REDACTED] room at the Melia Hotel in Pereira and that a trellis in the room was an exact match for the trellis shown behind the Cartel number three in the film. The hotel records confirm that [REDACTED] stayed there at the time. Investigation by the fact-finding team has identified what indeed appears to be the same trellis in the same room at the hotel which, according to the rooms manager, had not been refurbished since the time of making the film.

116. Moreover, the Cartel number three supports [REDACTED] consistent claim that the interview took place in [REDACTED] room at the Melia Hotel. [REDACTED] story of the blindfolding and the unknown location (supported by [REDACTED] may have been motivated by a genuine fear of revealing the location of the interview, a desire to achieve dramatic effect or a convenient combination of the two. It is beyond doubt that his comments on this episode, for example as to the length of time to reach the location, contain inconsistencies between one account and another.²⁶ It is possible that, impressed by the Cartel number three's insistence on anonymity and a genuine concern about revealing the location, [REDACTED] felt it necessary to keep the location secret. Whether this be so or not, the Panel accepts the version of events given by the participants (supported by photographic evidence of the hotel room) that the interview took place at the Melia Hotel and is troubled by [REDACTED] willingness to misrepresent what actually happened.

117. If the Cartel number three was acting the part (as the Panel concludes likely), this would be a most important factor to weigh against the claim in the programme that the crew were blindfolded and driven, heads covered, to an unknown location. Corroboration and persuasive explanation are absent. The Panel concludes that, on the balance of the evidence it has reviewed, the claim in the programme was false.

The programme referred to 'a contact within the Colombian network' in a context that meant the network of drugs traffickers.²⁷

118. This was false. The contact is in fact [REDACTED] in London. To portray him as an arms-length contact in Latin America for effect in this way misleads by omission and shows too little regard for the truth.²⁸

The programme suggested in one of the UK scenes that several individuals were being arrested for possessing heroin.²⁹

119. This was wrong - albeit the product of a mistake - in relation to one of the individuals concerned, who was in fact cautioned for the possession of cannabis. The programme contained footage of police raids at a number of different locations. On the day in question, 21 houses were raided, 19 arrests were made and £17,000 worth of heroin, cannabis and amphetamines were recovered. Prior to transmission

26 See paragraph 56 above.

27 Transmission script, page 30.

28 For the avoidance of doubt the Panel stresses that [REDACTED] was not involved in the falsehood and bore little responsibility for the programme.

29 Transmission script, page 41.

and at the request of Carlton [REDACTED] viewed both the rushes and the broadcast version of the programme with the purpose, among others, of identifying for the programme-makers those people who appeared in the raid and what happened to them afterwards. [REDACTED] did not draw attention to any mistake and as a result, the programme erroneously suggested that one individual was arrested for possessing heroin when in fact he was only cautioned for having cannabis. The footage was edited in such a way that it was not clear to whom the heroin seized actually belonged. The Panel concludes that the heroin seizures shown in the film occurred at addresses other than his. The individual complained, Carlton investigated, accepted that it was at fault, apologised to the individual and paid him compensation. Throughout this episode Carlton followed procedures laid down in the ITC Programme Code. In addition, Carlton obscured the identity of the man in a subsequent "legal edit" of the programme for future use.³⁰

What in the programme was not proven

120. Some main as well as some lesser claims in the programme relied so much on trust or on supposition without supporting evidence that they should not have been made in the way they were. In these cases the Panel is of the view that the programme-makers have not been able to establish the correctness of the programme's claims. The Panel therefore concludes that the claims are at best "not proven" and cannot therefore safely be believed.

The programme postulated a 'new heroin route from the hills of Colombia to the streets of Britain - a route the British authorities say they have no evidence of'.³¹

121. Some experts leave the question open. They do not deny the existence of a new route. Nor do they confirm it. Others believe the claim to be wrong. On the evidence given to the investigation, the Panel believes the programme, as one comment put it, had 'the right story, wrong country'. It has been suggested that the flood of Colombian heroin was into the United States, not into the United Kingdom where the price was much lower, therefore much less profitable for the traffickers. This is a view shared by Colombian police and intelligence agencies. Seizures of Colombian heroin in Europe generally have been small, smaller than they would have been had large amounts been smuggled there.

122. In the Panel's judgment, the programme did not have enough evidence to make this important claim as confidently as it did, if at all.

³⁰ The Guardian has alleged that Carlton (and in particular [REDACTED] misled the ISDD awards jury by submitting this edited version of the programme and that this was in breach of the rules of the festival which require that the broadcast version be submitted. [REDACTED] had no involvement in selecting the version of the film to be submitted for the award. [REDACTED] thinks she submitted the version of the programme with the man's identity obscured under the impression that it was the only version. The Panel notes that it would in fact have been unfair to the individual to show again the version containing the mistake.

³¹ Transmission script, page 1.

The programme claimed that "Two years ago, Colombian drug cartels took a momentous decision to target Western Europe with heroin" The caption at the end of the programme was "Colombian drug cartels claim to be exporting at least a hundred kilogrammes of heroin to Britain each month".³²

123. For the reasons given in paragraphs 121 and 122 above the statements are unreliable.

124. Had the programme considered its message more carefully and expressed it equally carefully it might have been able to justify a claim that Colombian cartels were at the time, or had been, testing a heroin route into Europe, including Britain, in a small way. As it is, exaggeration and lack of care corrupted into hyperbole what could have been a new insight.

What in the programme was true

125. Many scenes and many points in the programme were true.

126. The threat to young people from heroin, although mainly from eastern not Colombian sources, has been highlighted in a recent Home Office report. The report says '... since around 1996 (the year *'The Connection'* was shown), signs, indicators and rumours that heroin is making a return have been building ... [making it] reasonable to suggest we are facing a second heroin epidemic.'

127. It is a fact and an important one that at the time of making the programme Colombian poppy growing for heroin was on the increase. The programme showed how the poppy fields flourish in spite of actions to suppress cultivation. No doubts backed by evidence have been cast on the crop-spraying sequence and the Panel is satisfied that these scenes - and the attendant dangers for both police and film crew - were genuine. The Panel is also satisfied that the sequence showing the destruction of the drugs laboratory in the Colombian jungle was genuine.

128. On the basis of the information provided to the investigation by [REDACTED] the Panel is also satisfied that the scene showing the raid on the Cartel leader's mansion was genuine.³³

129. Even if viewed as reconstructions, the Colombian drug-trafficking scenes were most illuminating. They showed how fingers of heroin are packed. They showed how mules are loaded with them. They showed how the mules must behave

32 Transmission script, pages 1 and 45.

33 The Guardian reported in its 6 May 1998 article that Colonel Benjamin Nunez led the raid and was at the time the head of a police special forces rapid reaction squad dedicated to hunting the Cali cartel. The Guardian further reported that Colonel Nunez identified the mansion as belonging to Pacho Herrera (a senior figure in the Cali cartel who was in jail at the time) that the mansion had been unoccupied for a long time when they raided it with Carlton, that the police had searched it properly before but on this occasion it was "more of a show put on for a British TV crew". [REDACTED]

[REDACTED] was interviewed by the fact-finding team. According to him the raid was genuine and part of widespread anti-drugs trafficking operations co-ordinated by the Colombian National Police. According to [REDACTED] [REDACTED] also interviewed by the fact-finding team, the Colombian authorities in conducting such raids are not just looking for suspects but also seeking to collect evidence.

on their journeys. As noted earlier, ██████████ said the programme showed drugs trafficking as it generally happens, even if not on the particular occasions filmed.

130. The scenes at Heathrow showing the efforts made to stop drugs traffickers and to detect their contraband were informative. The efforts of the Manchester police to bust the local trade were well portrayed.

131. The programme included cogent observations by experts and commentators. It explored public policy on illegal drugs. It raised challenging ideas.

132. Had the drugs trafficking scenes been broadcast as reconstruction rather than reality, the programme would have been a valuable one, if not a candidate for prizes.

Who knew what was false or not proven

133. The Panel considered whether anyone on the programme team knew that the mule, loader and Cartel number three were acting their parts.

134. As noted previously (paragraph 39 above), apart from the main characters themselves only three people - ██████████ - could have known most of what was false or not proven. If they did know, they were hardly predisposed to disclose the flaws during the making of the programme, although, in the course of her complaints about her treatment by ██████████ ██████████ made allusive references, at a late stage, to facts which were at odds with those portrayed in the programme.

135. Having concluded that the interview took place in the Melia Hotel it must follow, in the Panel's view, that ██████████ must have known that the interview with Cartel number three did not take place where the programme claimed, i.e. at an unknown location. However, the Panel cannot conclude that he knew that the three central characters were not real. His function does not involve an editorial responsibility which requires him to know.

136. Although ██████████ has offered a positive view on the authenticity of the relevant sequences, he does not have an editorial responsibility to find out ██████████ is genuine and in this case he cannot reliably say, ██████████ that it was genuine.

137. ██████████ could not be expected to know. She made one trip to Colombia during which the crop-spraying and packing sequences were filmed, neither of which has been criticised in The Guardian articles.³⁴ Moreover,

³⁴ The packer was not interviewed by the fact-finding team. In written comments dated 4 November 1998 The Guardian at a late stage suggested that the packer "is most probably a Colombian policeman". The Panel has not been supplied with any evidence to sustain this further charge. A journalist based in Bogota ██████████ had previously written a piece on drugs trafficking for a Colombian journal and was instrumental in introducing the producer to the packer. The journalist has since affirmed that the packer was genuinely what he purported to be. In the aftermath, the packer protested that, contrary to an understanding reached, his identity was not obscured. ██████████ was also present during the filming of the raid on the mansion. Although this was criticised in The Guardian articles, as noted above, the Panel is satisfied that it was genuine.

she was responsible for the UK-based sequences not the Colombian sequences and it was not her function to second guess [REDACTED]

138. [REDACTED] has asserted that the programme was false; at best a reconstruction and at worst play acting. The Panel concludes that (as she herself claims) she knew of the programme's falsity.

139. She had been asked, because of her background, to procure the co-operation of people who were extremely unlikely to cooperate if they were genuine. Faced with this, she well may have decided to cheat [REDACTED] by recruiting friends and friends of friends to pretend to be drugs traffickers. This is indeed the assertion of the loader and the Cartel number three. On the other hand, she asserts, supported by the mule, that she was told by [REDACTED] to recruit people to play the parts for a reconstruction. The Panel does not accept this latter version of events. Both the loader and the Cartel number three are consistent in their assertion that it was [REDACTED] who stage-managed the scenes without [REDACTED] knowledge, and - as noted above - they have no predisposition to misrepresent these facts. As noted above, the loader told the fact-finding team that after giving her own account to the investigation [REDACTED] has made no secret of her great satisfaction with her further efforts to discredit [REDACTED]

140. Did [REDACTED] nonetheless know of the programme's major flaws even if he did not engineer them? If he did know it means he cheated colleagues, [REDACTED] the ITV Network and the viewing public. Such a devastating charge cannot be made good without unimpeachable evidence. Such evidence is, in the Panel's final judgment, lacking.

141. Factors all pointing to [REDACTED] awareness of possible deception are: the inconsistencies [REDACTED] the fact that it now appears that the location of the interview was a place other than where he says (the Panel accepts it is possible that, believing the Cartel number three to be genuine, he felt under an obligation not to reveal the location of the interview, but this does not excuse his misrepresentation about [REDACTED] his destruction of Tape No.8; his likely involvement in payments to the main characters and his certain involvement in relation to payment for the mule's journey; and the prompting of the interview with the loader. [REDACTED] insistence on his own version of events as to the interview, in the face of indications to the contrary, weighs heavily against him. Furthermore, at [REDACTED] request he read [REDACTED] statement, with its allusive references to inaccuracies and falseness, immediately after the meeting and before transmission. The fact that he did not bring these matters to [REDACTED] attention also arouses suspicion.

142. Notwithstanding the particular instances of deception noted above, bearing in mind the applicable standard of proof (see paragraph 25 above) the Panel cannot conclude that [REDACTED] that he knew to be a fake. He ought, in the Panel's view, to have realised that the three main characters were not what they purported to be i.e. persons at the material time actually involved in drugs trafficking. At some stage, indeed, the Panel believes that he did (contrary to his statements) entertain doubts, but suppressed them, because (the Panel infers) he believed that he was portraying a sequence of events, true in their essence, if distorted in the detail. His fault may well have lain in starting with a belief in his

general thesis and then seeking to verify it, rather than deriving the thesis from his own research. This cast of mind would have tended to lead him to overlook inconvenient facts and even to enhance others.

[REDACTED]

144. [REDACTED] knew the literal truth, namely that the mule's journey to London had been filmed in two separate parts but that the programme was to present it as one continuous trip (for reasons already discussed - see paragraphs 62 to 67 above).

145. [REDACTED] also knew that having been filmed in two parts, the mule's journey was being portrayed as one. [REDACTED] he had advised the two-part filming at an early stage. He says he simply 'lost track of the significance of the fact' and now bitterly regrets not asking for a line of commentary to reflect that the journey took place in two parts. He believes there would have been no objection had he made the request of [REDACTED]. The Panel does not need to add its own comment to this honest admission.

146. However, on a broad perspective, [REDACTED] could not know whether the central characters were real. As to the validity of the programme's claims, he had, to an important degree, to rely on [REDACTED]. His position would inevitably be made more difficult, if not impossible, if [REDACTED] was negligent in a way that he would consider on the overall basis of his previous professional relationship to be entirely uncharacteristic. No amount of experience would enable him to cope with that. With the single proviso noted in paragraph 143 above, the Panel must acquit [REDACTED] of knowledge of the programme's falsity.

147. [REDACTED] had responsibilities that overlapped those of [REDACTED]. He too could not know whether the central characters were real. He too depended heavily and necessarily on [REDACTED] reliability. When that let him down, he was exposed. With the same single proviso noted in paragraph 143 above, the Panel must also acquit him of knowledge of the programme's falsity.

148. At the higher echelons of Carlton no-one can have known of the programme's falsity. Even with regard to the amalgamation of the two part journey, [REDACTED] did not see it as a problem and, since he did not know others would or could see it as a problem, he saw no reason to refer it to a higher level.

Who ought to have know what was false or not proven

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

154. When falsehoods are perpetrated, whether by design or neglect, through inexperience, or reflecting habits of the trade, people other than the perpetrators can have great difficulty in finding out what they ought to know. Supervisors and higher executives can be trapped by the circumstances, especially when important scenes deal with criminal and covert activities in distant societies. [REDACTED]

155. With regard to what was not proven, the question of who ought to have known and at what level is more complex. The issue is not so much 'who ought to have been told' as 'who ought to have discovered' the dubious claims.

156. [REDACTED] position in the programme company - [REDACTED] - required him to be satisfied that the programme was reliable. [REDACTED]

[REDACTED] He is entitled to observe that at no stage did any of the experienced people on the programme team - [REDACTED] - raise any doubts with him. However, he ought to have realised that too many claims in the programme were inadequately justified (that is, not proven) and that they called for much better reasons to believe them. Had he demanded better explanations or required [REDACTED] to provide better grounds for significant claims in the programme (for example, that the mule successfully entered the United Kingdom), he could have insisted on programme changes himself or referred problems to a higher level. That he did not was a serious failing. [REDACTED]

[REDACTED]

[REDACTED]

158. The Panel nonetheless concludes that, having taken an active part in discussions, [REDACTED] should have required better assurances on relevant issues raised when the programme was in the making, such as whether the mule had got through customs and immigration. That he did not was also a serious failing.

159. Both [REDACTED] had access to [REDACTED] written statement about her treatment before the programme was transmitted. Although the whistle-blowing references in the statement were obscure, they should nevertheless have been scrutinised. It must have been apparent at the time that [REDACTED] (whose character was displayed at the meeting and recognised by those present)³⁶ had played a large role in the programme. Whilst the Panel appreciates that everyone involved on Carlton's behalf was preoccupied by her complaints about money, both [REDACTED] overlooked clues in her written statement that the programme was not what it claimed. The Panel notes that neither [REDACTED] accepts that they had any obligation or reason to consider the statement in the light of how the meeting concluded. But unless they knew (which they could not) that her written statement was exclusively concerned with money claims against Carlton they cannot be excused for the failure to read it properly or at all.

160. [REDACTED] bears a less direct responsibility. At his level he necessarily depends greatly on those most intimately involved in the making of programmes to draw attention to any editorial problems, otherwise he lacks a fair chance to intervene. After previewing the programme, [REDACTED] did ask significant questions such as, for example, how the programme-makers gained access to the Cartel and the mule. It could be argued that he should have pressed for more convincing answers. The Panel, however, on balance concludes that he ought to have been alerted to these difficult issues by [REDACTED] who knew the programme more intimately and that [REDACTED] can be forgiven for his lack of knowledge of the programme's flaws.

161. [REDACTED] was even more dependent than [REDACTED] on being alerted to problems by others. It could be argued that he too should have required better answers to questions that he did ask: why a Cartel should cooperate with a British television company; why the mule was not followed through customs. But on the troublesome issues in 'The Connection', he was largely in the dark because of the failure of those below him to be sufficiently rigorous.

162. Above all in the hierarchy of programme responsibility, [REDACTED] depend on the judgments of those below them. People making such judgments should know what to tell their superiors and when to tell them. They, in exercising their supervisory role, cannot be expected coldly to preview a programme and to spot all the problems without prompting.

163. A proper alert would have given [REDACTED] the opportunity to assess the programme and its problems in a fresh way, uncluttered by any earlier detailed involvement. Had either been told that the mule's 'continuous' journey had been filmed in two parts separated by six months, that part of the programme would have been changed. Had they been told of the claims in [REDACTED] statement produced at the meeting with Carlton days before transmission, the programme might not have been shown in the form it took, or indeed at all.

PART THREE

THE PANEL'S FINDINGS ABOUT CARLTON'S COMPLIANCE ARRANGEMENTS

The ITC Programme Codes

164. The Panel has considered the extent to which the programme conformed to or breached aspects of the ITC Programme Codes and whether or not Carlton had appropriate compliance procedures in place and the extent to which these were followed. In this context the Panel considered both general standards of conduct and particular sections of the ITC Codes which appeared to have a bearing on the programme.

165. The standards by which the programme is to be judged are set out by common law; in the Broadcasting Act 1990; and in certain Codes promulgated by the ITC.

166. There is, the Panel notes, a limit to the utility of laws or rules or codes. As Windlesham/Rampton said in respect of unusual programmes (of which 'The Connection' provides an example):

"The problem which arises in such cases cannot, ex hypothesis be resolved by reference to established legal or conventional principles, but must in each case be a matter of judgment for, in the first place, the journalists who make the programmes; in the second place, for the company which employs them; and, lastly, for the broadcasting authority."

167. The law relevant to this area is limited. The law of defamation provides a check on the dissemination of damaging inaccuracies. The Courts benevolently assume that responsible journalists will rely only on trustworthy sources. In *Attorney General v Mulholland; Attorney General v Foster* [1963] 2 QB 477, which was primarily concerned with the question of whether a journalist had a right to refuse to disclose a source, Lord Denning MR stated that:

"The newspapers had made these allegations. If they made them with a due sense of responsibility (as befits a press which enjoys such freedom as ours) then they must have based them on a trustworthy source. Heaven forbid that they should invent them". (Page 487)."

"... even if it was no invention, how was anyone to know that it was not the gossip of some idler seeking to impress? It may be mere rumour unless the journalist shows that he got it from a trustworthy source". (Page 492)."

168. The ITC has published various versions of a Programme Code. The version of the Code in operation at the relevant time was that dated Summer 1995. The foreword to the Code explains that the ITC has drawn up a specific code in relation to impartiality and a general code covering, inter alia, such matters concerning standards and practice for programmes as the ITC considers appropriate. In its present form the ITC Code postdate the programme: but its precepts are consistent with the earlier version then in place.

169. The Panel considered the sections of the Code set out below to be most relevant to this investigation.

170. The requirement of impartiality is dealt with in Section 3.1, which states that:

"Broadcasters licensed by the ITC are free to make programmes about any issues they choose. This freedom is limited only by the obligations of fairness and a respect for truth, two qualities which lie at the heart of impartial broadcasting."

171. Section 3.7(i) deals with the use of dramatised "reconstructions" in factual programmes, as follows:

"The use of dramatised 'reconstructions' in factual programmes is a legitimate means of obtaining greater authenticity or verisimilitude, so long as it does not distort reality."

"Whenever a reconstruction is used in a documentary, current affairs or news programme it should be labelled so that the viewer is not misled."

172. Section 3.8 deals with the conduct of interviews. It states, inter alia, that interviewees should be made adequately aware of the format, subject matter and purpose of the programme and also the way in which their contribution is likely to be used.

173. For programmes dealing with political controversy or current public policy interviewees should also be told the

"identity and intended role of other proposed participants in the programme"

but only where this is known.

174. Section 3.8(i) deals with the editing of interviews: to the impartiality which applies as well as to their conduct. It provides, inter alia, that:

"Editing to shorten recorded interviews must not distort or misrepresent the known views of the interviewee".

175. Section 2.2(ii) deals with filming on police operations and the need to respect the rights of members of the public who might appear in the film. Before transmission reference should be made to the Licensee's most senior programme executive.

176. Section 2.4 deals with secret filming by the use of hidden microphones and cameras. In order to record material in such circumstances consent must be sought from the Licensee's most senior programme executive. Such consent is also required in order to transmit the material recorded.

177. Section 5.1 deals with interviews with criminals. Careful consideration must be given to whether or not such an interview is justified in the public interest and any programme item which could reasonably be said to encourage or incite crime or lead to disorder is unacceptable. The ITC Code presently in force and issued in January 1998 provides at Section 5.2 that no payments should be made to a criminal whose sentence has not been completed; former criminals should not be paid for interviews about their crimes unless an important public interest is served; and no

payments should be made to individuals (convicted or not) for interviews about acts committed by them of a seriously anti-social nature, unless an important public interest is served.

178. Section 5.4 of the Code (Summer 1995 edition) covers demonstrations of criminal techniques in programmes dealing with criminal activities and provides:

"...there may be a conflict between the demands of accurate realism and the risk of unintentionally assisting the criminally inclined. Careful thought should be given and, where appropriate, advice taken from the police, before items are included which give detailed information about criminal methods and techniques...Similar caution is needed in the representation of police techniques of crime prevention and detection."

179. Section 5.5 deals with relations with the police and provides, inter alia, that:

"Where programme-makers are invited to film official police operations (e.g. a drugs raid) care should be taken to ensure that editorial control remains with the programme company and that any filming of members of the public is undertaken with due regard to the requirements for privacy."

180. Section 5.9 deals with drugs, drug addiction and their effect and provides that although they are valid subjects for television programmes, care should be taken to avoid any impression that drugs are a normal feature in British society.

Internal compliance procedures

181. The commentary on Section 3 of the ITC Code states that:

"(e) It is the responsibility of licensees to ensure that relevant employees and programme-makers, whether independent or on the staff, observe the provisions of the Code."

182. Central's Programme Compliance Procedures Guide (the Guide) dated February 1994 is the main compliance document which was in force at the relevant time. It was supplemented by further guidelines described below. It was distributed widely to programme-makers and executives.

183. The General Requirements section of the Guide states that Section 6 of the Broadcasting Act, which sets out general requirements as to the provision of licensed services and the ITC's responsibility for drawing up codes of practice, has to be complied with and Section 6(1) is set out in full.

184. Part 2 of the Guide provides a detailed summary of each section of the ITC Programme Code and describes the procedures to be followed in order to comply with each section and details who is responsible for compliance. For the most part each producer/director/news editor/editor and Independent Producer is responsible for compliance. He should refer any doubts to the Relevant Programme Controller, who in turn should refer any doubts to the Designated Compliance Officer. The Relevant Programme Controller is also under a duty to satisfy himself that the Programme and Broadcasting Standards Codes are complied with.

185. Part 3 deals with script and programme clearance: all programmes made for Central are to comply with these provisions. Programme-makers are required to

contact the Legal Department at the earliest opportunity to ensure their programmes satisfy compliance procedures.

186. For non-script based programmes such as documentaries which are arranged at the time of editing, the compliance procedure will generally take place at the editing stage and as follows:

"Compliance:

Stage 1: The producer, director, news editor, editor or Independent Producer shall satisfy him/herself that the programme complies with the Programme and Impartiality Codes and the Broadcasting Standards Code and shall consider potential legal issues.

Stage 2: The Stage 1 person shall show the film/send a VHS video (as appropriate) to

- (a) the Relevant Programme Controller for his/her comments, both artistically and in relation to the Programme and Impartiality Codes and the Broadcasting Standards Code;*
- (b) to the Legal Department for its comments.*

Stage 3: The Stage 1 person shall comply with the comments made from Stage 2."

187. It is acknowledged in Part 3 of the Guide that sometimes, before production of a specific item, it is possible to identify a matter which may impact on the Programme, Impartiality or Broadcasting Standards Codes or have legal implications. In such cases the compliance procedure is as follows:

"Compliance:

The producer, director, news editor, editor or Independent Producer shall consult in advance of production with:

- (a) the Relevant Programme Controller in relation to the Programme and Impartiality Codes and the Broadcasting Standards Code. The Relevant Programme Controller shall where required under Part 2 above, or otherwise where he/she has any concern, consult the Designated Compliance Officer;*
- (b) the Legal Department of legal matters."*

188. Part 4 of the Guide deals with written releases and Part 5 deals with secret recordings.

189. Compliance and legal affairs came under the overall responsibility of [REDACTED]

190. Responsibility for compliance as set out in a December 1994 Short Guide to Compliance prepared by [REDACTED] was assigned as follows:

- (1) the programme's producer held primary responsibility for achieving programme standards. In-house producers were to report to the relevant Programme Controller;

- (2) that Programme Controller was responsible for programme standards to the Managing Director of Carlton Broadcasting or Central Broadcasting, as appropriate;
- (3) ultimately, responsibility rested with Carlton Broadcasting and Central Broadcasting as licence holders;
- (4) At all stages, advice could and should, as necessary, be sought from [REDACTED] or his staff.

191. Page 3 of the guide explained that the ITC Programme Code contains eight matters on which senior executive approval must be obtained through written approval of the appropriate broadcast Managing Director, with copies to [REDACTED] (directed through the appropriate Controller, if possible). For example, approval had to be obtained for the filming of police operations and for any secret filming.

192. On 21 February 1995 [REDACTED] circulated widely a copy of the ITC Programme Code dated Summer 1995.

193. Carlton UK Productions also published and circulated widely a transmission guide dated 25 September 1995 entitled "Transmission Guide: Charlotte St". At page 3, under point 8 the Guide states:

"As a requirement under the Broadcasting Act, [REDACTED] must approve all completed programmes before transmission. Send a VHS to him in good time. He may also require a copy of the transmission script before transmission."

Other considerations

194. The National Union of Journalists Code of Conduct (the NUJ Code) has the following material provisions:

(i) Rule 1 places a journalist under a duty to maintain the "highest professional and ethical standards".

(ii) Rule 3 states:

"A journalist shall strive to ensure that the information he/she disseminates is fair and accurate, avoid the expression of comment and conjecture as established fact and falsification by distortion, selection or misrepresentation".

(iii) Rule 5 deals with the collection of information by journalists and states that information should only be obtained by "straightforward means" unless the use of "other means" can be justified only by "overriding considerations of the public interest".

195. However, good journalists are disciplined more by an innate sense of professional responsibility which reflects the precepts of the codes than by the letter of the codes themselves. Windlesham/Rampton provide a convenient motto:

"We start with the proposition that the freedom of the press and broadcast media is an integral part of a free society. The degree of freedom and the pressures upon it will always be contentious, but the principle should be beyond challenge that the public interest is advanced by publishing the facts and opinions without which a democratic electorate cannot make responsible judgments.

That said, the freedom to examine and report on issues of public importance carries with it a corresponding responsibility. Inaccurate or unfair reporting may cause injustice and distress to those who are its victims, while doing a disservice to society generally. The public may be misled into making false judgments, and the realisation that an apparently serious exposition of an issue is flawed in point of fairness or accuracy may undermine trust in the press or broadcasting as reliable media of communication". (para.12)

Findings

196. The Panel concludes that Carlton had appropriate procedures in place to observe the compliance requirements of the ITC Codes and that reasonable efforts were made to ensure that these requirements were widely known. It concludes also that they were in the main followed.

197. Permission for secret recordings during the mule's journeys was properly obtained in advance (Section 2.4 of the ITC Code). The filming of police operations was properly cleared in advance and efforts were made to respect the rights of members of the public who might appear in the film (Section 2.2(ii)). In this regard a mistake was made in respect of one individual but this arose despite careful checking with the police (paragraph 119 above).

198. Third party contributors appear to have been made aware of the format and subject of the programme. [REDACTED] confirms that he asked questions at the rough cut stage to ensure that the editing of the interviews had been fair and [REDACTED] were given an opportunity to view the programme prior to transmission (Section 3.8).

199. The programme was referred to [REDACTED] on several occasions during production and post production and the programme as a whole was referred to [REDACTED] and to [REDACTED] prior to transmission. During these referrals consideration was given to whether the filming of criminal activity and interviews with criminals was justified in the public interest (Section 5.1). Consideration was also given to whether the demonstration of criminal techniques could be justified and appropriate advice was sought from the police and customs before the programme was transmitted (Section 5.4).

200. During the referrals consideration was also given to whether the programme could be said to encourage drug taking or suggest that drugs are a normal feature of British society (Section 5.9).

201. During post production, and in referrals upwards to [REDACTED] consideration was given to whether the events portrayed in the programme were credible and in particular whether it

was credible for real criminals to allow themselves to be filmed in this way (Sections 3.1 and 5.4).

202. However, the procedures failed in a very important respect.

203. As analysed in paragraphs 156 to 163 above, those responsible for Carlton's procedures (primarily [REDACTED]) placed too much reliance upon the word of [REDACTED] overlooked warning signals, and were too readily satisfied with the answers given to their questions. More vigorous questioning about the motives of the drugs traffickers in appearing on television (including asking whether they had received any payment), about whether the mule got through customs and immigration at Heathrow, about the sequences of drugs swallowing, about the interview with the Cartel number 3 and about the journey to London could have revealed the fatal flaws in the programme. They should have read and absorbed the written statement of [REDACTED] prepared before the meeting in October 1996 and sought to ascertain whether the allusions contained in it, however oblique, to facts that were at odds with those portrayed in the programme created doubts about the authenticity of the programme.

204. Moreover, it was known, not only by [REDACTED] but also by [REDACTED] that the mule's journey to London had been filmed in two stages. Failure to disclose this fact to the viewing public showed insufficient regard for the truth.

205. This absence of rigour was inconsistent with the requirement to respect the truth as set out in Section 3.1 of the ITC Programme Code. [REDACTED]

[REDACTED] The difficulties inherent in producing a programme about criminal drugs trafficking in overseas locations calls for circumspection in the claims made.

PART FOUR
CONCLUSIONS AND RECOMMENDATIONS

206. The Panel draws the following broad conclusions from the investigation:

'The Connection'

- (i) Substantial claims in the programme were false and on these grounds alone the programme should not have been broadcast in the form it took. Other claims lacked a sufficient evidentiary basis. [REDACTED]
- (ii) In two cases, namely the two-part filming of the mule's journey and the location and circumstances of the interview with the Cartel number three, [REDACTED] was complicit in falsehoods. In all other cases the Panel is not prepared to conclude he was complicit in fakery. The Panel notes that [REDACTED] continues to defend the basic integrity of the programme and strenuously denies that any sequences in the film were faked [REDACTED]. On the balance of the evidence it has reviewed, the Panel believes that [REDACTED] was himself duped, at least in part, but also that he must have had doubts which he suppressed.
- (iii) A number of scenes in the programme were genuine and instructive.
- (iv) Carlton had procedures in place to ensure compliance with the ITC Programme Code. Generally these were followed but, in the context of the programme as a whole, the failure to disclose the two-part nature of the mule's journey to London amounted to a breach of Section 3.1 of the ITC Programme Code (respect for truth). While questioning took place about the credibility of the programme this was not pursued with sufficient vigour with the consequence that [REDACTED] while victims of [REDACTED] own shortcomings with respect to Section 3.1 of the Code, themselves failed to honour its requirements to the full.
- (v) However, no Carlton executives or supervisors intended a deception, knowingly accepted something they believed to be misleading or were asked to authorise any payments to criminals (although the Panel believes that some payments were in fact made to participants in the programme acting the part of criminals). The Panel is satisfied that had Carlton's executives and supervisors realised that vital parts of the programme were misleading, they would not have permitted it to be broadcast, or broadcast in the form it took.

'Inside Castro's Cuba'

The Panel saw no reason to conclude that the programme *'Inside Castro's Cuba'* contained false elements or misled the public, although some of the attendant publicity material exaggerated the programme's access to President Castro by referring to an exclusive interview rather than hitherto unseen footage: see Appendix 1.

207. The Panel also reflected on the general context of documentary programme making in which those mistakes were made. It noted, for instance, that programmes investigating the criminal underworld in far off countries are likely to rely to a much greater extent than programmes dealing with lawful activities in a domestic setting on the integrity and professionalism of the producer or director. This places greater responsibility upon supervisors and those responsible for compliance to exercise good judgment and care. If these are found wanting then formal compliance with procedures alone cannot be relied upon to identify rogue programmes and there is an increased risk that viewers may be misled. There is no substitute for the highest standards of professional journalism.

208. The programme made use of certain methods widely used in documentary film making. These included filming events out of chronological sequence and then assembling material to tell a coherent sequential story. These practices are at times justified by the belief that they are convenient ways of explaining the truth since, in reality, events often do not roll by the cameras in a way that allows them to be readily captured. It is not always easy to draw the line between convenience and reconstruction, or between filming actual occurrences and filming stage-managed events. Many famous photographs, interviews and occurrences throughout the history of news photography and documentaries have been nudged into shape by a producer, reporter, photographer or cameraman. In many cases these may have revealed rather than distorted the underlying truth.

209. Nevertheless there is an ever-present danger of crossing the line at the wrong point. In the case of *'The Connection'* the line was crossed in such a way on one obvious occasion - the presentation of the mule's two-part journey as continuous. The Panel formed the view that this programme's point of departure, which included filming events out of sequence - a method frequently practised in documentary making and innocent in itself - was the inadvertent entrance to a primrose path which, in this case, ended in falsehood. Documentary programme-makers need carefully to review some habits of their trade if television documentaries are to continue to be a service to and trusted by viewers. The high standing which such programmes enjoy in the eyes of the public can only be justified by high standards amongst the programme-makers.

210. The Panel also considered the suggestions made by *The Guardian* that the failings of this particular programme resulted in part from pressure from ITV for sensational stories likely to attract high viewing figures. The Panel found no evidence to support this criticism. The programme was commissioned for the Network First series which had a well-earned reputation for serious work and the time allowed and budget provided for the making of the programme were appropriate for a serious investigative piece.

211. In considering its recommendations to Carlton about measures to be taken to prevent a similar failing in the future the Panel noted that almost all the people intimately involved in *'The Connection'* either

It was therefore unnecessary for the Panel to make recommendations as to what (if any) action should be taken against those who bore the main responsibility for the programme.

212. The Panel throughout gave consideration to whether (and if so what) new procedures should be put in place. It considered ideas such as the introduction of more detailed layers of review. But it was conscious that these could easily become

bureaucratic and might stifle good programme-making, when the objective should be to sustain good programme-making. They could shift responsibility away from where it must lie: with the programme-maker and the executive producer. At the same time the Panel knows that it is not possible to rely wholly on individual judgments about whether certain kinds of programmes need special scrutiny before they are broadcast. In the case of *'The Connection'* the stipulated procedures were largely observed, including referral upwards but, in the event, ineffectively.

213. The Panel believes, however, that there should be arrangements which:

- (i) highlight, at the commissioning stage, certain programmes as likely to need extra scrutiny; and
- (ii) require such programmes to be subject, before they are broadcast, to the discipline of intensive journalistic challenge, by experienced people not directly connected with the making of the programme.

214. Such a "flashing light" mechanism should set in train a sequence of events designed to prevent programmes like *'The Connection'* being broadcast without adequate prior challenge.

215. To put this into effect, Carlton should introduce new internal guidance procedures which urge the need to continue to make bold programmes but at the same time re-emphasise that the highest standards of professionalism and accuracy are pre-eminent responsibilities of everyone involved in factual broadcasting. No programme of an investigative nature should be broadcast unless the executive producer has satisfied the head of factual programmes and Director of Programmes on these matters.

216. These new guidelines should embrace the following points:

- (i) At the commissioning stage any proposed documentary should be discussed between the executive producer, the head of factual programmes and the Director of Programmes to determine whether it is likely to involve special challenges or deal with sensitive subjects. If so then the programme should be highlighted as requiring a special scrutiny at all stages. This should include careful analysis of the initial thesis, close monitoring of the pre-production research, and detailed review during post-production and well before broadcast. If there is doubt at any early stage as to whether a particular programme is to require special scrutiny, those responsible should include it. At all times it should be emphasised that the process is designed to strengthen programmes by exposing them to experienced attention.
- (ii) It is not practical to define in advance every circumstance in which a flashing light would be appropriate. Certain features should, though, always alert the Director of Programmes to the need for special care. These include, by way of example:
 - (a) an intention to carry out secret filming;
 - (b) a likely reliance upon disguised interviewees;
 - (c) a likely drawing (to a significant extent) upon anonymous sources;

- (d) filming of criminal activity and/or interviews with criminals (where there is an obligation to scrutinise their motivation in agreeing to be filmed);
- (e) cases where payments to participants are contemplated (where there is an obligation to scrutinise and record any such payments).

Where any such feature is present in a programme which is to be filmed overseas the risks are increased because supervisors will necessarily be less familiar with the general context. In such cases the Director of Programmes should, from the outset, place such a programme in a special category and satisfy himself that the programme is being carefully monitored throughout its production. As part of this process of monitoring the Director of Programmes should indicate, in advance of filming, the extent to which he or the head of factual programmes will need to be consulted before particular scenes are shot. When this is not feasible, such scenes should be referred to the Director of Programmes as soon as possible after shooting and well before post-production.

- (iii) The special scrutiny at the post-production stage should take the form of a meeting or meetings chaired by the Director of Programmes. It should be attended by the executive or series producer, the producer, principal researchers, and the compliance officer. The Director of Programmes may involve a senior journalist in the company who is not associated with the programme. The meeting should view all relevant programme material including the text of any narration and will examine most closely:
 - (a) the provenance of source material
 - (b) the extent of any uncorroborated claims
 - (c) the means by which facts and pictures were obtained
 - (d) the extent to which the producer can convincingly stand behind the programme.
- (iv) Any changes in the structure or content of the programme, or any further inquiries called for as a result of their review must be made to the satisfaction of Director of Programmes or head of factual programmes before the programme may be broadcast.
- (v) The Director of Programmes must be personally satisfied that adequate resources of time and people needed for these arrangements are in place.
- (vi) At least once a year the Chief Executive of the company must arrange a review to establish that these procedures are being fully complied with and report the outcome to the Board.


217. These measures should establish that insistence on the highest standards comes from the top of the programme-making department and that producers and executive producers must expect to give a full justification of their work before it may be broadcast.

218. The Panel cannot stress too much that all the rules in the world will not make good programmes. Integrity, experience and talent are essential. When they come together in a good programme, they will be fully supported rather than undermined by the process of scrutiny.

APPENDIX 1

'INSIDE CASTRO'S CUBA'

1. On 9th June 1998 The Guardian published an allegation that another documentary made by Marc de Beaufort for the ITV Network First series also involved a fake. This programme, 'Inside Castro's Cuba', included scenes of President Fidel Castro reflecting on the condition of Cuba following the withdrawal of support from the USSR. The Guardian alleged that publicity material produced by Carlton in support of the programme claimed that these scenes were obtained in an exclusive interview with President Castro when, in fact, they were archive material supplied to the production team by an official Cuban Government cameraman.
2. The Panel approached its consideration of this matter by asking whether the programme or the publicity material was likely to mislead the viewer.
3. The programme itself made no claims about the means by which the scenes of President Castro were obtained or about their exclusivity. The substance of the material was clearly genuine. President Castro is seen and heard commenting on issues addressed by the programme with views contemporaneous with the theme of the programme. These scenes were relevant to the programme and, in themselves, would not have misled the viewer. They added to the value of the programme.
4. The Panel considered whether a viewer who had also read the publicity material or seen reports of it was likely to be misled in any meaningful way by supposing that the scenes in question formed part of an "exclusive interview". The publicity material in question included interviews and press releases, two on-air promotions and a promotional booklet for the Network First series which summarised future programmes, produced by The Guardian in association with ITV. Neither of the two on-air promotions refers to an exclusive interview and the longer of the two in fact refers, accurately, to "unseen footage of life [in Cuba]". In the promotional booklet de Beaufort described how the production team eventually secured an interview with President Castro. Underneath a photograph of the President a caption read "Cuba, 35 years after the Communist Revolution; featuring an exclusive interview with Fidel Castro".
5. Both [REDACTED] have explained that during the year spent in Cuba producing the film they had been trying to obtain an interview with Castro, who rarely submits to such a process. They eventually gained access to new footage of Castro [REDACTED].
[REDACTED] The footage used in the programme, was of a candid discussion between Castro and a group of overseas visitors [REDACTED].
[REDACTED] He provided the footage to them and authorised its use in the film. He assured them that it was for their sole use in the documentary and would not be shared by any other media organisations. [REDACTED] states it was "unique and timely and never seen before material".
[REDACTED]




7. Upon seeing the publicity material [REDACTED] wrote a letter to [REDACTED] on 24 January 1995 in which he disputed that Castro had given an exclusive interview to [REDACTED] or anyone else and made bitter criticisms of [REDACTED]. However, in the wake of its article [REDACTED] wrote to The Guardian on 2 June 1998 testifying to the integrity of the film. Taking both these letters and their timing into account the Panel concludes that the programme was not a fake and did not mislead viewers.

8. At worst, some of the attendant publicity for the programme exaggerated the role of the production team in securing the footage of President Castro. The material shown was *clearly genuine, broadly contemporaneous and relevant*. It could also reasonably be described as exclusive since it had not been seen before and, so far as the Panel is aware, was not shown elsewhere, at least in the UK, before being transmitted in the programme. Had all the publicity material used the phrase "unseen footage" (as in the on-air promotions) rather than "exclusive interview" no valid criticism could be levelled at it.

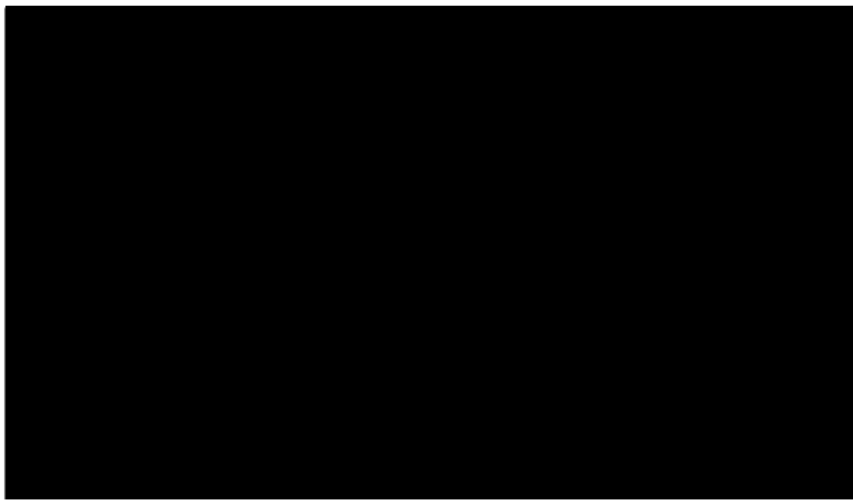
APPENDIX 2

SCOPE OF THE FACT-FINDING EXERCISE

 In relation to investigations carried out in Colombia and Spain, locally-based assistance was also obtained, as noted below.

2. The following people provided written statements and/or were interviewed by the fact-finding team (referring to the positions they held at the relevant time, unless otherwise stated):

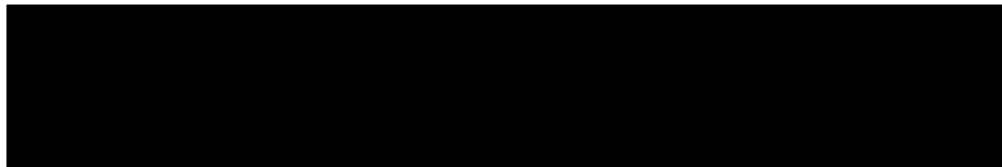
Programme-makers/production team



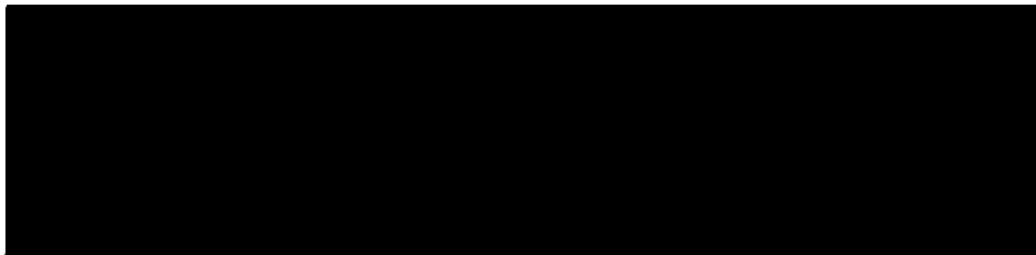
Carlton executives



Legal/compliance



Third party contributors to the programme



The ITV Network Centre

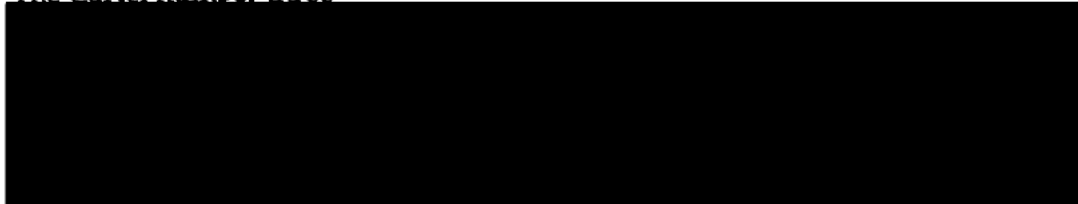


The Guardian



Others

The mule
The loader
The Cartel number three




3. Carlton's production files were also reviewed.
4. Video tape "rushes" of the interviews and other sequences for the programme, including material not used in the final version, were viewed.
5. A separate report was commissioned from Carlton's internal audit team into the programme budget and the recording of expenses. This was reviewed.
6. Additional information was requested and/or obtained from other sources including -
 - (i) The Guardian newspaper;
 - (ii) UK customs and immigration authorities;
 - (iii) the Colombian Embassy in London; and
 - (iv) the emigration authorities in Colombia.
7. A member of the fact-finding team conducted interviews with participants in the programme in Colombia and Spain and also spoke extensively with the police and intelligence authorities in Colombia, in each case with the assistance of locally-based Spanish-speaking journalists.

CARLTON



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14 December 1998



Independent Television Commission
33 Foley Street
London
W1P 7LB

Dear 

When we spoke the other day you invited me to reflect on any points that Carlton might like to put were the Commission minded to reach firm conclusions about *The Connection* at its meeting on 17th December, including conclusions about the application of any statutory sanctions. May I therefore offer the following observations for your consideration.

1. Carlton has treated the failings of this programme with the utmost seriousness. The Investigation Panel, and the supporting fact-finding exercise, went to great lengths to discover the facts and arrive at firm conclusions, which Carlton accepts.
2. As you know the Panel made a number of carefully considered recommendations as to how Carlton Television should improve its procedures in future. Carlton has adopted these in full and is implementing them with immediate effect.  has already conducted briefing meetings with  and emphasised the vital importance of observing both the spirit and the letter of the new guidelines. Leadership on these matters will come from the top.

3.


Carlton Television therefore now has strength and depth in factual programming at the top of its programme

making arm and is confident that it can achieve high and ambitious standards going forward.

4. The programme makers and the senior management at Carlton Television are of course extremely conscious of the impact of the very public nature of the interest and criticism which the original allegations against the programme and the publication of the Panel's report have aroused. They are in no doubt of the need to rise to the challenge of building a new and earned reputation for quality factual programme making in the future.
5. Immediately upon publication of the Panel's report Carlton Television contacted all the organisations and festivals which had awarded recognition and prizes to the programme and undertook to return all the honours.
6. At the same time Carlton Television also immediately contacted all overseas broadcasters to whom it had licensed the programme and offered to refund all licence fees. [REDACTED]

7. [REDACTED]

I hope that these points are helpful. Please let me know if you need any further information.

Yours sincerely,

[REDACTED]