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HOUSE OF COMMONS
LONDON SW1A 0AA

The Rt. Hon. Sir Patrick Mayhew MP
Secretary of State for Northern Ireland
Whitehall
London SW1A 2AZ
05.02.93

Dear *Secretary of State*

Re: The Casement Trials

I am writing to you in relation to the cases of Patrick Kane, Michael Timmons and Sean Kelly. These three men were convicted of aiding and abetting the murder of Corporals David Howes and Derek Wood in the events surrounding the funeral of Kevin Brady in West Belfast on March 19th, 1988. They were also convicted of grievous bodily harm (GBH) and false imprisonment. They were sentenced to life imprisonment, 10 years and 15 years respectively for these offenses.

As you are aware, public unease about many aspects of the trials arising from the horrendous deaths of Corporals Howe and Woods, has been growing. In many ways, the cases of Kane, Timmons and Kelly exemplify the concerns and represent the most stark example of what many claim to be the injustice of many of the convictions. A number of issues have been raised, which cause me to question whether these convictions are really safe.

Firstly, in the sixth of the trials, Mr Justice Carswell extended the law of Common Purpose. It has been argued that the doctrine of common purpose, which formed the basis of the convictions in this trial, represents an improper extension of the principle underlying this doctrine. There was no proof of any initial agreement of the accused with the ultimate killers, nor of their membership of any paramilitary organisation. Without such proof, the convictions of Kane, Timmons, and Kelly seem unsafe and unsatisfactory. Their conviction assumes that an unproven conspiracy existed, and thus seeks to shift the onus onto the defendant to prove themselves not guilty. This would be a clear violation of the presumption of Innocence, which is the basis of a fair trial.

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The convictions of Kane, Timmons, and Kelly, seem even more strange following Mr Justice McDermott's treatment of the taxi-driver Kevin McCaughley in another of the trials. McCaughley drove the taxi from Casement Park to Penny Lane, where the actual killings occurred. Mr Justice MacDermott conceded that McCaughley might not have realised what would happen to the soldiers. This contradicts Mr Justice Carswell's ruling that Kane, Timmons and Kelly must have known that murder was one possible outcome of their actions, and so found them guilty of that crime.

Even if it is conceded that Kane, Timmons and Kelly joined in the beating of the soldiers, which they deny, (Kelly and Kane claim not to have been in Casement Park), at the most they should have been found guilty of the crime which occurred in Casement Park, namely, Grievous Bodily Harm. If the soldiers had been beaten to death in Casement Park, then it is possible that a case could have been made against them for murder. This did not happen. The killings occurred at a different place, at a later time and at the hands of different people.

Furthermore, more recent decisions in the courts in other cases, show that even knowingly hi-jacking a taxi for a paramilitary organisation does not implicate the person accused of hi-jacking in any eventual murder carried out by the organisation.

Secondly, questions have been raised concerning the value and the validity of the use of hell-tele film. New technological techniques have been used on these images, but I believe that it is still very difficult to identify particular individuals. Identifications have been made from hell-tele film, based on general characteristics of the accused, such as hair, moustaches or beards, the way they walk, or even the colour of their socks (it is to be hoped none of the accused is an identical twin). Sean Kelly and Patrick Kane continue to deny that they were in Casement Park at all. Sean Kelly's conviction is now based almost entirely on his identification from the hell-tele film. This is surely of major concern.

Thirdly, in the first of the trials, Sir Brian Hutton LCJ, ruled on the question of secret witnesses. This ruling formed the basis for the rest of the trials. Media witnesses were allowed to give their testimony from behind a thick curtain, their identity being kept totally anonymous. The right of a defendant to confront his or her accuser is a universally recognised element in ensuring a fair trial. Most of the secret witnesses in the Casement trials have been media witnesses, verifying their film or photographs. The only secret witness in the trials whose evidence was disputed by the defence, was Witness E, he testified to hearing one of the soldiers cry out around the car in an English accent. None of the Judges has claimed to rely on Witness E's testimony, but it is not unreasonable to regard it as prejudicial to the defendants' case.



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Fourthly, the 1988 Criminal Evidence Order has had implications for a number of defendants in these trials. It had a particular relevance in the case of Sean Kelly. Mr Justice Carswell used the Order to take an adverse inference from Kelly's refusal to testify and so secure his conviction. This was despite, what Mr Justice Carswell himself admitted, was weak identification evidence. On Appeal the court found that the identification of Kelly was strong enough to need no inferences by way of the Criminal Evidence Order. This inconsistency is disturbing. Without the Criminal Evidence Order, the weak identification evidence, at first instance, may not have been sufficient to convict Kelly (see Justice Carswell's comments). It would appear that on appeal the court was concerned to strengthen, rather than to rectify, an unsafe conviction.

Finally, the Judge in these trials seem to have taken an extremely inconsistent approach to the surrounding circumstances within which the killing of the Corporals took place. From the perception of the local community, six needless deaths had occurred in the previous weeks, following the events in the City Cemetery on the previous Wednesday, there was an understandable fear that more deaths might ensue. The atmosphere on the day, according to several of those present, was tense, angry and despairing. In these three cases, the Judge was, in my view, unreasonably dismissive of the chaos, confusion and hysteria following the blundering upon the funeral cortege of Corporals Howes and Wood.

Taken together I consider that these issues represent the new evidence, or other considerations of substance, which you are required to have in order to refer cases back to the Court of Appeal. I am convinced that the Court of Appeal should re-examine the convictions of those who have been imprisoned under the general heading of the 'Casement Trials'. I am therefore requesting that in the interests of justice, you should use your prerogative to refer these cases back to the Court of Appeal for reexamination, on the grounds of law and fact.

Yours sincerely,

Kevin McNamara MP

Shadow Secretary of State for Northern Ireland



THE CASEMENT TRIAL- BRIEFING DOCUMENT

A - GENERAL BACKGROUND TO THE CORPORALS KILLINGS.

THE EVENTS OF 19th MARCH 1988, WERE AMONG THE MOST SHOCKING IN NORTHERN IRELAND'S RECENT HISTORY. IN THE SEVERAL WEEKS BEFORE THE CORPORALS' KILLINGS, THERE WAS ALOT OF ANGER, RESENTMENT AND FEAR WITHIN THE NATIONALIST COMMUNITY IN NORTHERN IRELAND. ON 6th MARCH 1988, THREE IRA MEMBERS WERE SHOT DEAD IN GIBRALTER BY MEMBERS OF AN UNDERCOVER UNIT OF THE BRITISH ARMY.

ON 16th MARCH 1988, AT THE FUNERAL OF "THE GIBRALTER THREE", AT THE MILLTOWN CEMETARY, WEST BELFAST, A LOYALIST PARAMILITARY NAMED MICHAEL STONE APPEARED AND SHOT WILDLY INTO THE FUNERAL CROWD. THREE PEOPLE WERE KILLED. ONE OF WHOM WAS KEVIN BRADY.

HIS FUNERAL WAS HELD THREE DAY AFTER HIS DEATH, ON 19th MARCH 1988. AS THE FUNERAL CORTEGE PROCEEDED DOWN ANDERSTOWN ROAD TOWARDS MILLTOWN CEMETARY, TWO OFF-DUTY, PLAIN CLOTHED BRITISH SOLDIERS, CORPORAL DAVID HOWES AND CORPORAL DEREK WOOD, APPEARED DRIVING AT SPEED IN A SILVER PASSAT TOWARDS THE FRONT OF THE CORTEGE.

IN THE LIGHT OF WHAT HAD OCCURRED THREE DAYS PREVIOUS, MOST PEOPLE'S INSTINCTIVE REACTION WAS THAT ANOTHER LOYALIST ATTACK WAS UNDERWAY. THE CROWD SURROUNDED THE CAR AND STARTED TO BEAT ON IT. THE CROWD DREW BACK MOMENTARILY WHEN THE DRIVER EMERGED THROUGH HIS WINDOW WITH A GUN, BUT QUICKLY RETURNED AND BEGAN TO BRUTALLY BEAT THE MEN. WITHIN TWO OR THREE MINUTES THE CORPORALS WERE DRAGGED INTO NEARBY CASEMENT PARK. INSIDE THE PARK, WITH THE GATES SHUT, THE SOLDIERS WERE BEATEN FURTHER AND STRIPPED OF MOST OF THEIR CLOTHES AS THEY WERE BEING SEARCHED. AT THIS STAGE, A GROUP OF ABOUT 20 PEOPLE WERE INVOLVED.

AGAIN, WITHIN MINUTES OF BEING TAKEN INTO CASEMENT PARK, THE TWO MEN WERE THROWN OVER A SIDE WALL AND INTO A WAITING TAXI, THEN TAKEN TO A DESERTED LOT ON PENNY LANE. ONCE THE TAXI REACHED PENNY LANE THE MEN - (IT SEEMED THAT 5 MEN WERE IN THE BACK SEAT WITH THE SOLDIERS AND 1 MAN IN THE FRONT WITH THE DRIVER) - ALL GOT OUT OF THE TAXI. THE SOLDIERS TRIED TO RUN AWAY, BUT WERE GRABBED AND BEATEN AGAIN. TWO MEN FROM THE TAXI LEFT THE SCENE AND RETURNED



WITH TWO OTHER MEN, ONE OF WHOM HAD A GUN. THE SOLDIERS WERE POINTED OUT TO HIM AND HE SHOT THEM REPEATEDLY. HE THEN GAVE THE GUN TO THE OTHER NEWCOMER WHO WENT OVER TO THE PROSTRATE FIGURES AND SHOT THEM AGAIN. THE TWO GUNMEN WORE JACKETS WITH HOODS.

THE ENTIRE EVENT LASTED ABOUT 16 MINUTES, WAS FILMED FROM AN ARMY HELICOPTER WHICH WAS OBSERVING THE FUNERAL (THE HELI-TELE). THE MEDIA TURNED OUT AT THE FUNERAL IN GREAT NUMBERS, AND TOOK VIDEOS AND PHOTOGRAPHS UNTIL THE MEN WERE DRAGGED INTO CASEMENT PARK. AT THIS POINT THEY WERE PREVENTED FROM CONTINUING BY MEMBERS OF THE CROWD. MOST OF THE ARRESTS HAVE BEEN BASED ON IDENTIFICATIONS FROM THIS VISUAL EVIDENCE.

THUS FAR SOME 41 MEN HAVE BEEN CHARGED WITH OFFENCES ARISING OUT OF THE INCIDENT. 21 MEN WERE CONVICTED OF OFFENCES VARYING FROM MURDER TO PERVERTING THE COURSE OF JUSTICE AND 20 HAVE BEEN CLEARED (SEE APPENDIX A). THE TWO MEN WHO ACTUALLY KILLED THE CORPORALS HAVE NOT BEEN APPREHENDED.

B - LEGAL ISSUES THAT HAVE ARISEN IN THE 10 TRIALS.

1. APPLICATION OF THE LAW .

1. THE EXTENSION OF THE LAW OF COMMON PURPOSE.

THIS OCCURRED DURING THE 6th OF THE TRIALS, INVOLVING SEAN KELLY, MICHAEL TIMMONS, AND PATRICK KANE. THEY WERE CONVICTED OF MURDER, EVEN THOUGH THEY ONLY PLAYED A MINOR ROLE. NONE WERE FOUND TO HAVE BEEN INVOLVED BEYOND CASEMENT PARK; KELLY AND KANE DENIED EVEN BEING INSIDE THE PARK AT ALL. THEIR CONVICTIONS RELIED ON THE JUDGE - MR JUSTICE CARSWELL - AND HIS INTERPRBTATION OF THE LAW OF COMMON PURPOSE.

THE LAW STATES THAT:

- a. THAT THE DEFENDANT MIGHT HAVE GIVEN ASSISTANCE TO A JOINT ENTERPRISE, THE PURPOSE OF WHICH WAS TO COMMIT MURDER; OR
- b. IF THE PURPOSE OF THE JOINT ENTERPRISE WAS NOT TO COMMIT



MURDER, THE DEFENDANT MIGHT HAVE FORESEEN THAT ONE OF HIS CO-PLANNERS COULD COMMIT MURDER WHILE PURSUING THEIR COMMON PURPOSE.

CARSWELL FOUND KANE, TIMMONS, AND KELLY TO HAVE BEEN IN CASEMENT PARK AND TO HAVE AIDED IN THE GBH OF THE SOLDIERS. HE FURTHER REASONED THAT THEY MUST HAVE CONTEMPLATED THE SOLDIERS' EVENTUAL MURDER AS ONE POSSIBLE OUTCOME OF THEIR JOINT ENTERPRISE. SINCE MURDER DID RESULT, THE JUDGE FOUND THEM GUILTY OF THAT CRIME. THEY EACH RECEIVED A MANDATORY LIFE SENTENCE.

CARSWELL'S APPLICATION OF THE LAW CAN BE SAID TO BE IMPROPER BECAUSE NONE OF THE ACCUSED WERE EVEN ALLEGED TO HAVE CONSPIRED, EXPRESSLY OR IMPLIEDLY, WITH THE ACTUAL KILLERS - NOR WERE THEY PART OF THE GROUP WHO TOOK THE CORPORALS TO PENNY LANE IN THE TAXI.

IN ALL BUT ONE OF THE CASES QUOTED BY CARSWELL IN SUPPORT OF HIS VIEW, THE ACCUSED HAD FORMED A PRIOR CRIMINAL PLAN WITH THE PERSON WHO ACTUALLY KILLED SOMEONE. FURTHERMORE, EACH ACCUSED IN THE CASES REFERRED TO HAD CONTEMPLATED THE KILLING BEFORE EMBARKED ON THE CRIMINAL COMMON PURPOSE.

II. SELF DEFENCE AND MITIGATING FACTORS.

IN GENERAL, IT IS ARGUED THAT THE DEFENDANTS WERE DEFENDING THEMSELVES FROM WHAT WIDELY APPEARED TO BE ANOTHER INDISCRIMINATE ATTACK BY LOYALIST PARAMILITARY - ALONG THE LINES OF THE ATTACK ON THE FUNERAL OF THE 'GIBRALTAR 3', 3 DAYS EARLIER.

THE LAW OF SELF DEFENCE WAS NOT DISPUTED AT THE TRIALS. THE PROSECUTION CORRECTLY POINTED OUT THAT ONCE THE MEN WERE KNOWN TO BE HELPLESS AND SUBDUED, SELF DEFENCE NO LONGER APPLIED.

SEVERAL WERE ACQUITTED ON SELF DEFENCE, BUT BY THE TIME THE SOLDIERS WERE DRAGGED INTO CASEMENT PARK - IT IS REASONABLE TO ARGUE THAT IT MUST HAVE BEEN OBVIOUS THAT THEY WERE NO LONGER A THREAT TO ANYONE, BUT THE SITUATION INITIALLY SURROUNDING THE CAR WAS MORE VAGUE.

ALSO, THE FACT OF THE ATTACK BY MICHAEL STONE 3 DAYS EARLIER, HAD REASONABLY RESULTED IN THE MOURNERS BEING NERVOUS, FRIGHTENED AND AGITATED WHEN FIRST THE CAR



APPEARED. IN THE MURDER CONVICTIONS OF KANE, TIMMONS AND KELLY, CARSWELL SEEMED TO GIVE NO WEIGHT TO THE DEFENCE ASSERTIONS THAT THE CROWD WERE IN THE MIDST OF A FRENZIED REACTION TO THE HORRIFIC INCIDENT 3 DAYS EARLIER.

BUT, IN ANOTHER OF THE TRIALS, MR JUSTICE MacDERMOTT SHOWED CONSIDERABLE EMPATHY FOR KEVIN McCAUGHLEY, THE MAN WHO DROVE THE TAXI FROM CASEMENT PARK TO PENNY LANE. McCAUGHLEY EVEN PUNCHED AND KICKED ONE OF THE SOLDIERS BEFORE RUNNING OFF. MacDERMOTT ADMITTED THAT McCAUGHLEY MIGHT NOT OF KNOWN THAT HE WAS EFFECTIVELY AIDING IN THE SOLDIERS KILLING.

III. THE USE OF FILM AND VIDEO EVIDENCE FOR IDENTIFICATION.

THESE WERE AMONG THE FIRST TRIALS TO USE FILM AND VIDEO EVIDENCE AS AN EFFECTIVE CORE OF A CASE AGAINST ACCUSED IN THE U.K.

THE EVIDENCE CONSISTED OF:

- a. FILM TAKEN BY THE ARMY HELICOPTER (HELI-TELE); AND
- b. VIDEO'S FROM THE MEDIA PEOPLE COVERING THE EVENT.

THE MEDIA FOOTAGE WAS CLEAR, BUT IT ENDS WITH THE CORPORALS BEING TAKEN INTO CASEMENT PARK. THE HELI-TELE FILM IS NOT CLEAR ENOUGH TO DISTINGUISH PEOPLE'S FACES, BUT COVER THE WHOLE FUNERAL, INCLUDING THE GET AWAY OF THE ASSASSINS.

THE ACCUSED DID NOT GENERALLY CONTEST THE IDENTIFICATIONS FROM THE MEDIA VIDEO'S, BUT THERE HAS BEEN UPROAR IN RELATION TO THE I.D.'S MADE FROM THE HELI-TELE. THESE ARE BASED ON GENERAL CHARACTERISTICS OF THE ACCUSED. THAT INCLUDED CLOTHING, COLOUR OF HAIR, MOUSTACHES OR BEARDS, THE WAY THEY WALK, EVEN THE COLOUR OF THEIR SOCKS!

DEFENCE COUNSEL PROTESTED AGAINST THE USE OF THE HELI-TELE ALTOGETHER BECAUSE OF THEIR POOR QUALITY etc. SOME OF THE JUDGES ADMITTED THAT IT WAS NOT CONCLUSIVE, BUT COMBINED THE I.D.'S WITH OTHER EVIDENCE TO OBTAIN THEIR CONVICTIONS.

THERE WERE MANY COMPLAINTS OVER RESTRICTIONS PLACED ON THE DEFENCE COUNSEL. DEFENCE CLAIMED THAT THE PROSECUTION HAD ACCESS TO MORE SOPHISTICATED VIDEO AND SCREENING EQUIPMENT, WHILE THEY HAD TO OPERATE ON A SMALL BUDGET. ONE DEFENCE SOLICITOR ATTEMPTED TO GET THE FILM AND VIDEO PROCESSED TO SHOW HOW VIDEO CAN BE CHANGED TO



ALTER PEOPLE'S APPEARANCE. IN THE END, HOWEVER, RESOURCES PREVENTED HIM FROM DOING THIS. THE QUESTION OF EQUALITY OF ARMS SEEMS TO HAVE PARTICULAR RELEVANCE HERE.

2. ASPECTS OF THE CRIMINAL PROCESS.

I. DIPLOCK COURTS.

IN DIPLOCK COURTS, THE JUDGE PLAYS THE ROLE OF BOTH JUDGE AND JURY. THE REASON FOR THEIR SETTING UP WAS TO 'OVERCOME THE PERVERSE CASE OUTCOMES CAUSED BY JURIES ALLEGEDLY SUBJECT TO INTENSE BIAS OR INTIMIDATION.'

THE CASEMENT ACCUSED WERE ALL TRIED IN DIPLOCK COURTS. IT APPEARS THAT FAR FROM REMOVING THE CHANCE OF THE PERVERSION OF JUSTICE SUPPOSEDLY CAUSED BY JURY TRIALS, THE GLARING INCONSISTENCIES AMONG THE VERDICTS, SHOW THAT THE DECISIONS OF THE JUDGES CAN BE JUST AS PERVERSE.

AS MENTIONED BEFORE, IN THE 6th CASEMENT TRIAL, MR JUSTICE CARSWELL, WITHOUT ACKNOWLEDGING IT, EXTENDED THE LAW ON COMMON PURPOSE. MR. JUSTICE MacDERMOTT SAT ON THE APPEAL, AND DEFERRED TO HIS BROTHER CARSWELL'S CONVICTIONS. IMMEDIATELY AFTER THAT APPEAL JUDGEMENT WAS GIVEN, MacDERMOTT CAME OUT WITH HIS OWN JUDGEMENT REGARDING McCAUGHLEY. MONTHS HAD ELAPSED SINCE BOTH THE KANE, TIMMONS AND KELLY, AND THE McCAUGHLEY TRIAL, BUT MacDERMOTT WAS CAREFUL NOT TO DELIVER HIS DECISION ON McCAGHLEY UNTIL THE APPEAL DECISION HAD BEEN GIVEN.

II. METHODS OF OBTAINING AND USING CONFESSION EVIDENCE.

PATRICK KANE MADE SEVERAL INCRIMINATING ADMISSIONS DURING INTERROGATION. HE ALLEGED HE DID SO BECAUSE HE FEARED THE INTERVIEWING DETECTIVES. MICHAEL TIMMONS ALSO MADE INCRIMINATING STATEMENTS WHICH HE LATER RETRACTED. HE CLAIMED THAT THE DETECTIVES TOLD HIM IT WAS THE ONLY WAY HE COULD GET BAIL. IN BOTH OF THESE CASES, CONFESSIONAL EVIDENCE WAS RELIED UPON FOR THE CONVICTIONS.

THE MAJORITY OF THE CASES AGAINST THE CASEMENT ACCUSED INVOLVE CONFESSIONAL EVIDENCE. HOWEVER, NONE OF THE COMPLAINTS ARISING FROM THESE CONFESSIONS ALLEGE PHYSICAL ABUSE. IN THESE CASES OTHER VISUAL EVIDENCE EXISTED AND THE ACCUSED TYPICALLY IN THEIR CONFESSION ATTEMPTED TO EXPLAIN WHAT THEY WERE DOING WHEN THE VISUAL EVIDENCE WAS



TAKEN. EVEN IF THE ACCUSED SAID NOTHING, THE VISUAL EVIDENCE WAS ENOUGH TO CREATE A PRIMA FACIE CASE AGAINST THEM.

THIS IS IN CONTRAST TO MANY OTHER CASES IN WHICH PHYSICAL OR PSYCHOLOGICAL ILL-TREATMENT IS A GREATER THREAT, THE EXISTENCE OF OTHER EVIDENCE IN THE CASES OF THE CASEMENT ACCUSED TEND TO SUPPORT THE VIEW THAT THE OBTAINING AND USE BY THE POLICE AND PROSECUTION OF EVIDENCE OTHER THAN CONFESSIONS, MAKES THE RISK OF ILL-TREATMENT WHILE UNDER POLICE CUSTODY LESS OF A PROBLEM.

III. THE USE OF SECRET WITNESSES.

SIR BRIAN HUTTON LCJ, RULED ON THE QUESTION OF SECRET WITNESSES DURING THE 1st TRIAL, AND THIS FORMED THE BASIS FOR THE REST OF THE TRIALS. MEDIA WITNESSES WERE ALLOWED TO GIVE TESTIMONY FROM BEHIND A THICK CURTAIN, THEIR IDENTITY BEING KEPT TOTALLY ANONYMOUS. THE ACCUSED, AND HIS DEFENCE LAWYERS NEVER LEARNT THE IDENTITY OF THE WITNESSES.

THE DEFENCE ONLY OBJECTED TO HIDING THE WITNESSES' FACE FROM THE ACCUSED. THEIR ARGUMENT STRESSED THAT DENYING THE ACCUSED EXPOSURE TO THE WITNESS MIGHT PREVENT THE ACCUSED FROM REALISING THAT THE WITNESS HAD SEEN HIM IN A DIFFERENT PLACE FROM THAT ALLEGED BY THE POLICE. LIKEWISE, THE WITNESS MAY REALISE THAT HE HAD SEEN THE ACCUSED SOMEWHERE OTHER THAN ALLEGED. ALSO, BEYOND THESE ARGUMENTS, THIS CONTRADICTS THE ACCUSED AND HIS SOLICITOR'S FUNDAMENTAL RIGHT TO CONFRONT ONE'S ACCUSER.

MOST OF THE SECRET WITNESSES IN THE CASEMENT TRIALS HAVE BEEN MEDIA PEOPLE VERIFYING THEIR FILM OR PHOTOGRAPHS. THE ONLY SECRET WITNESS IN THE CASEMENT TRIALS, WHOSE EVIDENCE WAS DISPUTED BY THE DEFENCE, HAS BEEN WITNESS E. HE TESTIFIED TO HEARING ONE OF THE SOLDIERS CRY OUT AROUND THE CAR IN ENGLISH ACCENTS, AND HEARD A LOCAL MAN SHOUT THAT THEY WERE SAS. THIS IS, OF COURSE, VERY SIGNIFICANT WERE IT TO BE TRUE, AS IT WOULD MEAN THAT SELF DEFENCE AGAINST ANOTHER MICHAEL STONE-TYPE ATTACK WOULD BE INAPPLICABLE.

NONE OF THE JUDGES HAS CLAIMED TO RELY ON WITNESS E'S TESTIMONY IN HIS OPINION, BUT THE TESTIMONY WAS HEARD AND IT IS NOT UNREASONABLE TO REGARD IT AS PREJUDICIAL TO THE DEFENDANTS' CASES.



IV. THE IMITATION OF THE RIGHT TO SILENCE.

FROM THE CRIMINAL EVIDENCE (N.I.) ORDER 1988. SEAN KELLY REFUSED TO GIVE MORE THAN ONE PARTICULAR STATEMENT TO HIS INTERROGATORS, AND REFUSED TO TESTIFY IN COURT. MR JUSTICE CARSWELL DECIDED THAT AN ADVERSE INFERENCE COULD BE DRAWN FROM THIS BEHAVIOUR ACCORDING TO THE CRIMINAL EVIDENCE ACT ABOVE. HE USED THIS ADVERSE INFERENCE TO SUPPORT WHAT HE ACKNOWLEDGED TO BE WEAK I.D. EVIDENCE AND FORM A CONVICTION. ON APPEAL, THE JUSTICES MAINTAINED THE CONVICTION AGAINST KELLY, BUT DECIDED THAT THE I.D. EVIDENCE WAS STRONG ENOUGH TO CONVICT, WITHOUT THE NEED FOR ADVERSE INFERENCE. SO, MR JUSTICE CARSWELL'S ADMISSION THAT THE I.D. EVIDENCE WAS WEAK LEADS ONE TO QUESTION THE APPEAL JUSTICES' DECISION THAT THE I.D. EVIDENCE WAS BEYOND DOUBT.

ON IT'S OWN, THE CRIMINAL EVIDENCE ACT WOULD BE OF SIGNIFICANT CONCERN. BUT COMING, AS IT DOES ON TOP OF MANY OTHER INCURSIONS INTO HUMAN RIGHTS AND CIVIL LIBERTIES ENJOYED IN THE OTHER JURISDICTIONS, THE ATTACK ON A SUSPECT'S RIGHT TO REMAIN SILENT GIVES CAUSE FOR REAL DOUBTS THAT THE SYSTEM IS CAPABLE OF INDEPENDENTLY DISPENSING JUSTICE. THE RECENT HELSINKI WATCH REPORT CONCLUDES :

" Helsinki watch believes that the Criminal Evidence Order unjustifiably erodes the right to silence. There is no persuasive evidence that limits on this important right are warranted by considerations of law enforcement or public safety. If the procedures regarding pre-trial interrogation were changed to permit full and fair opportunity for consultation with counsel, comment on the assertion of the right to silence might be appropriate in some circumstances. Short of such a major change in current procedure, the right to silence should be safeguarded."

UNDOUBTEDLY, THE FORCE OF POSSIBLE ADVERSE INFERENCES BEING DRAWN AGAINST THE ACCUSED WOULD ENCOURAGE A PERSON TO TALK WHERE S/HE OTHERWISE MIGHT NOT. .

V. DISCRIMINATORY ADMINISTRATION OF THE PROSECUTION SYSTEM.

MUCH OF WHAT HAS CAUSED CONCERN OVER THE CASEMENT TRIALS HAS BEEN THE LARGE SCALE OF ARRESTS AND PROSECUTIONS. ADDITIONALLY, THE DPP HAS EXPENDED AN UNUSUALLY VAST AMOUNT OF RESOURCES ON THE INVESTIGATION.



THUS FAR, OVER 200 PEOPLE FROM WEST BELFAST HAVE BEEN ARRESTED AND HELD IN CONNECTION WITH THE KILLINGS, 41 MEN HAVE BEEN CHARGED AND THERE HAS BEEN NO INDICATION THAT THE INVESTIGATION IS CLOSED.

SOME ESTIMATES SUGGEST THAT PROSECUTIONS IN THE CASEMENT TRIALS HAVE INVOLVED OVER 100,000 POUNDS IN MEDIA EQUIPMENT ALONE. 1500 RUC MEN HAVE BEEN ORGANISED TO VIEW THE VISUAL EVIDENCE. ADDITIONALLY, 39 OFFICERS HAVE BEEN ASSIGNED FULL TIME TO THE CASEMENT INVESTIGATIONS. NORMALLY 3 OR 4 OFFICERS WOULD INVESTIGATE A MURDER.

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McNAMARA CALLS FOR REEXAMINATION OF CASEMENT CONVICTIONS.

KEVIN McNAMARA MP, SHADOW SECRETARY OF STATE FOR NORTHERN IRELAND, HAS SENT A LETTER TO SECRETARY OF STATE FOR NORTHERN IRELAND, SIR PATRICK MAYHEW REQUESTING HIM TO US HIS PREROGATIVE TO REFER THE CASES OF PATRICK KANE, MICHAEL TIMMONS AND SEAN KELLY BACK TO THE COURT OF APPEAL FOR REEXAMINATION.

MR McNAMARA EXPRESSES HIS CONCERN OVER MR. JUSTICE CARSWELLS' IMPROPER EXTENSION OF THE LAW OF COMMON PURPOSE, DURING THE TRIAL OF KANE, TIMMONS AND KELLY.

" IF THE SOLDIERS HAD BEEN BEATEN TO DEATH IN CASEMENT PARK, THEN IT IS POSSIBLE THAT A CASE COULD HAVE BEEN MADE AGAINST THEM FOR MURDER. THIS DID NOT HAPPEN. THE KILLINGS OCCURRED AT A DIFFERENT PLACE, AT A LATER TIME AND AT THE HANDS OF DIFFERENT PEOPLE. "

MR McNAMARA WRITES THAT HE IS CONVINCED THAT THE COURT OF APPEAL SHOULD REEXAMINE THE CONVICTIONS OF THOSE WHO HAVE BEEN IMPRISONED UNDER THE GENERAL HEADING OF THE 'CASEMENT TRIALS', " IN THE INTERESTS OF JUSTICE."