



An Chartlann Náisiúnta
National Archives

Reference Code: 2021/47/85

Creator(s): Department of Foreign Affairs

Accession Conditions: Open

Copyright: National Archives, Ireland.
May only be reproduced with
the written permission of the
Director of the National
Archives.

**LEGAL DEFENCE
IN NORTHERN IRELAND**

Following the murder of Patrick Finucane on
12 February 1989

REPORT OF AN INTERNATIONAL
DELEGATION OF LAWYERS

SUMMER 1989

P R E F A C E

On 12 February 1989 a leading Belfast solicitor, Patrick Finucane, was murdered. A loyalist paramilitary organisation claimed responsibility for the assassination. Subsequently, an international delegation of lawyers visited Belfast to show support for Northern Ireland's legal profession, to investigate the issues arising from Patrick Finucane's murder and to make recommendations. This is the report of the international delegation.

CONTACT ADDRESS: National Council for Civil Liberties (Liberty)
21, Tabard Street,
London SE1 4LA
U.K.

Telephone: 01-403.3888

THE DELEGATION

The delegation represented the following:-

The Bar of Paris, France.
The International Federation of Human Rights.
The International Association of Democratic Lawyers.
The Haldane Society of Socialist Lawyers, London.
The National Council for Civil Liberties, London.

The members of the delegation were:-

Georges-Henri Beauthier. Avocat, Member of the Bar of Brussels
and Representative of the International
Federation of Human Rights.

Geoffrey Bindman. Solicitor and senior partner of
Bindman & Partners, London.

Jean-Yves Carlier. Avocat and Representative of the
International Association of
Democratic Lawyers.

Paul Hunt. Solicitor, Acting General Secretary
of the National Council for Civil
Liberties, Deputy General Secretary
of the International Federation of
Human Rights.

Yves Laurin. Avocat and Member of the Council
of the Paris Bar.

LEGAL DEFENCE IN NORTHERN IRELAND

CONTENTS

	PAGE
Introduction	1
Historical Background	1
Legal Background	2
Emergency Legislation	2
Prevention of Terrorism	3
Arrest	4
Length of Detention	4
Interrogation	4
Confessions	5
Right of Silence	5
Access to a Lawyer	6
Conclusions	8
Civil Liberty and Criminal Defence Lawyers	8
Smears and Innuendos	10
Stalker	12
Douglas Hogg	14
'Dirty Tricks'	16
Patrick Finucane	17
The Consequences	18
Summary and Conclusions	19
Recommendations	21
References	24

LEGAL DEFENCE IN NORTHERN IRELAND

FOLLOWING THE MURDER OF PATRICK FINUCANE ON
12 FEBRUARY 1989.

INTRODUCTION

1. The role of government in maintaining the rule of law is unusually difficult in Northern Ireland where paramilitary organisations, often with significant support among sections of the population, carry out frequent acts of violence against both civilian and military targets.
2. Nevertheless it is vital for the future of the people of Northern Ireland that international standards of human rights are observed and that, whatever provocation they may be called upon to endure, the police and military forces of the state fulfil the requirements of the law in carrying out their duties. The breakdown of law would inevitably destroy the prospect of reconciliation and peace which can only develop within a framework of legality.
3. It is a fundamental condition of the rule of law that those accused of crime are given access to skilled and independent legal representation within an independent judicial system.
4. The purpose of our delegation was to examine what pressures are felt by solicitors and barristers offering legal representation in Northern Ireland to those accused of sectarian violence and related crimes; we sought, in particular, to assess the effect on these lawyers of the assassination of a leading Belfast solicitor, Patrick Finucane, on 12 February 1989.
5. The members of the delegation were fortunate in meeting several local solicitors and barristers in regular practice before the criminal courts. They also met the President and other officers of the Northern Ireland Law Society, a representative of the Bar, the Lord Chief Justice of Northern Ireland, senior officers of the Royal Ulster Constabulary(RUC), and the head of the Law and Order Division of the Northern Ireland Office.

HISTORICAL BACKGROUND

6. Following partition in 1920, Ireland was divided into Northern Ireland and the Irish Free State, now the Republic of Ireland. For fifty years the Northern Ireland Government and Parliament at Stormont exercised jurisdiction over most internal functions in Northern Ireland; its other affairs, such as taxation and defence, remained under the control of the United Kingdom Parliament at Westminster, to which Northern Ireland members were elected as they are today. Stormont, dominated by the Protestant majority, was responsible for various forms of discrimination against the minority Catholic community.

In 1968 and 1969 a civil rights campaign was mounted in Northern Ireland which involved large street demonstrations, some of which resulted in violence. The focal point of the demonstrations was the criticism by the minority community of the discrimination organised or tolerated by Stormont.

In response to escalating violence, the British army was deployed in Northern Ireland in 1969 and it has remained there ever since.

In 1972 a system of direct rule was introduced: Stormont was prorogued (and later abolished) and executive authority passed to Westminster. Direct rule was introduced as a short-term measure but it has continued with the exception of a few months in 1974. Consequently in Northern Ireland today legislation is by statutory instrument, local government enjoys few powers and normal political processes are in abeyance.

Political violence rose to a peak in 1972 when there were some 472 fatalities. Paramilitaries, at both ends of the political spectrum, were increasingly active. From 1969 until the end of 1986, 2,525 individuals lost their lives in Northern Ireland as the result of political violence; this figure includes over 780 members of the security forces. The security forces in Northern Ireland have been responsible for the deaths of over 270 individuals, at least 155 of whom were 'civilians' (defined by the Irish Information Partnership as those "without manifest connection with paramilitaries, security forces, police or prison services".)

LEGAL BACKGROUND

7. Emergency Legislation

Emergency legislation has been in force in Northern Ireland ever since its creation in 1921. The Restoration of Order in Ireland Act (1920) was replaced by the Civil Authorities (Special Powers) Act (Northern Ireland) in 1922. This Special Powers Act was intended as a temporary measure, but after a series of renewals it was made permanent in 1933. A Commission of Inquiry established by the National Council for Civil Liberties in 1936 to consider the Special Powers Act concluded: "Through the use of Special Powers individual liberty is no longer protected by law, but is at the arbitrary disposition of the executive. This abrogation of the rule of law has been so practised as to bring the freedom of the subject into contempt."

In 1971 a policy of internment - detention without trial - was introduced under the Special Powers Act. The following year a Commission was established under Lord Diplock to consider "what arrangements for the administration of justice in Northern Ireland could be made in order to deal more effectively with terrorist organisations ... otherwise than by internment ...". Lord Diplock's principal recommendations were implemented: the Special Powers Act was repealed but many of its provisions were substantially re-enacted in the Northern Ireland (Emergency Provisions) Act, 1973 (EPA 1973). In addition the EPA 1973 suspended jury trials for a series of terrorism related offences (known as 'scheduled offences' heard in 'Diplock' Courts).

The policy of internment was phased out in 1975; the power to intern, however, remains on the statute book today and it could be re-activated without prior Parliamentary approval.

The EPA 1973 was subsequently amended and the consolidating Northern Ireland (Emergency Provisions) Act 1978 was passed. The EPA 1978, as amended by the Northern Ireland (Emergency Provisions) (Amendment) Act 1987 remains in force today. These two Acts, with their origins in the 1920s, are central to Northern Ireland's emergency legislation.

8. Prevention of Terrorism

Another key component in the emergency laws of Northern Ireland is the Prevention of Terrorism legislation. While the various Emergency Powers Acts only extend to Northern Ireland, most of the Prevention of Terrorism legislation covers Britain (England, Wales and Scotland) as well as Northern Ireland.

The first Prevention of Terrorism (Temporary Provisions) Act (PTA) was rushed through all its parliamentary stages in two days in 1974, immediately after 21 people had been killed in two bomb attacks in Birmingham. The Home Secretary, Roy Jenkins, responsible for the legislation described it as "draconian" and "unprecedented in peacetime". Although the Act was intended to last for only six months, it has been renewed without break, and extended. The PTA 1974 was refined, extended and replaced by the PTA 1976, 1984 and 1989.(1)

These statutes include, for example, provisions permitting the proscription of organisations like the IRA, and the exclusion of citizens of the UK from Britain or Northern Ireland at the discretion of the executive (a form of internal exile). Also, as we will see, they permit the detention of suspects on reasonable suspicion for up to 7 days without the suspect either being charged or brought before a court. By introducing arbitrary executive powers, the Prevention of Terrorism Acts have violated cardinal principles of the rule of law and international standards of human rights.(2)

In some respects the Prevention of Terrorism legislation has attracted a higher profile in Britain than in Northern Ireland. This is because the coercive powers contained in the Acts are unlike any other powers in Britain whereas, as we have seen, Northern Ireland has experienced such provisions ever since its creation.

The Emergency Provisions and Prevention of Terrorism Acts comprise in Northern Ireland a web of emergency legislation comparable in some respects to the emergency provisions of Israel and South Africa.(3)

While it is unnecessary in this report to describe in detail the features of Northern Ireland's emergency legislation, a few key provisions are of particular relevance if the critical role of defence lawyers is to be fully understood.

9. Arrest

Until recently the three main sources of arrest powers in Northern Ireland were section 11 of the EPA 1978, section 12 of the PTA 1984 (now section 14 of the PTA 1989) and section 14 of the EPA 1978.

Section 11 of the EPA empowered arrest on mere suspicion of being a terrorist; there was no requirement that the suspicion be 'reasonable'. Moreover, the section did not require suspicion in relation to a specific incident or offence. Section 11 was repealed in 1987.

Section 14 of the PTA 1989 includes the objective test of 'reasonableness'. It empowers a constable to arrest any person whom he or she reasonably suspects is or has been concerned in the commission, preparation or instigation of acts of terrorism. Again, reasonable suspicion in relation to a specific incident or offence is not required. The test of 'reasonableness' is notoriously weak when applied to a general concept such as terrorism, providing little protection to an arrested person. (4)

Section 14 of the EPA empowered arrest by the army on mere suspicion of an offence of any nature, whether terrorist or otherwise. In 1987, section 14 was amended to require "reasonable suspicion".

Before 1987, these provisions gave the security forces in Northern Ireland extraordinarily wide powers of arrest. They were used by the authorities for intelligence gathering. Defence lawyers found that because the powers were so widely drafted their abuse was exceptionally difficult to challenge in the courts. The same remains true today in relation to the powers of arrest under section 14 of the PTA and section 14 of the EPA.

10. Length of Detention

How long a suspect may be detained varies under different provisions. The commonly used section 14 of the PTA allows detention for the longest period. A suspect may be detained without charge or being brought before a court for two days, followed by five more days if sanctioned by the Secretary of State.(5)

11. Interrogation

There are special police interrogation centres at Castlereagh in Belfast, and Cough Barracks in Armagh. The interrogation is usually conducted by alternating teams of two detectives. Police officers may watch the interrogation on closed-circuit television. The interrogation system isolates suspects and makes them highly vulnerable.

Interrogation practices in Northern Ireland continue to be a source of public concern. In 1972 the British Government abandoned the use of the 'five techniques' during interrogation: wall-standing, hooding, continuous noise, deprivation of food and deprivation of sleep.(6)

In 1978, after repeated complaints, the Government established the Bennett Committee to enquire into police interrogation practices and procedures.(7) The Committee reported in 1979 and most of its recommendations were duly implemented.(8)

Yet complaints persist; in July 1988, for example, Amnesty International in its report Northern Ireland: Recent Cases of Alleged Ill-Treatment, documented a series of recent serious allegations.

12. Confessions

Monitoring of the Diplock courts reveals that about 90% of defendants made confessions during interrogation; in 75-80% of cases the prosecution evidence was based wholly or substantially on confessions.(9)

The rules restricting the admissibility of confessions are less exacting in Northern Ireland than they are in Britain. A confession which would be inadmissible in Britain because it was obtained by "oppression", could be admissible in Northern Ireland. In Northern Ireland, until 1987, section 8 of the EPA 1978 provided that any statement made by the accused would be admissible in evidence in the Diplock courts if the prosecution could satisfy the judge that it was not extracted by torture, inhuman or degrading treatment. In other words, the RUC could subject a prisoner to lengthy and debilitating interrogation, threats, verbal abuse, and possibly even a moderate degree of physical ill-treatment to obtain a confession, without that confession being ruled inadmissible.

Section 8 was amended by the EPA 1987 so that a confession is now inadmissible in Northern Ireland if an accused is subjected to the use or threat of violence. Despite this amendment, the test of admissibility in Northern Ireland remains less strict than the comparable test of "oppression" which operates in Britain.(10)

13. Right of Silence

For many years a central feature of the accusatorial system of justice in the UK has been the right of suspects and defendants to remain silent in the police station or court without their silence being counted against them at trial. The right offered protection to the accused from undue pressure which could otherwise result in a false confession and wrongful conviction.

In November 1988, the British Government abolished the right of silence in Northern Ireland.

14. Access to a Lawyer

A person arrested and held in custody by the authorities has the right to have a 'named person', such as a relative or friend, informed of the arrest (11) and a right to consult a solicitor in private.(12)

Both these rights, however, may be withheld in emergency legislation cases by a senior police officer for up to two days on specified grounds.

It is worth setting out the grounds in full because they highlight the attitude of the authorities towards defence solicitors in emergency legislation cases. Section 15(8) of the EPA 1987 states:-

"An officer may only authorise a delay in complying with a request (by a suspect to consult a solicitor privately) where he has reasonable grounds for believing that the exercise of the right ... at the time when the detained person desires to exercise it -

- (a) will lead to interference with or harm to evidence connected with a scheduled offence or interference with or physical injury to any person; or
- (b) will lead to the alerting of any person suspected of having committed such an offence but not yet arrested for it; or
- (c) will hinder the recovery of any property obtained as a result of such an offence; or
- (d) will lead to interference with the gathering of information about the commission, preparation or instigation of acts of terrorism; or
- (e) by alerting any person will make it more difficult -
 - (i) to prevent an act of terrorism; or
 - (ii) to secure the apprehension, prosecution or conviction of any person in connection with the commission, preparation, or instigation of an act of terrorism."

The English Court of Appeal held in 1987, that in order to justify the denial of access to a solicitor the police must believe that the solicitor will commit a criminal offence, such as perverting the course of justice, and prove the belief with evidence concerning that specific solicitor. The court felt that such a genuine belief would be rare. The court doubted that intelligent professional solicitors were so naive or foolish as to pass coded messages from the person detained to someone outside. (13)

We understand that access to a lawyer within two days tends to be granted more often now than in the past. Such access, however, is still withheld frequently and without the RUC giving a specific reason, making it extremely difficult to challenge. Also we were told there appears to be a correlation between the denial of access to a lawyer for two days and suspects making confessions. In our view, it would be instructive if this matter was the subject of independent, statistical research.

On the same section 15(8) EPA 1987 grounds, a senior officer may direct that a suspect "may only consult a solicitor in the sight and hearing of a qualified officer" of the RUC. (14)

During our visit to Belfast we were informed by defence lawyers that the RUC were insisting with increasing frequency that consultations between a suspect and a solicitor should take place in the sight and hearing of one of their officers.

The restrictions on a suspect's right of access to a lawyer under the EPA 1987 violate international human rights law. Thus:-

- a. Article 14(3) of the United Nations International Covenant on Civil and Political Rights(ICPR) says:

"In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality ...

- (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing ... "

The Human Rights Committee established under ICPR has stated that Article 14(3)(b) "requires counsel to communicate with the accused in conditions giving full respect for the confidentiality of their communications. Lawyers should be able to counsel and to represent their clients in accordance with their established professional standards and judgement without restrictions, influences, pressures or undue interference from any quarter."(15)

- b. Rule 93 of the United Nations Standard Minimum Rules for the Treatment of Prisoners says: "for the purposes of his defence, an untried prisoner shall be allowed ... to receive visits from his legal advisor with a view to his defence and to prepare and hand to him confidential instructions". (16)
- c. Earlier this year the UN General Assembly adopted unanimously a Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment. Principle 18 states:

- "1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.
2. A detained or imprisoned person shall be allowed adequate time and facilities for consultations with his legal counsel.

3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.
4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official."

Clearly, Principle 18(4) is inconsistent with the relevant provision of the EPA 1987.(17) So RUC officers may violate Principle 18(4) even though they are complying with the terms of EPA 1987.

15. Conclusions

The cumulative effect of Northern Ireland's wide powers of arrest, seven day detention, abolition of the right of silence, restrictions on access to a solicitor, questionable interrogation practices, weak rules on the admissibility of confessions and reliance on confessions and juryless courts, is to produce a system of criminal justice significantly weighted against the accused. It is beyond the scope of our report to examine in detail whether or not the law and practice in emergency legislation cases amounts to a violation of the international human right to a fair trial.(18) But we agree with Amnesty International that an assessment of the fairness of a particular trial includes consideration of pre-trial procedures.(19)

In any system of criminal justice access to a lawyer is a vital safeguard. It becomes even more important as other safeguards for detainees are eroded.

CIVIL LIBERTY AND CRIMINAL DEFENCE LAWYERS

16. In Northern Ireland the cumulative effects of the emergency legislation, with its wide police powers and erosion of suspects' rights, places an especially heavy responsibility upon defence lawyers. It is hardly surprising that under this pressure they become increasingly isolated and exposed to misinterpretation and criticism. In a volatile political situation, they are potential targets for intimidation, harassment and even physical attacks.

Some defence lawyers have refused to undertake cases in the Diplock courts because they regard the denial of jury trial as unjust. On this view, to participate would be to collude in the imposition of an unjust system. Others have complained that their ability to give advice and representation is impeded by the RUC. In many cases, for example, it is said that the RUC have unreasonably delayed legal access to clients held for interrogation.

17. The result is that lawyers are discouraged from undertaking emergency legislation cases and those who have continued to do them are overburdened and under severe pressure.
18. Despite recent developments, the Government appears to recognise the essential role of defence lawyers in the maintenance of the rule of law. Their courage and independence has often been praised by Government ministers. It is clear that the Government has been anxious to avoid the embarrassment of attacks on its human rights record in Northern Ireland and one means of doing so is to ensure effective access to independent legal representation. It is for this reason that the Government has tried to overcome the reluctance of lawyers to participate in the Diplock courts by paying enhanced fees under the legal aid scheme. We are told, however, that legal aid fees in Diplock court cases are presently under scrutiny by the Government.
19. The independence of the legal profession has been widely acknowledged not only by the Government but also by the general public. This reputation has been achieved by the determination of lawyers' professional bodies and individual practitioners to avoid identification with sectarian opinions or organisations.

There are Catholic and Protestant lawyers and they all possess private opinions and even prejudices about the political situation and the merits of various partisan positions. Nevertheless, we were satisfied that the lawyers we met in Northern Ireland would regard it as unprofessional and unthinkable to refuse to act for clients because the clients belonged to a different religious persuasion. We were told that among criminal defence lawyers there were none whose practice was limited wholly to one or other group, and indeed that it was common for some lawyers to represent at the same time alleged members of rival paramilitary organisations.

20. The role of the criminal defence lawyer is widely understood in all civilised systems. It includes putting forward as vigorously as necessary all the arguments and evidence which favour the client and to present the case as the client would be able to do, given the advantage of the lawyer's experience and training. It is the most elementary error to confuse the lawyer with the client and to assume that the lawyer shares the client's opinions or is identified with the client in any other way than as professional representative. In a society as tense and violent as Northern Ireland, to proclaim such identification is extremely dangerous: it not only attacks the professional integrity of lawyers but it may put them in serious physical danger from those opposed to the group with which the lawyer is deemed to be associated.

Moreover, the international community will soon formally recognise the professional distinction between a lawyer's and client's views. After several years discussion and drafting, the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in 1990 is likely to adopt twenty-three Basic Principles on the role of lawyers; Principle 17 states: "Lawyers shall not be identified to their prejudice with their clients or their clients' causes as a result of discharging their function".

21. Until the murder of Patrick Finucane in February 1989, no practising defence lawyer had been assassinated in Northern Ireland. Lawyers have rarely been the target of terrorist groups in any Western European country. It was generally supposed that the recognition of professional independence was sufficiently strong in all communities in Northern Ireland to exclude lawyers from any personal risk other than that which they shared with the public at large. The position was evidently different for judges, a number of whom have been assassinated. The explanation may be that judges are seen by some as agents of the State and enforcers of repressive laws. In contrast, although they are officers of the court, the primary responsibility of practising lawyers is to their clients.
22. Despite the Government's apparent recognition that defence lawyers have a vital role to play in Northern Ireland, we have identified several features of the law and practice of the emergency provisions which demonstrate the authorities' distrust of Northern Ireland's legal profession.

Firstly, the grounds upon which the authorities may delay a suspect's access to a solicitor are, in practice, wider in Northern Ireland than in Britain, and they assume some lawyers will 'tip-off' those suspected in an investigation.(20)

Secondly, as we saw, the RUC are insisting with increasing frequency that consultations between suspect and solicitor should take place in the sight and hearing of an officer. Thirdly, although in Northern Ireland an interrogation may be watched on closed-circuit television by uniformed RUC officers, no recording of the interrogation is kept. If a recording was kept, defence lawyers would be able to demand access to it. The authorities evidently do not wish defence lawyers to have access to information given to the RUC by suspects during interrogation.(21)

Fourthly, the PTA 1989 includes new provisions which encroach upon the confidentiality of the solicitor-client relationship, reflecting a refusal to acknowledge the professional integrity of lawyers.(See paragraph 34 below).

SMEARS AND INNUENDOS

23. For several years before the assassination of Patrick Finucane there had been a growing concern among lawyers at what seemed to be a campaign of smears and innuendos against certain solicitors engaged in criminal defence work. Although we were assured that there is no criminal lawyer who restricts his clientele to one side of the political or religious divide, nevertheless it is inevitable that those in authority in the paramilitary organisations will from time to time favour the abilities of a particular solicitor and will advise their members to consult that solicitor in time of need. Moreover, a good solicitor will advance the client's case with energy and imagination, which may be presented (by the ignorant or the malicious) as evidence of personal commitment to the client's cause.

24. In 1984, Lord Gifford QC. in his report on the use of "supergrass" evidence in Northern Ireland, gave an account of a long conversation he had with Robert Lean, who had been implicated in a rocket attack and punishment shootings. Robert Lean became a "supergrass" in return for promises of immunity. His allegations that he was put under pressure by the police to give false evidence against certain named individuals cannot be tested, but Lord Gifford records among them the claim that the police asked him to sign a statement implicating five well-known solicitors. According to Robert Lean the police said: "we know they feed information to the I.R.A., we just want it (Lean's signed statement) in case we need it." (22)
25. In May 1987, a group of Northern Ireland solicitors issued a public statement from the office of an Omagh firm. They reported regular abuse of detainees by RUC officers while held in interrogation centres. When the detainees ask for their solicitors, the statement claimed, the solicitors are called "IRA men" and "murderers". The statement continued: "This is despicable conduct, but so far all complaints to the RUC to have it stopped have fallen on deaf ears. Is it too much to ask that the RUC should observe civilised standards towards their prisoners and should stop attempting to set up them and their legal advisers for murder by loyalist gunmen?" The solicitors expressed concern about the effect such pressure had on those detained and felt that the RUC was trying to discourage solicitors taking up cases.
26. We ourselves were told by several solicitors to whom we spoke during our visit that clients had reported similar comments by police officers while they were under arrest or interrogation. Some of their clients had informed them that during interrogation RUC officers had made offensive comments about particular solicitors and in at least one case told the suspect there was no point instructing a named lawyer because he did not have long to live. There were reports that RUC detectives were telling a suspect in about January that he would not be having Patrick Finucane as his lawyer for much longer. They were going to "get him". This story was published in the newspaper Seven Days on 4 March 1989 but we have been unable to substantiate it.
27. When we put these allegations to the RUC they denied them with the comment that the allegations were made after Patrick Finucane's murder and with the benefit of hindsight. But the public statement issued from the office of an Omagh firm was made eighteen months before Patrick Finucane's murder.
28. Also, since our delegation visited Belfast and met the RUC, we have obtained an excerpt of notes taken during an interview between Brian Gillen and representatives of Amnesty International on 6 February 1988. The interview focussed upon Brian Gillen's allegations of physical ill-treatment during interrogation by the RUC between 27-30 January 1988. These and other allegations of physical abuse were published by Amnesty International in July 1988. (23) We append the excerpt from Amnesty International's notes of interview with Brian Gillen. The interview took place seven days after Brian Gillen was released at the end of his interrogation by the RUC.

As will be seen from the appendix, the notes of interview contain passages of particular relevance to our enquiry. For example: "Detectives tried to discredit Brian Gillen's solicitor by accusing the solicitor of working for the IRA", and later: "Detectives suggested that the UVF (loyalist paramilitary group) should shoot the solicitor. They further tried to discredit the solicitor saying that although the solicitor's hands were "clean of guns" they should be shot as they are just as bad as the terrorists".

Patrick Finucane was one of the partners of the firm of solicitors instructed by Brian Gillen while he was interviewed by the RUC. One year after both the interrogation and the notes of the interview were written, Patrick Finucane was murdered. The Ulster Freedom Fighters (UFF), claimed responsibility for the assassination.

Amnesty International's notes of interview corroborate the various allegations we heard from a number of solicitors when we visited Belfast after Patrick Finucane's murder, and to which we have already referred. Moreover, the notes cannot be dismissed as written "with the benefit of hindsight".

29. We were also told by some lawyers that, according to their clients, the RUC arrest and interrogate loyalists, and sometimes ask the suspects why they are bothering about particular targets, observing that various local lawyers are more prominent in republican circles than these targets.

30. Stalker

In his book Stalker published in 1988, John Stalker, former Deputy Chief Constable of Manchester, describes his experiences when investigating an alleged "shoot-to-kill" policy by the RUC. He mentions that the spokesmen for the families of those who had been shot by the police were usually solicitors. He says "they were wary towards us, very conscious, it seemed to me, of the contempt I would be held in by some policemen for entering their clients' homes. It was quite unlike anything I have ever experienced in England. In this country a defence solicitor - even the most anti-police or devious of them - is treated by policemen as a professional. He may be spoken to very coolly, in a carefully guarded way, but he will be acknowledged as doing a job. I saw very little of that type of relationship during the long days I spent at Crumlin Road Crown Court"

The period he is speaking of is not clearly identified in the book but it must have been in late 1984 and in 1985. "The atmosphere in the big hall was electric whenever we spoke to any of these solicitors. We felt open resentment and distrust from many of the RUC officers gathered in small groups around us. I recall one conversation with a youngish RUC uniformed sergeant who left his group and approached me as I walked away after a very short conversation with a solicitor representing Martin McCauley, the youth who survived the shooting at the Hayshed." This solicitor must have been Patrick Finucane. "The sergeant came up to me and said, 'May I speak to you, Mr. Stalker? Do you know who that was

you were speaking to?' I replied, 'Yes - it was Martin McCauley and his solicitor.' The sergeant said, 'The solicitor is an IRA man - any man who represents IRA men is worse than an IRA man. His brother is an IRA man also and I have to say that I believe a senior policeman of your rank should not be seen speaking to the likes of either of them. My colleagues have asked me to tell you that you have embarrassed all of us in doing that. I will be reporting this conversation and what you have done to my superiors'."

"I was surprised at his studied vehemence," goes on John Stalker, "although I recognised his comment for the honest bigotry it clearly was, and I let the matter go. But what he had starkly illustrated to me was the bitter depths of hatred even among professionals... This conversation with the sergeant also showed me how easy it would be in the Province to have one's name included in Special Branch files and minds as having 'possible Republican sympathies'. An open conversation in a public place with a solicitor who performs his duty to the courts was, it seems, probably sufficient evidence of such 'sympathies'."

31. These observations of a very senior English police officer carry conviction because RUC officers would have less reason to conceal their true feelings and attitudes from him than from people outside the police service.

Members of the delegation visited senior officials of the RUC at their headquarters and asked them whether there was any 'blacklist' of solicitors or whether solicitors who represented members of terrorist organisations were treated as identified with them. The officials to whom we spoke asserted in strong terms that they fully recognised the role of solicitors as independent advisers and representatives and that they wholly disapproved of the attitudes reflected in John Stalker's account of the young sergeant at Crumlin Road. Nevertheless, it was apparent that they recognised the prevalence of hostile attitudes among police officers towards some defence lawyers and it appeared that even the senior officials whom we met felt those attitudes were understandable. One of them remarked that the terrorists were well known to the police and it was only the difficulty of proof under legal constraints that prevented their arrest. Another made the comment that the difficulties faced by the police were enhanced by the Government's policy of treating terrorists as ordinary criminals. The alternative policy which he appeared to consider preferable was to treat terrorists as outlaws to whom the ordinary safeguards of the law would be denied.

32. We were informed by the President of the Northern Ireland Law Society, Colin Haddick, that the Society had received no complaint of professional misconduct against any solicitor alleging involvement with any terrorist organisation. The Northern Ireland Law Society is the body responsible for investigating and prosecuting complaints of professional misconduct and it would plainly be its duty to investigate a complaint that a solicitor had assisted or colluded in the commission of any act of terrorism. Such a complaint could properly be presented by the RUC or by any Government agency. Indeed, such conduct would almost certainly be a breach of the criminal law and would be a matter

for consideration by the Director of Public Prosecutions. It is not known whether consideration has ever been given to the prosecution of a solicitor for such an offence but what is certain is that no prosecution has ever been brought.

33. In summary, there is a history of alleged RUC smears and innuendos against lawyers in Northern Ireland. Some of the allegations, like the accounts of Brian Gillen and John Stalker, we believe to be true.

Of course, such slurs are not confined to lawyers. For example, on 11 March 1979, Dr Robert Irwin, a police surgeon, publicly reported that since 1976 he had seen over 150 cases of unexplained injuries to prisoners held by the RUC. Dr Irwin's revelations provoked a storm of protest. A few days later, however, the Daily Telegraph was fed a story by a confidential source in Whitehall: Dr Irwin, the paper was told, harboured a grudge against the RUC for failing to catch the man who had raped his wife in 1976. The smear was clearly designed "to question Dr Irwin's motives and thereby undermine his damaging activities."(24)

More recently, defamatory misinformation about Carmen Proetta, an eye witness of the fatal shootings in Gibraltar on 6 March 1988, seems to have been fed to the press in an attempt to discredit her evidence.

Some slurs, such as those about defence lawyers, are not only offensive but dangerous.

34. DOUGLAS HOGG

Against the background we have described, the remarks made by the Parliamentary Under-Secretary of State for the Home Department, Douglas Hogg MP, in a Committee debate on the Prevention of Terrorism (Temporary Provisions) Bill on 17 January 1989 are extraordinary.

The Committee was discussing two new provisions, the first prohibiting any disclosure likely to prejudice a terrorist investigation, and the second criminalising any failure by a person to disclose information which he or she knows or believes might assist in preventing an act of terrorism or in securing the apprehension, prosecution or conviction of a person for a terrorist offence.

Amendments had been tabled by Conservative and Labour members to preserve the right of solicitors to make disclosures for the purpose of seeking their clients' instructions or giving their clients legal advice, and their right to refuse to disclose information which they would be entitled in High Court proceedings to refuse to disclose on grounds of professional privilege.

These amendments were supported by the Law Society. They sought no more than to retain for solicitors under this Bill the normal confidentiality of the solicitor-client relationship which is recognised in every other situation.

In attempting to justify encroaching on this fundamentally important safeguard of individual liberty, Douglas Hogg said: "I have to state as a fact, but with great regret, that there are in Northern Ireland a number of solicitors who are unduly sympathetic to the cause of the IRA. [Interruption]. I repeat that there are in the Province a number of solicitors who are unduly sympathetic to the cause of the IRA. One has to bear that in mind."(25)

He was immediately challenged by Seamus Mallon MP who said: "That is a remarkable statement for a Minister to make about members of a profession who have borne much of the heat in a traumatic and abnormal situation. Such words should not be said without the courage to support them. I find it appalling that the Minister should make such an accusation with such emphasis and without, it seems, the intention of substantiating it."

Douglas Hogg did not substantiate it, though he repeated it several times in almost identical language. At one point in the debate he said: "There are certain solicitors in Northern Ireland who are known to be sympathetic to one or other terrorist organisation. I state that as a fact. I state it on the basis of advice that I have received, guidance that I have been given by people who are dealing in these matters, and I shall not expand on it further. Certainly, I shall not name individuals or specific cases..."

In the course of the debate Seamus Mallon made the prophetic statement: "I have no doubt that there are lawyers walking the streets or driving on the roads of the North of Ireland who have become targets for assassins' bullets as a result of the statement that has been made tonight... Following (Douglas Hogg's) statement, people's lives are in grave danger. People who have brought cases to the European Court against this legislation will be suspected. People accused of IRA membership and other activities will be suspected. We have thrown a blanket over many lawyers in the North of Ireland, and it will be on the head of this Minister and Government if the assassin's bullet decides to do, by lead, what this Minister has done by word."(26)

The Minister made his comments while defending legislation which puts solicitors at risk of breaking the criminal law if they fail to incriminate their clients.

The Minister is wrong to regard mere 'sympathy' as justifying the criminal liability which the House of Commons Committee was discussing. Whatever sympathies solicitors may or may not have, they need never and should never conflict with their professional duty. It is a gross slur to accuse them of allowing private sympathies to divert them from their duty.

It is hard to imagine that Douglas Hogg, a barrister who is the son and grandson of Lord Chancellors of England, could be ignorant or uncertain of the clear separation between personal sympathy and professional obligation. It is even harder to believe that the words he repeated many times were uttered carelessly or without an understanding of their potential impact. Nor was the Minister speaking spontaneously. The fact that he repeated the identical phrase without elaboration on several

occasions suggests that he was speaking rigidly to a brief. No doubt its inspiration came from "those people who are dealing in these matters", who perhaps were not merely guiding but directing him.

35. Douglas Hogg's remarks shocked the legal profession in Northern Ireland. The Secretary of the Northern Ireland Law Society wrote to him expressing astonishment and regret that the remarks had been made. The Society pointed out that it would support any action taken to bring to book any solicitors in Northern Ireland guilty of criminal activity. It also reminded the Minister that it was the body responsible for policing the profession in relation to allegations of professional impropriety. It invited him to provide any details which might be available which would enable the Society to carry out the necessary investigations. Finally, the Society drew attention to the great resentment felt among the legal profession at Douglas Hogg's remarks and asked for clarification of them, requesting that any accusations should be made outside the protection of Parliamentary privilege.

We were informed that no retraction or apology was received from the Minister and no details or evidence in support of his allegations was forthcoming. It was subsequently reported that the Northern Ireland Law Society had decided not to take the matter further after the Minister had said that he was not speaking about the profession as a whole. (Guardian, 14 February 1989).

36. The public outcry at Douglas Hogg's remarks was widespread; they were condemned in editorials in newspapers such as the Guardian and the Independent. There were calls for his resignation but the Secretary of State for Northern Ireland, Tom King MP, loyally supported him.

37. 'DIRTY TRICKS'

A considerable amount of evidence has emerged in recent years that government officials, senior officers in the British army, senior police officers and operatives of MI5 and MI6 have engaged in, or condoned, illegal acts in what they perceive to be an all-out war against the IRA. Former army officers Fred Holroyd and Colin Wallace have disclosed detailed information about 'dirty tricks' including the plotting of assassinations. The account by Colin Wallace of his work as an army public relations officer at Lisburn barracks and subsequent removal by the authorities, suggests the sophistication and ruthlessness of the undercover activities carried out on behalf of the British Government.(27)

We do not know the relationship, if any, between those guiding Douglas Hogg, on 17 January, whom he describes as "the people dealing in these matters", and the people responsible for the 'dirty tricks' documented by Fred Holroyd and Colin Wallace. Whether or not they are the same people, there are plainly grounds for serious concern at the conduct of the Government's administration of affairs in Northern Ireland. There can be no hope of restoring the rule of law there until these allegations are fully and publicly investigated.

38. PATRICK FINUCANE

The protests following Douglas Hogg's remarks in Parliament died down but were tragically revived when Patrick Finucane was shot dead in his home on the evening of 12 February 1989. A loyalist group called the Ulster Freedom Fighters (UFF) issued a press statement claiming responsibility for the murder.

Patrick Finucane was a prominent Belfast solicitor who specialised in criminal defence work and who had become well-known through his conduct of cases on behalf of alleged terrorists and their families. He had become particularly prominent and had attracted the hostility of elements in the RUC (see paragraph 30 above), by his forceful and imaginative use of legal processes in the interests of his clients. He was responsible for a number of successful civil actions against the police on behalf of those whom they had injured or wrongfully detained. He had fought cases in the House of Lords and under the European Convention on Human Rights in Strasbourg. He was the solicitor for the families of the three men whom John Stalker had identified as the victims of a "police inclination" to 'shoot-to-kill'(28); and on their behalf he had successfully challenged in the Court of Appeal, a few weeks before his murder, the Coroner's Rules in Northern Ireland exempting security forces personnel involved in killings from giving oral evidence at the inquest.

39. All these initiatives reflect nothing but credit upon a dedicated lawyer devoted to the best interests of his clients. Yet vigour in the pursuit of justice is not always perceived as a virtue when it is employed on behalf of those whom the authorities have labelled, without legal process, enemies of the State.
40. On 13 February the Irish Times reported that loyalist sources had claimed that members questioned by the RUC had been told by police officers that Pat Finucane and other Catholic solicitors were helping to keep the IRA out of prison. The Independent reported that police sources freely referred to Pat Finucane as a "Provo solicitor", alleging that he was an "IRA stooge". (14 February 1989).
41. The influence of such references was to be seen in many of the newspapers who reported the assassination, where Pat Finucane was regularly linked with the IRA, and described as "IRA defence solicitor" or "IRA lawyer". Another Belfast solicitor is suing several newspapers for using such expressions about him. Patrick Finucane, of course, cannot do so.
42. Even the Guardian, a reputable paper which one would expect to be sensitive to the issue, headed its report of the assassination "IRA defence solicitor killed" (13 February 1989). But other solicitors, as well as Patrick Finucane's widow, asserted that he acted for people on both sides. She said: "Pat would have represented the people who shot him."

We found no evidence to support the suggestion which appeared to be made in the Guardian on the following day that some lawyers are giving "financial kickbacks" to paramilitary organisations.

3. It has never been disputed that Patrick Finucane's brother was convicted of IRA activities and escaped from the Maze Prison, but there is no evidence that Patrick Finucane had any connection with these or comparable activities; indeed, on 14 February 1989, the Independent reported that "extreme Loyalists were already slightly shamefaced about the murder, acknowledging that the lawyer had not been, as they claim publicly, a member of the IRA". It condemned Douglas Hogg for the remarks he had made 4 weeks before.

44. Many people blamed Douglas Hogg directly for the murder of Patrick Finucane, saying that his remarks had prompted the extreme loyalist paramilitaries to target the lawyer who most closely fitted his Parliamentary remarks. This cannot be proved, but the President of the Northern Ireland Law Society, who did not link Douglas Hogg directly with the killing, was quoted in the Times as saying that the Minister's remark had created "an excuse" for terrorists to target solicitors and barristers in the province (14 February 1989).

45. The Consequences

We have no doubt that Douglas Hogg's statement and Patrick Finucane's murder have had a significant effect upon solicitors and barristers who defend in emergency legislation cases in Northern Ireland.

Some lawyers have recently taken steps to increase the security of themselves and their families, and have been advised by the RUC to arm themselves. Some have installed security lighting in their gardens and intercom systems by their front doors. Others search under their cars in the morning before driving to work. The RUC has advised at least one lawyer never to develop a daily routine, such as buying a newspaper at a particular shop at a certain time, which could be predicted by an assassin. One lawyer told us of his trepidation when, as he walks down the street, a car slows down alongside him.

46. Threats, apparently from paramilitary organisations, against lawyers are not uncommon. One lawyer who had been instructed in a high profile security case involving members of one community, was warned against entering the geographical area associated with the other. Such threats may be no more common now than they have been for some years; we are sure, however, that they are taken more seriously and create more anxiety now than before.

For many years, lawyers working on security cases have been careful when discussing them on the telephone because they believe their telephones are tapped. Lawyers are now more cautious than before about what they discuss on the telephone. Indeed, we have ourselves experienced this increased caution when speaking to them on the telephone about our enquiries.

On one occasion, a member of our delegation arranged a meeting with a lawyer who went to considerable lengths not to be seen with a representative of the delegation and not to be overheard by anyone else. When we made informal contacts with practising lawyers we were repeatedly told that it would be dangerous for our report to identify individuals.

47. The delegation tried to assess whether or not security cases were being conducted with the same vigour after Patrick Finucane's murder as before. It would be perfectly understandable if lawyers were intimidated by Douglas Hogg's statement and Patrick Finucane's murder. The lawyers to whom we addressed this question when we visited Belfast were unanimous: the types of cases undertaken and the energy invested in them were unchanged.

Since our visit, however, we have formed the view that a small minority of cases are not being pursued as they would have been before 1989. For example, a lawyer who received a paramilitary death threat has withdrawn from a case which was later dropped by the client. The circumstances suggest the possibility of collusion between the RUC and a paramilitary organisation.

48. In the summer of 1989, much alarming new evidence came to light of collusion between loyalist paramilitaries and the security forces. (See for example, 31 August, Independent). Mr. John Stevens, the Deputy Chief Constable of Cambridgeshire was appointed to investigate the unauthorised disclosure of security information.
49. In the aftermath of Douglas Hogg's statement and Patrick Finucane's murder, extraordinary meetings of the Law Society of Northern Ireland were convened. We understand the Law Society agreed to re-activate its committee on human rights. We welcome this development and hope it is pursued.
50. The murder of Patrick Finucane has not ended unsubstantiated and irresponsible allegations in the press about lawyers and their involvement in terrorist activities. In March, for example, the loyalist magazine Ulster, allegedly quoting from the Sunday Express, reported there was a second tier of government within the IRA, including "solicitors and barristers who are firmly backing the murderous activities of the IRA". The same issue of Ulster carried a long press statement from the Ulster Freedom Fighters explaining why it had "assassinated" Patrick Finucane. More recently a scurrilous magazine published the names of "IRA lawyers" with their addresses and telephone numbers.

SUMMARY AND CONCLUSIONS

- a. It is a fundamental requirement of the rule of law that those accused of crime are given access to skilled and independent legal representation (Introduction).
- b. In Northern Ireland there is a web of emergency legislation, some of which violates the rule of law and international standards of human rights (paragraphs 8 and 14).
- c. The emergency legislation has produced a system of criminal justice weighted significantly against the accused (paragraph 15).
- d. The emergency legislation, with its wide police powers and erosion of suspects' rights, places an especially heavy responsibility upon defence lawyers who become increasingly isolated and exposed. In a volatile situation, such as exists in Northern Ireland, this may lead to intimidation, harassment and physical attacks (paragraph 16).

- e. Criminal defence lawyers in Northern Ireland do not confine their practices to either one community or the other (paragraph 19).
- f. The role of the criminal defence lawyer includes putting forward as vigorously as necessary all the arguments and evidence which favour the client, and presenting the case as the client would be able to do, given the advantage of the lawyer's experience and training (paragraph 20).
- g. In a society as tense and violent as Northern Ireland, lawyers are placed in an extremely dangerous position if the error is made of identifying them with the politics of their clients (paragraph 20).
- h. Several features of the law and practice of the emergency provisions betray the authorities' distrust of Northern Ireland's legal profession. These public manifestations of official distrust of the legal profession combine with other factors to contribute to the increasing isolation and vulnerability of some lawyers in Northern Ireland (paragraph 22).
- i. Although police powers have been extended, the law is still perceived by some members of the security forces as obstructing the achievement of their objectives (paragraph 31). In the forefront of that perceived obstruction is a small group of defence lawyers, typified by Patrick Finucane.
- j. There is a history of alleged RUC smears and innuendos against lawyers in Northern Ireland. Some of the allegations, like the accounts of Brian Gillen and John Stalker, are convincing; they are also dangerous to those against whom they are directed. (paragraphs 23-33).
- k. In the tense and delicately poised political environment of Northern Ireland, it was predictable that an accusation of the kind made by Douglas Hogg on 17 January 1989 would provoke an act of terrorism against a lawyer from Northern Ireland (paragraphs 34-36). We did not find, of course, any evidence that Douglas Hogg's statement led directly to the murder of Patrick Finucane 26 days later. We conclude, however, that Douglas Hogg's statement played a part in creating a climate in which the likelihood of the murder of Patrick Finucane, or another lawyer, was increased (paragraphs 38-44).
- l. There is convincing evidence of the British authorities engaging in unlawful 'dirty tricks' in Northern Ireland; the relationship, if any, between those responsible for these undercover operations and those who advised Douglas Hogg on 17 January requires investigation (paragraph 37).
- m. Some of the press have been guilty of irresponsible reporting when referring to solicitors acting for members of the IRA (paragraphs 41-42).

- n. Douglas Hogg's statement and Patrick Finucane's murder has had a significant effect upon the security measures taken by those defence lawyers undertaking emergency legislation cases in Northern Ireland. Paramilitary threats against lawyers have greater impact now than before the statement or murder (paragraphs 45-46).
- o. In our opinion, a small minority of legal cases are not being pursued as they would have been before January 1989 (paragraph 47).
- p. In the light of evidence of collusion between loyalist paramilitaries and members of the security forces in Northern Ireland, we believe a judicial enquiry established on the lines of our recommendations should also consider this question (paragraphs 28 and 47-48).

RECOMMENDATIONS

We understand that earlier this year the Law Society of Northern Ireland helped to facilitate co-operation between lawyers acting for victims of the London-Belfast British Midlands air crash. We are confident the Law Society and Bar Council could play an equally constructive role in relation to the issues addressed in this report. The following recommendations, however, are addressed to all interested parties.

- a. We recommend that a full, public, judicial enquiry should be established to investigate:
 - (i) The background to Douglas Hogg's statement made on 17 January about lawyers in Northern Ireland.
 - (ii) The slurs against lawyers which RUC officers are said to have uttered while they interrogated subjects, in particular those made during the RUC interrogation of Brian Gillen in January 1988.
 - (iii) Allegations of collusion between paramilitaries and members of the security forces in Northern Ireland.
- b. We recommend the Government urgently considers, with representatives of the legal profession, what steps it can take to repair the damage inflicted by Douglas Hogg's statement of 17 January 1989.
- c. We recommend regular meetings between the Law Society and Bar Council of Northern Ireland, and the Northern Ireland Office should take place to discuss pressures on the legal profession.
- d. We appreciate that if lawyers are subject to pressure to withdraw from cases, they may not wish to publicise what has happened. Nonetheless we recommend that wherever possible lawyers who are subjected to threats report them, in strict confidence if they wish. Only if threats are recorded can the scale of the problem be understood and strategies devised to tackle it. Recording the

incidents may, for example, disclose a pattern suggesting collusion between paramilitaries and members of the security forces, which could then be thoroughly investigated by an independent body.

- e. Despite the lack of confidence, in some quarters, in the RUC, threats should be reported to the police. In addition, we recommend the legal profession sets up a committee to monitor in confidence threats to lawyers. The lawyers of Northern Ireland would have to decide the most appropriate composition of such a body. The Law Society, Bar Council, Criminal Bar Association, or a small ad hoc group of lawyers and/or lay people could play a part in such a project.

In any event, the committee could record and collate reliable information about threats to lawyers in Northern Ireland. When appropriate it could liaise with the authorities, issue a statement or publish a report about its work. The monitoring committee might also offer personal and professional support for the victims of threats.

- f. The committee referred to in the preceding paragraph could establish how often intimidation occurs. If it is occurring on a significant scale, we recommend the legal profession in Northern Ireland establishes a panel of lawyers who are prepared to accept responsibility for the conduct of cases in which an individual lawyer has been intimidated or fears intimidation. Collective responsibility would reduce the vulnerability of the practitioners involved.

We also recommend that consideration is given to involving a professional association or other organisation in the conduct of some cases where a lawyer has been threatened. This might be another way of reducing, in some instances, the vulnerability of individual practitioners.

- g. We recommend the Law Society and Bar Council in Northern Ireland liaise with their counterparts in Britain, to ensure that the issues which are the subject of this report are addressed throughout the legal profession of the United Kingdom.
- h. We recommend the press and the National Union of Journalists to remind their members of the dangers of associating lawyers with the political views of their clients.
- i. We recommend that the police investigation into the murder of Patrick Finucane is intensified; in the light of what it is alleged RUC officers said during their interrogation of Brian Gillen in January 1988, we recommend that the investigation into Patrick Finucane's murder is supervised by an external police authority.
- j. In early 1990, when the provisions of the Police and Criminal Evidence Act are extended to Northern Ireland, the Secretary of State will be able to introduce audio tape recordings of the interrogation of suspects. We recommend that audio tape recording of the interrogation of all suspects is introduced as a matter of urgency. Defence lawyers must be given access to the tapes of their clients' interrogation. We are vigorously opposed to the suggestion, which we have been informed the Government might be considering, that the interrogation of terrorist suspects should be excluded from audio tape recording.

- k. We recommend that RUC Guidelines should be issued regulating what interrogators may say to suspects about legal advisers; a breach of the Guidelines should be a disciplinary offence.
- l. We recommend that the legal professions in other countries give whatever support they can to their counterparts in Northern Ireland.

Georges-Henri Beauthier (Belgium)
Geoffrey Bindman (Britain)
Jean-Yves Carlier (Belgium)
Paul Hunt (Britain)
Yves Laurin (France) SUMMER 1989

—ooOoo—

REFERENCES

- (1) The PTA 1989 replaced the PTA 1984 which expired in March 1989.
- (2) The executive power to exclude UK citizens from either Northern Ireland or Britain, for example, violates Article 13(1) of the Universal Declaration of Human Rights: "Everyone has the right to freedom of movement and residence within the borders of each state". Also, see footnote 5.
- (3) See Freedom, State Security and the Rule of Law, A. Matthews, Juta, 1986, and Security, Terrorism and Torture, Harold Rundoph, Juta, 1984.
- (4) See ex parte Lynch (1980) N.I. 126.
- (5) In November 1988, the European Court of Human Rights in the case of Brogan and others v. UK (Application No.11209/84) held that detention of four days and six hours was in breach of Article 5 of the European Convention on Human Rights (ECHR). In December 1988, the UK Government responded by entering notices of derogation in relation to both ECHR and the UN International Covenant on Civil and Political Rights. Proceedings have been instituted by Belfast solicitors challenging the lawfulness of the purported derogation from ECHR.
- (6) In 1976 the European Commission on Human Rights held this treatment constituted torture; in 1978 the European Court of Human Rights came to a different decision, holding that it constituted inhuman and degrading treatment, but not torture. (Ireland v. UK Application No. 5310/71).
- (7) Report of the Committee of Inquiry into Police Interrogation Procedures in Northern Ireland, Cmnd. 7947, HMSO (London), 1979.
- (8) For an account of the RUC'S interrogation practices in the late 1970's see Peter Taylor, Beating the Terrorists?, Penguin, Harmondsworth, 1980.
- (9) This is according to the latest available statistics from the early 1980's. See K. Boyle, T. Hadden and P. Hillyard, Ten Years On in Northern Ireland: The Legal Response to Political Violence (Cobden Trust, 1980), ch.4; and D. Walsh, The Use and Abuse of Emergency Legislation in Northern Ireland (Cobden Trust, 1983).
- (10) Section 8 of the EPA 1978 was further amended by the EPA 1987 to give judicial discretion to exclude a confession "to avoid unfairness to the accused or otherwise in the interests of justice". We were told, however, that this discretion has rarely been exercised in favour of exclusion.
- (11) S.14 EPA 1987
- (12) S.15 EPA 1987
- (13) R. v. Samuel, The Times, 19 December, 1987. In R. v. Alladice, The Times, 11 May, 1988, the English Court of Appeal held that the lawful denial of access to a solicitor "would doubtless be infrequent" and "it behoved the police to use their powers of delaying access to a solicitor with great circumspection". Samuel and Alladice concerned detention under the Police and Criminal Evidence Act 1984 (PACE), not detention under the EPA. The grounds for delaying access to a solicitor under PACE are comparable to, but narrower than, those found in the EPA.

Also, access can be delayed up to only 36 hours under PACE, not two days as under the EPA. The EPA grounds for delay for two days are also found in the PTA.

- (14) S.15(11) EPA 1987. There is an equivalent provision in the PTA, but not PACE.
- (15) General Comment 13(21) on Article 14 of ICPR.
- (16) According to Rule 92, an untried prisoner shall be allowed to inform his family immediately of his/her detention. As we have seen, s.14 EPA 1987 permits this right to be delayed for up to 2 days. Section 14 is, therefore, inconsistent with Rule 92.
- (17) S.15(11) EPA 1987.
- (18) Universal Declaration of Human Rights, Article 10; International Covenant on Civil and Political Rights, Article 14; European Convention on Human Rights, Article 6.
- (19) See United Kingdom. Alleged Forced Admissions During Incommunicado Detention, Amnesty International, February 1988, para. 4.4.
- (20) See paragraph 14 and footnote 13. The grounds for delay under the EPA and PTA are wider than under PACE which is the main relevant statute operating in Britain. Although the PTA applies in both Britain and Northern Ireland, it is used more extensively in Northern Ireland.
- (21) In contrast, under the Police and Criminal Evidence Act 1984 audio tape recording of interrogation by the police is gradually being introduced throughout England and Wales; the process is due to be completed in 1991.
- (22) Tony Gifford QC., Supergrasses: the Use of Accomplice Evidence in Northern Ireland, The Cobden Trust, 1984, para. 78.
- (23) Northern Ireland: Recent Cases of Alleged Ill-Treatment, Amnesty International, July 1988.
- (24) Peter Taylor, Beating the Terrorists?, Penguin, Harmondsworth, 1980, p.319.
- (25) Hansard, House of Commons, Standing Committee B, 17 January 1989, Col. 508.
- (26) Ibid., Col.519.
- (27) Paul Foot, Who Framed Colin Wallace?, Macmillan, 1989.
- (28) "The circumstances of those shootings pointed to a police inclination if not a policy, to shoot suspects dead without warning rather than arrest them". (John Stalker, Stalker, Penguin, London, 1988, p.253.)

APPENDIX

EXCERPT FROM NOTES TAKEN DURING AN INTERVIEW BETWEEN BRIAN GILLEN AND AMNESTY INTERNATIONAL REPRESENTATIVES, BELFAST, 6 FEBRUARY 1988

THURSDAY 28 JANUARY 1988 (Continued)

At lunch time he was given a hot meal and he requested three times to see his solicitor.

second interrogation session 2.00pm - 6.00pm

Further references were made to the fact that BG should be killed etc. No "real ill-treatment" took place during this session apart from a few times that BG was slapped around the face and had his hair pulled. During the second part of the interrogation session two other detectives came in. BG was told that he was not going to see his wife again and that he would be "put away" for 30 years. The detectives on one occasion took any notes.

third interrogation session 7.00pm - 11.00pm.

The detectives said to BG that his solicitor did not care about him, nor does the IRA. Although no ill-treatment took place, various threats were made, such as "what is your wife going to do; your wife will get fed up with you in prison; and she will be sleeping with other men". BG was offered a new life in Australia, a house and money if he was prepared to become an informer.

FRIDAY 29 JANUARY

BG asked the uniformed police whether he could see his solicitor. They did not make any further complaints to the doctor as he had done the night before.

first interrogation session ? - 11.30am.

Detectives tried to discredit BG's solicitor by accusing the solicitor of working for the IRA. BG had a meeting with solicitor X 11.30am-1.30pm. X said that he thought the detectives listen to such meetings through microphones.

During the lunch break BG was given clean clothes and he was allowed to take a shower and wash himself.

second interrogation session 2.00pm - 6.00pm

Detectives suggested that the UVF (loyalist para-military group) should shoot the solicitor. They further tried to discredit the solicitor saying that although the solicitor's hands were "clean of blood" they should be shot as they are just as bad as the terrorists. Other threats were made that BG's wife was being unfaithful to him. Ill-treatment took place that afternoon. The detective who was in charge of the investigation into the incident for which BG had been arrested came by and said that he was going to give BG the interview of his life. While he said this his colleague held BG's arm behind his back, slapped him at the back of his head and was leaning on him with the full weight of his body (15 stones).