

SUGGESTED CHANGES IN THE LAWRUC PAPERINTRODUCTION

1. Since 1976, and following the phasing out of detention without trial, Government security policy has required that terrorists be prosecuted in the ordinary way for offences under the Criminal Law as extended to take account of the situation in the Province. This policy has as its counterpart what is described as the 'primacy of the police' who are tasked in their proper role as enforcers of the Criminal Law with the Army acting where necessary in their support.
2. That the police were singularly successful in their efforts, particularly during 1976 and 1977, is borne out not only by the number of terrorists charged but also by the effect which the high rate of charging had on public opinion and, more importantly, on the effect which it had on the terrorist organisations. So far as the latter were concerned, it was widely accepted that the interrogation of suspects based on accurate intelligence was having a quite devastating effect on the organisations, a fact which was borne out in a document found on Seamus Twomey which opened with the unqualified statement - 'the RUC through its interrogation is defeating the IRA'.

3. Unfortunately, and as was to be expected, the propaganda spotlight then focused upon interrogation and gradually, but relentlessly, the initiative was wrested from the police. This exercise, although an undoubted achievement for the terrorists, was not in any sense due directly to their efforts but to the endeavours of those who apparently regarded the circumscribing of police activity as being more important than the apprehension of terrorists.

4. In any event, and consequent upon Amnesty and Bennett to name but two disruptive factors, the product from interrogation is now much reduced, both because the psychological pendulum has swung towards the terrorists and because the interviewing officers feel themselves hampered by unnecessary and unduly restrictive regulations. That being the case, it has become necessary to devise new ways by which evidence sufficient to secure the conviction of terrorists may be obtained. This change of emphasis has highlighted certain deficiencies in the law which, while they always existed, were not of such moment when interrogation was producing results. It is assumed there are few who would deny that the RUC has shown itself both willing and capable in enforcing the law within the law, but a Police Force, as with any other work force, is only as good as the material with which it has to work. Put another way, the law must change to meet changing circumstances and more particularly in a community beset by terrorist violence, where public perception of what is being done in real terms to combat that terrorism is all important.

5. To that end this paper concerns itself with suggesting some changes in the law which, if implemented, would make it easier to secure convictions of a greater number of terrorists and which, it is believed, would be welcomed by the public, using that word to denote the long-suffering majority and not the vocal minority (numerical not sectarian). Before turning to the list of changes, a small number of practical examples of the difficulties faced is outlined hereunder.

SOME PROBLEM CASES

6. (a) In January 1978 a number of masked members of PIRA displayed a M60 machine-gun and other firearms on the occasion of the Bloody Sunday commemoration parade in Londonderry. This was the usual type of propaganda exercise which was given television coverage on all the main networks and which was reported, with photographs, in most of the daily newspapers circulating in the Province and, indeed, on the mainland. A video recording of the television transmissions was made by a police officer and still photographs of the incident came into the possession of the police. Two suspects were detained by the police and scientific comparison of the clothing and footwear worn by these suspects with that of the persons shown on the video and in the still photographs showed conclusively that the two persons in custody were two of those involved in the display of the M60 and the other firearms. Scientific examination of the photographs also

revealed that the firearms were genuine and in addition it was possible to prove conclusively that the pictures were those of a particular place in Londonderry and that on the relevant date and at the time in question the commemoration parade had passed by this place.

The particular difficulty in this case began with the fact that ITN who had obtained the film from RTE refused to hand over the film or to show it to the investigating officers in the absence of a Court Order compelling them to do so. Since the police already had secondary evidence of the film on video, this was not regarded as an insurmountable hurdle but when the papers were referred to the DPP he directed no prosecution on the grounds that it was not possible to prove the making, processing, editing and transmission of the original news film. The rationale of this decision must surely be incomprehensible to the ordinary citizen but there the matter had to rest and what was without exaggeration an excellent piece of police work came to nought and two dangerous terrorists were allowed to go free.

- (b) In September 1978 Gerry Adams, then Chief of Staff of PIRA, was arraigned on two counts under Section 19(1)(a) of the Northern Ireland (Emergency Provisions) Act 1973 of belonging to a proscribed organisation and of professing to belong to a proscribed organisation. In support of the case against Adams the Crown sought to advance a number of items of evidence which



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fell generally under the following headings:-

- (i) that Adams acted as Inspecting Officer on the occasion of Republican parades in the Maze Prison;
- (ii) that Adams made a speech in Dublin which was broadcast on BBC television which explained PIRA's reliance on the people of Republican areas and which was couched in singularly military language;
- (iii) that Adams frequented the Belfast Headquarters of Provisional Sinn Fein where there were numerous posters advocating support for PIRA and generally advancing the cause of terrorist violence;
- (iv) that Adams was known to be and, in fact, admitted being a member of Sinn Fein, whose constitution pledged assistance to all organisations working towards the overthrow of English Rule in Ireland and the establishment of a Democratic Socialist Republic based on the proclamation of 1916.

The Lord Chief Justice who had, in fact, invited applications on whether he should enter a 'No Bill' under Section 2(3) of the Grand Jury (Abolition) Act (NI) 1969, found none of the evidential items tendered persuasive and Adams was allowed to go free. It is not without significance that during the period Adams was in

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prison on remand, the level of terrorist activity was substantially reduced and here again the general public would have some difficulty in understanding the legal refinements.

(c) Throughout the latter half of 1977 and the first half of 1978 a major police operation was mounted against Provisional Sinn Fein, who were believed to be for all intents and purposes part of PIRA and whose offices were being used to telex details of, and claims of responsibility for, terrorist incidents. This operation culminated in the seizure of a huge volume of documentary evidence and in the arrest of eight leading members of Belfast Sinn Fein. These persons were charged, inter alia, with conspiracy to pervert and defeat the course of public justice in that they had established a system whereby reports of criminal offences would not be made to the police but would be made to PIRA and that punishment in respect of such offences would be meted out by PIRA.

There were literally thousands of items of documentary evidence, some in the handwriting of the accused and including minutes of meetings, posters advocating support for the IRA and incident forms which recorded names of those who were to be punished for alleged offences. The overall effect of this documentary evidence is perhaps best summed up in the words of Mr Justice Murray who heard the bail applications in the case where he said -

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"The gist of the Crown case - as described to me - on the conspiracy charge is as follows:-

FIRST

that the documents seized showed a very close 'hand in glove' working relationship between the IRA and the Sinn Fein organisation in Belfast.

SECONDLY

that in particular there is such a relationship between the complaints procedure operated by Sinn Fein and the severe punishments carried out on individuals by the IRA.

THIRDLY

that there is evidence, amongst other matters, to show that each one of the accused had been involved to some extent in the recording of complaints of offences against individuals."

The Learned Judge found that there was prima facie evidence in the documents that there was a very close relationship between the IRA and the Sinn Fein organisation and that the working of the complaints and punishment system went far beyond any lawful activities in which Sinn Fein would have been entitled to engage. There was also, although the Learned Judge did not have to address his mind to this point, evidence of an agreement between the accused sufficient to ground a conspiracy charge. However, when the papers were referred to the DPP, he directed no prosecution

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on the conspiracy charge stating that it raised 'manifestly difficult issues of law' and that the prospect of conducting a successful prosecution was so remote that the proceedings should not go on. Yet again, legal technicalities stood in the way of justice.

- (d) In March of this year Martin McGuinness, a very high-ranking member of PIRA, was arrested in a police operation which also netted Brian Keenan who was wanted in connection with bomb explosions in London. Keenan was taken to London but McGuinness was detained for five days in the Police Office at Castlereagh. Throughout his stay there he was totally unco-operative and made two spurious complaints against the police. He refused to answer any questions and even refused to sit in the interview room. Indeed, one of the complaints which he made concerned his being restrained from leaving the interview room by the officers who were interviewing him after he had declared his intention to depart.

This is but one example of a hardened terrorist exercising his common law right to remain silent and it is, unfortunately, a situation which arises all too often. Even before the advent of Amnesty and Bennett there was clear evidence that terrorists were being schooled in the art of anti-interrogation and it is manifest that not only has this tuition become more widespread and effective but it has received very considerable sustenance from all the

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consequences of the Bennett Report. Given the gravity of the situation here and given that intelligence can pinpoint with a high degree of accuracy both the perpetrators and organisers of violence, it seems logical, and would find favour with the public, to place an onus on a suspected terrorist to offer an explanation in relation to his alleged involvement.

- (e) On 12 August 1979 on the occasion of a Provisional Sinn Fein parade in Belfast, PIRA laid on one of their propaganda exercises in the form of a number of masked terrorists displaying a variety of firearms. As usual this incident was widely reported both in newspapers and on radio and television and gave rise to the usual assortment of statements by public figures together with an implied criticism of the security forces by the media. In point of fact police enquiries into incidents on that day have been relatively successful and a number of people have been charged with serious offences. However, in the course of those enquiries the Northern editor of the Daily Mail was asked to supply the original of a photograph showing the display of firearms which had appeared in his newspaper on 13 August 1979.

The request was politely but nonetheless firmly rejected on the usual grounds that reporters and photographers must be seen to be impartial and equally must not be exposed to any repercussions arising from their assisting the forces of law and order.