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## RIGHT OF SILENCE RESEARCH

### Executive Summary

The introduction of the Criminal Evidence (Northern Ireland) Order 1988 changed the law on evidence to permit the courts in Northern Ireland to draw such inferences as appear proper from the fact that the accused remained silent either during police questioning or in Court. The Court or Jury may draw inferences based on four situations provided for in the Order, failure of the accused to mention facts relevant to his defence, refusal of defendant to give evidence in court, failure of accused to account for objects, marks or substances on his person/clothing, failure of accused to account for his presence at a particular place.

The following summarises the findings of two pieces of research aimed at examining the effects of the 1988 Order. A study undertaken by the NIO in 1990 tracked suspects from police questioning to court. The second study was carried out by the RUC in 1992 and involves persons questioned by police for non-terrorist crime.

### NIO Study

- 288 (55%) of the sample were terrorist suspects, 87% of whom requested access to a solicitor compared with 32% of non-terrorist suspects.

- Terrorist Suspects  
interviews identified four variables  
38% (109) remained either totally silent or refused to answer relevant questions at interview 19 of whom were subsequently charged. Of the terrorist suspects who 'co-operated' 60 were subsequently charged. *she made significantly less use of silence than other suspects.*
- Non-Terrorist Suspects  
6% (15) remained silent or refused to answer relevant questions, 3 of whom were subsequently charged. 94 of the non-terrorist suspects who 'co-operated' were charged. *terrorist suspects are more likely than non-terrorist suspects to use*
- Suspects were more likely to be charged if they 'co-operated' during questioning and terrorist suspects were less likely to be charged than their non-terrorist counterparts.
- Of the 22 suspects who were charged, 5 pleaded guilty and one had case dropped due to insufficient evidence. Articles were applicable to 13 defendants, 12 of whom were convicted. The Judge drew adverse inference in 9 out of the 13 instances and in 5 of these silence was used to corroborate other evidence.

#### RUC Study

- Silence was used by 19% (92) of the 489 suspects. Some suspects were interviewed more than once resulting in a total of 768 interviews.



- An analysis of the interviews identified four variables significantly related to the use of silence during interview: suspects aged 21-30, existence of a criminal record, receipt of legal advice made more use of silence. If evidence against a suspect was strong he/she made significantly less use of silence than other suspects.
- These studies show that if a suspect co-operates during interview, he/she is more likely to have proceedings taken against them than if they had remained silent. Also terrorist suspects are more likely than non-terrorist suspects to use silence and less likely to be charged. If a case goes to trial the court is very likely to draw inferences about silence used during police questioning, in court or both.



## RIGHT OF SILENCE RESEARCH (NI)

### INTRODUCTION

#### Background

1. The introduction of the Criminal Evidence (Northern Ireland) Order 1988 amended the law on evidence to permit the courts in Northern Ireland to draw such inferences as appear proper from the fact that the accused remained silent either during police questioning or in court. The Order provides four situations which empower the court or the jury to draw inferences.

**Article 3** Failure of the accused to mention facts relevant to defence when questioned, charged or informed that he/she is to be prosecuted for an offence.

**Article 4** Refusal of the accused to give evidence at trial for an offence with which he/she is charged or answers on oath.

**Article 5** Failure of accused to answer questions about objects, substances or marks on his/her person or clothing or in his/her possession including whether there is a case to answer or deciding upon whether to commit accused for trial or find him/her guilty of an offence with which he/she is charged.

Article 6 Failure or refusal to account for one's presence at a particular place if the accused was arrested at a place or about the time the offence he/she was arrested is alleged to have been committed.

While the court may take account of all the articles which are relevant in any case before them, Articles 5 and 6 relate particularly to police questioning of suspects.

2. Research was initiated with the aim of examining the practical effects on the Criminal Justice System of the Criminal Evidence (NI) Order 1988. Such an investigation would, it was thought, be useful to both the Home Office and NIO Ministers when considering legislation on the right of silence for England and Wales and its subsequent implications for the law on evidence in Northern Ireland.
3. A small scale research project was undertaken in 1990 by NIO to examine the extent of the use of silence during police questioning, during trial and the inferences drawn by the courts. More recently, the RUC has carried out a project, early in 1992, with the objective of determining the use of silence by suspects of non-terrorist crime in Northern Ireland.



4. A recent study by Moston (1990) investigated the use of the 'right of silence' by suspects detained in 10 Metropolitan Police Stations. This study found that 16% of all sampled suspects used silence to some degree during interview, 8% remained totally silent. The study also revealed that suspects questioned about serious offences used silence during interview more often than those detained for lesser offences. Of those suspects interviewed about offences described as very serious 23% used silence compared with 9% of suspects interviewed for less serious offences.

5. In consultation with the RUC a programme was designed to capture the following information:  
location; sex of suspect; age; main offence;  
terrorist/non-terrorist offence; use of silence; number of co-suspects; access to legal advice; grounds for suspicion; final decision; criminal history of suspect; importance of interview evidence.

7. Data was gathered on 526 suspects interviewed during the first six months of 1990. They were interviewed at three centres, Castlereagh (291), Stranstown (204) and Portadown

**NIO STUDY**

**Methodology**

5. The study was undertaken in two phases: the first focussed on the use of silence during police questioning; the second phase tracked those suspects who had remained silent, who were subsequently charged and then followed through to appearance at court. Such an approach was adopted in order to assess the effects of the new cautions, based on Articles 5 and 6, on the use of silence during police questioning and subsequent consideration given to such silence by the courts. In addition, use of Articles 3 and 4 by the courts may also be monitored.
6. In consultation with the RUC a programme was designed to capture the following information:  
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terrorist/non-terrorist offence; use of silence; number of co-suspects; access to legal advice; grounds for suspicion; final decision; criminal history of suspect; importance of interview evidence.
7. Data was gathered on 526 suspects interviewed during the first six months of 1990. They were interviewed at three centres, Castlereagh (291), Strandtown (204) and Portadown



(31) for 'serious arrestable offences'. The centres were chosen in order to yield a balanced sample between terrorist and non-terrorist suspects.

Definition of Terms

8. The following were the definitions used in the study.

**Terrorist/Non-Terrorist** - A suspect was designated as terrorist if there was paramilitary involvement in the offence for which he/she was being questioned.

**Serious Arrestable Offence** - An offence which could result in a prison sentence of 5 years or more.

Interview Process

**Silence** - Those suspects who refused to answer any questions at all or refused to answer questions relevant to the suspected offence but may have supplied information on name, age, address were considered to be 'essentially silent'.

## FINDINGS ( Silence at Interview (Phase 1)

### Profile of Sample (44) of suspects used silence during interview.

9. The majority of the sample overall (92%) were male and three quarters were aged over 21 with 4% aged between 10 and 16 years. 288 (55%) of the total sample were questioned about terrorist offences, the remaining 231 suspects were questioned about offences which did not involve paramilitaries. The proportion of females questioned about terrorist and non-terrorist offences was 7% and 10% respectively. The proportion of adult suspects was much greater in the cases involving crime of a terrorist nature. Only 12% of the terrorist suspects were under 21 years of age compared to 45% of non-terrorist suspects.

### Interview Process (one relevant questions 55 (37%) had proceedings taken against them, 50 of whom were charged.

10. Access to a solicitor was requested by 63% of the sample suspects with 87% of terrorist suspects and 32% of non-terrorist suspects requesting access. 'Information from another suspect' formed grounds for suspicion for 34% of the sample overall, 52% of terrorist suspects were questioned on this basis. 15 suspects 4 (29%) had proceedings taken against them, 3 of whom were charged.



**The Use of Silence at Interview (Phase 1)**

11. Overall 124 (24%) of suspects used silence during interview.

**Terrorist Suspects**

12. Of the 288 terrorist suspects 109 (38%) remained either totally silent or refused to answer relevant questions (essentially silent) during interview. Of these 109 suspects who remained silent 33 (30%) had proceedings taken against them ie 19 (17%) were charged, the remainder were either summonsed, released on bail pending further enquiries or cautioned. The remaining 96 were released without charge.

13. Of the 179 terrorist suspects who answered all questions or answered some relevant questions 66 (37%) had proceedings taken against them, 60 of whom were charged.

**Non-Terrorist Suspects**

14. Of the 238 non-terrorist suspects 15 (6%) remained either totally silent or refused to answer relevant questions during interview. Of these 15 suspects 4 (29%) had proceedings taken against them, 3 of whom were charged.

The remaining 11 were released without charge. Of the 208 suspects who either answered all questions or answered some questions 178 (86%) had proceedings taken against them, 94 of whom were charged. defendants.

15. In summary, terrorist suspects compared with non-terrorist suspects are more likely to remain silent during interview and they are less likely to be prosecuted, particularly they are less likely to be charged whether or not they remain silent.

#### Appearance at Court (Phase 2)

16. A total of 22 silent suspects were charged, 19 of whom were terrorist suspects. This phase of the study tracked the 22 defendants through to appearance at court. The DPP reported that one of the non-terrorist defendants was subsequently charged and tried for a terrorist offence. Of the 22, 5 (23%) pleaded guilty despite their original silence, one defendant had the charges dropped due to insufficient evidence. Of the remaining 16 defendants the Articles were applicable to 13 who appeared in court, 12 of these were convicted. -terrorist counterparts,

irrespective of use of silence. If suspects co-operate during police interviews they are more likely to have proceedings taken against them. Of those defendants who



### Use of Articles by the Court

17. The following matrix shows the applicability of each of the articles to each of the 13 defendants.

Defendant	ARTICLE				Convicted
	3	4	5	6	
1	(N)	(S)	-	(S)	YES
2	(N)	(S)	(N)	(S)	YES
3	(N)	(S)	(N)	(S)	YES
4	(A)	-	-	(N)	YES
5	(A)	(AC)	(AC)	(AC)	YES
6	(A)	(AC)	(AC)	(AC)	YES
7	(N)	-	(N)	(N)	YES
8	-	-	(N)	(N)	YES
9	-	(A)	(A)	(A)	YES
10	-	-	(N)	(N)	YES
11	-	-	(N)	(N)	YES
12	-	(N)	-	-	NO
13	-	-	(N)	(N)	YES

- (N) - No inference drawn
- (A) - Adverse inference drawn
- (AC) - Adverse inference drawn and silence used to corroborate existing evidence
- (S) - Strong inferences drawn and silence used to corroborate existing evidence.

18. This small study would indicate a few things about the use of silence by suspects and defendants and the subsequent treatment of that by the court. Terrorist suspects remain silent more so than non-terrorists while being interviewed. Terrorist suspects are less likely to be prosecuted than their non-terrorist counterparts, irrespective of use of silence. If suspects co-operate during police interviews they are more likely to have proceedings taken against them. Of those defendants who

appeared in court the articles were a live issue in the vast majority of instances. In most of these (9 out of 13) instances adverse inference was drawn by the Judge and in 5 of these refusal to answer relevant questions was used as corroboration for existing evidence.

19. There was a small number of defendants involved at this stage and this may cause interpretation of the results to be problematic. Interpretation, however, can be valid and useful; it is the expansive use of it for policy purposes which needs to be restrained, unless of course, small numbers are all that is involved.

22. Custody sergeants in each of the targetted stations were used as survey administrators and all relevant information was either completed or checked by them. An inspector at each site acted as co-ordinator and forwarded completed questionnaires to RUC HQ Crime Branch.



## RUC STUDY

**Methodology** of 449 suspects were interviewed which yielded 788

interviews. The majority of the suspects were male (90%);

20. In the early part of 1992 the RUC undertook an examination of the use of the right of silence in non-terrorist cases in Northern Ireland. Coverage excluded terrorist suspects questioned in the three designated centres (Castlereagh, Gough and Strand Road).

against property (80% for Theft and Burglary); 33% of

21. Data was collected at 17 designated PACE stations over a 4-week period during February and March 1992. The

Use information gathered consisted of some background variables (age, sex) and variables related to the

24. interview process such as nature of offence, offence seriousness, criminal history, strength of evidence, use of legal advice, use of Article 5 (marks found) and of Article 6 (account of presence at a particular place), cautions, use of silence, number of interviews and count interview outcome.

no account of their presence.

22. Custody sergeants in each of the targetted stations were used as survey administrators and all relevant information was either completed or checked by them. An inspector at each site acted as co-ordinator and forwarded completed questionnaires to RUC HQ Crime Branch.

## Findings

23. A total of 489 suspects were interviewed which yielded 768 interviews. The majority of the suspects were male (90%); 68% were aged 30 years or under with 43% aged under 21, this compares with 45% of non-terrorist suspects in the NIO study; 71% of suspects were suspected of having committed either moderately serious or very serious offences; 79% were suspected of having committed offences against property (60% for Theft and Burglary); 33% of suspects had a substantial criminal record.

## Use of Cautions (Articles 5 and 6)

24. There were 193 suspects cautioned under Article 5 (objects, substances or marks on his/her person) of whom 100 (51.5%) gave no account of the marks, substances or objects. Coincidentally there were 193 suspects (not necessarily the same) given Article 6 cautions (account for presence at particular place) of whom 111 (57.5%) gave no account of their presence.

## Interview Process and Outcomes

25. In 69% of the 768 interviews legal advice had been obtained by suspects.



Of the 489 suspects only 75 (15%) were released with no further police action being taken. Over half (53%) were charged, a further 12% were either summonsed or cautioned with 20% released on bail, 50% of suspects admitted the main offence with a further 5% admitting to a lesser offence.

### The use of Silence During Interview

26. Silence was used at some point during interviews by 92 (19%) suspects, 41 (8%) of whom maintained, a substantial use of silence throughout detention, 18 (4%) suspects maintaining some use of silence throughout detention while a further 33 (7%) used silence but did not maintain it throughout the period of detention. Some suspects were interviewed more than once. Of the 768 interviews which took place silence was used in 20% (151) of them. This breaks down as follows: substantial use of silence throughout the interview occurred in 74 (10%) cases, partial use of silence throughout interview occurred in 44 (6%) cases and silence was used but not throughout in 33 (4%) instances.
27. The remaining, detailed, analysis contained within the RUC's report concentrated on interviews rather than suspects.

Some suspects (168 (34%)) were the subject of more than one interview. It is conceivable that suspects who refuse to answer relevant questions may be subject to more than one interview. If this were the case, the effect on analysis of interviews rather than suspects would be to over-estimate the effect of the use of silence on investigations.

28. The analysis of the interviews identified 4 variables which were significantly related to the use of silence. They were: age - suspects aged 21-30 made most use of silence (25%) with juveniles making least use (14%); previous criminal history - suspects with a criminal record made more use of silence during their interviews than those who had no criminal record; strength of evidence - suspects against whom there was strong evidence made significantly less use of silence than other suspects; receipt of legal advice - suspects who had received legal advice were more likely to have used silence during their interviews.

29. It is worth noting that of the 4 variables identified as being significantly related to the use of silence only one could vary across interview, ie receipt of legal advice. Analysis based on suspects would have been useful, it would have identified suspect-related variables and it would have negated any potential for over-estimating the



effect of silence. Indeed, one may have found the same four variables emerging as significant. Because of the concentration on analysis by interview there are gaps in the information presented. For example, it would have been both useful and interesting to have data on the number of suspects who had used silence and who were subsequently charged, cautioned or summonsed; the number of silent suspects who received legal advice, the number of silent suspects who had a criminal history; the number of silent suspects who were being interviewed for serious offences. Such information would have allowed more detailed comparisons with the NIO study to be made.

### Summary

30. In summary, this study has shown that during interview the suspects who are most likely to use silence are aged between 21-30, have a criminal history, are not faced with strong evidence against them and have received legal advice.

### Conclusions

31. The two studies summarised have supplied a substantial amount of data on the application of the articles to the police interviewing stage.

We now know that the suspects more likely to remain silent during interview are those questioned about terrorist offences and for 'ordinary' serious offences, those for whom the evidence is not strong, those in receipt of legal advice and those with a previous criminal record.

32. A comparison of the studies offers support for the findings of the Moston (1990) Study which reported that suspects interviewed about more serious crime are more likely to remain silent. Findings from the NIO study revealed that 24% of suspects questioned about serious crime remained silent (this included terrorist suspects). However, 19% of the suspects in the RUC study which dealt with all reportable non-terrorist crime remained silent.
33. This would appear to provide some evidence that suspects in Northern Ireland, generally, make more use of silence than those in England and Wales.
34. As a concluding remark in the RUC study the author asserts that since the introduction of the Order more suspects have remained silent during interview. Some tentative evidence exists for this, bearing in mind the methodological differences, in comparing the two studies. The NIO study (1990), reported that 6% of non-terrorist suspects remained silent during interview compared to 19% in the RUC study (1992). Given that the NIO study was



concerned with suspects interviewed about 'serious arrestable offences' and that such suspects have been shown to use silence more often than others one might have then expected the NIO rate to be higher than that shown in the RUC study.

35. The substantial amount of relevant information available at police interview stage is contrasted with the dearth of data available on what happens in Court. From our limited amount of information it is evident that the Court is using the provisions of the Order as provided for in Articles 3, 4, 5 and 6, at least in terrorist-related cases. Further, more detailed examinations of the use of the articles by the Court should now follow, with particular reference to terrorist cases. The office of the Director of Public Prosecutions holds details of all cases in which the Order has been applicable. This is a rich source of information which would be of enormous benefit to further research on Right of Silence.