THE ADMINISTRATION OF JUSTICE IN NORTHERN IRELAND

The proceedings of a conference held in Belfast on June 13, 1981

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The conference was held on Saturday 13th June 1981 at the Students' Union, Queen's University, Belfast. More than one hundred individuals and delegates attended, representing a wide range of organisations in the legal, political and community spheres. It was the first time that so wide a range of people had come together to discuss the administration of justice under emergency laws, and that in itself was a justification for the concept of a jointly sponsored conference.

The five papers presented at the morning session were designed to cover the main aspects of the administration of justice which have given particular cause for concern in recent years. Each was followed up by an afternoon working party.

1. Arrest and Interrogation

Mr Dermot Walsh, Cobden Trust Research Student at Queen's University, outlined the preliminary results of his work on interrogation since the implementation of the Bennett Committee recommendations. He had interviewed some 40 of those who had been arrested and interrogated, and subsequently released without charge, in the past six months. His main conclusions, as summarised in the attached paper, where, that allegations of physical ill-treatment had virtually disappeared, but that there was still cause for grave concerne at the content of many of the interrogations. Though the security forces are entitled to arrest only on suspicion of criminal or terrorist activity, in many of the cases those arrested were not questioned on any specific matters of that kind, but on their background and associates and on the 'political temperature' in their areas; some were offered inducements to act as informers; some were subjected to verbal abuse. It was not possible to verify whether all aspects of the Bennett recommendations were being implemented. But there was clear evidence that those arrested were being denied access to solicitors and that the limits on the numbers of detectives involved in any one interrogation were sometimes exceeded.

The working party on this topic stressed their concern at the counterproductive effects of the pattern of arrest for 'screening' which Mr Walsh's research revealed. It called for the setting up of an independent body to supervise the due implementation both of the law and of administrative recommendations and codes of conduct. It also concluded that no special powers of arrest or interrogation should be renewed unless it was shown by the authorities that there was positive evidence that they were effective.

2. Complaints procedures

Mr Francis Keenan, a Belfast solicitor, explained in detail how the intentions behind the provisions in the Police Act (NI) 1969 for internal

police inquiries and external tribunals had been frustrated. No external tribunal had been appointed until 1980 in the Rafferty case, on the ground that the Police Authority considered that the appointment of a public inquiry was inappropriate where normal methods of complaint were sufficient; a tribunal had only been **considered** on two other occasions. And when the Rafferty Tribunal was established its proceedings were frustrated by the refusal of police witnesses to cooperate in any way, and of the high court to order them to do so. The Police Complaints Board set up under the Police (NI) Order 1977 had proved equally ineffective as a result of the 'double jeopardy' rule which meant that all cases of alleged assault were dealt with by the Director of Public Prosecutions, and thereafter were barred from further investigation by the Police Complaints Board whether or not a prosecution was ordered. Even in a case where all allegations of criminal conduct had been carefully excised from the complaint, to avoid this process, the case was referred to the DPP on the ground that it disclosed a possible unlawful detention. Mr Keenan recommended the setting up of an independent complaints commission with powers to carry out its own investigations and to order its own prosecutions.

This suggestion was followed up in the working party, which also considered the attached paper on the establishment of an unofficial independent body to review matters of concern in the administration of justice. The working party concluded that both these proposals should be pursued: a detailed study should be undertaken of precedents in Hong Kong and Australia, referred to by Mr Keenan, and a firm proposal for an appropriate body for Northern Ireland should be prepared; in addition the idea of an independent unofficial body, which would probably concentrate on general matters of concern rather than individual cases, should be pursued.

3. Diplock Courts

Professor Kevin Boyle of the Irish Centre for the Study of Human Rights, University College Galway, summarised the results of his recent joint study of the operation of the Diplock Court system (published as **Ten Years on in Northern Ireland**, price £2.50). Setting the Diplock system against the requirement of a fair trial under the European Convention of Human Rights, he raised the possibility of case-hardening on the part of the single judges sitting in Diplock Courts, and the dangers of heavy reliance on admissions and confessions. He recommended the repeal and replacement of section 8 of the Northern Ireland (Emergency Provisions) Act 1978 and urgent consideration of the reintroduction of juries or lay assessors for many of the cases currently dealt with by single judges.

The working party on this topic considered the attached paper on alternatives to single-judge trials, and endorsed the view that immediate steps be taken to reduce the range of scheduled offences so that more cases would be heard by juries. No firm conclusion was reached on the introduction of lay assessors, but a call was made for the establishment

of an immediate official review of the operation of Diplock courts.

4. Prisons

Mr Mervyn Love, an ex-special category status prisoner at the Maze prison, gave an account of his experience in dealing with the prison bureaucracy and of the drawbacks to the current regime under which prisoners have virtually no rights and are granted privileges only in return for continuing cooperation. He stressed the need for the recognition of all prisoners as citizens in temporary confinement and for the creation of a genuinely independent body to investigate complaints and supervise the implementation of prisoners' rights. The current Board of Visitors was unable to achieve this because of their involvement in disciplinary proceedings and their lack of real power within the prison system. He called for all prisoners to be permitted to wear their own clothes, and criticised the inflexible bureaucratic approach by the authorities in dealing with the H-Block protesters and with many other current problems within the prison system.

No general agreement was reached in the working party on prisons as to the immediate H-Block problem. But it was agreed that a review of the prison system should look more carefully into the categorisations of prisoners, and ensure that there was much better communication at all levels of the system; it was also agreed that the dual role of the Board of Visitors as protectors of prisoners' rights and as a disciplinary tribunal was counterproductive.

5. Joyriding

This topic was included as an example of the problems caused when 'ordinary' criminal activity by youths became tied up in the general security problem. Mr Jim McCorry of the Broadway Resource Centre in West Belfast explained how his team has established an alternative means of dealing with young people who became involved in joyriding. He could not claim complete success for those who became involved in his motor repair and racing programme, but it was a better approach than locking young people up for long periods. The working party on this topic stressed the criticisms of the security forces' response to the joy-riding problem and urged further experimentation in alternative and less drastic methods of dealing with such problems than were currently being used.

Resolutions

The plenary session of the conference passed two resolutions unanimously:

1. That a judicial review of the administration of justice in Northern Ireland should be established
2. That the conveners of the conference and others interested should continue their work on specific topics, as discussed in the working parties, and should convene a further conference at an appropriate time to consider the results of their work.

ARREST AND INTERROGATION

The Bennett Report

From 1975 to the end of the decade allegations of physical ill-treatment by the RUC of suspects in their custody grew in volume and intensity. This gave rise to considerable disquiet in many influential quarters of society — particularly as convictions in Diplock Courts were relying mainly on confessions obtained from suspects in police custody. The doctors involved in examining the suspects, church leaders, lawyers, politicians and civil liberties groups increasingly made known their concern at what seemed to be happening in the police interrogation centres. Finally, Amnesty International carried out an investigation into a number of alleged cases of ill-treatment. Their report called for a public inquiry to be set up.

The Government gave way in June 1978 and set up the Bennett Committee inquiry with a brief to examine "police procedures and practice in Northern Ireland relating to the interrogation of persons suspected of scheduled offences; to examine the operation of the present procedures for the dealing with complaints relating to the conduct of police in the course of the process of interrogation; and to report and make recommendations."

The Committee reported in March 1979 making a number of wide-ranging recommendations. The main thrust of these was to create conditions in which it would be much more difficult for suspects to be ill-treated while in police custody. They include:

(1) Closed-circuit television cameras to be installed in interview rooms.
(2) Medical officers should see suspects every 24 hours;
(3) A code of conduct to be drawn up for interviewing officers;
(4) Without prejudice to existing rights suspects should have access to a solicitor after 48 hours;
(5) Supervision by senior uniformed officers and senior detective officers should be stepped up;
(6) A training programme to be instituted for detectives;
(7) Detectives should be rotated with more general detective duties;
(8) Interviews should not last longer than the interval between meals;
(9) Not more than 2 officers should be in the interview room at one time;
(10) A maximum of 6 officers to be involved with the one suspect;
(11) Officers should identify themselves by name or number.

Current Research

The Northern Ireland Office claim that these recommendations are now all fully implemented. It is impossible to determine to what extent some of them are operating — the degree of supervision for example. But a small research project on the implementation of the Bennett recommendations began early in 1981, and is continuing. So far forty persons arrested for interrogation and released without charge have been interviewed. Allegations of physical ill-treatment were virtually non-existent in this sample. It would appear that the other recommendations with a few notable exceptions, are being implemented to some extent. In virtually every case medical examinations are offered on arrival and departure; 88% of interrogation sessions were less than 3 hours (see table 1). There was a noticeable laxity in the implementation of other recommendations: 24% said that a third detective sometimes came in and asked questions; 41% said that the maximum number of detectives allowed in one case was exceeded (see table 2), while 48% said that they had been subject to verbal abuse. As for access to a solicitor, it seems to be non-existent in the first 48 hours and in only 18% of those cases where the suspect asked to see his solicitor after 48 hours did he actually get seeing one.

The most disturbing feature to emerge from the survey, however, was the apparent use of the emergency legislation for the ulterior

TABLE 1

Length of Sessions (for those arrested under the 3 and 7 day powers)

Hours	Number	Percentage of total
0-1	3	13
1-2	4	17
2-3	14	58
3-4	2	8
4+	1	4
	24	100%

TABLE 2

Number of Interrogators in one case (3 and 7 day powers)

Number	Cases	Percentage
1-2	3	13
3-4	9	38
5-6	2	8
7-8	6	25
9-10	3	12
10+	1	4
	24	100%

TABLE 3

Power of arrest	Number	Percentage
4 hr power (s.14 EPA)	15	38
3 day (s.11 EPA)	17	44
7 day (s.12 PTA)	8	18
	40	100%

motives of screening, building up dossiers of information on people in an area, harrassment and inducing suspects to pass on information. 85% of those arrested under the three powers of arrest were subsequently released without charge (see table 3). In most of these cases there did not appear to be any real suspicion that the suspect was connected with acts of terrorism. In 67% of cases the suspect claimed that he was not even questioned about specific incidents; 64% said they were questioned about family details, 47% about political views and activity while 39% said that they were induced to pass on information.

In conclusion it can be said that although the strict letter of the Bennett recommendation may not be implemented in a number of important areas, by and large they would appear to be operating effectively to prevent physical ill-treatment of suspects in custody. However, one very ominous danger which they cannot hope to deal with is the abuse of emergency powers of arrest. If persons are being arrested and interrogated for purposes other than extracting confessions from them about terrorist activity then the whole concept of the Bennett recommendations is rendered largely academic.

Dermot Walsh

STATISTICS ON THE OPERATION OF DIPLOCK COURTS

(From 'Ten Years on in Northern Ireland')

Table 5.1: The interrogation of defendants dealt with in Diplock Courts between January and April 1979

a. Number of sessions

	1-3	4-9	10 or more	NK
Loyalists (89)	39%	43%	12%	6%
Republicans (240)	27%	59%	9%	4%
Total (332)*	31%	54%	10%	5%

b. Total hours under interrogation

	Up to 4	4-9	10 or more	NK
Loyalists (89)	30%	29%	32%	9%
Republicans (240)	15%	45%	36%	5%
Total (332)*	19%	40%	33%	7%

*including three cases not identified as Loyalist or Republican.

Table 5.2: The nature of the evidence against defendants in Diplock trials between January and April 1979

	Statement only	Statement and other evidence	No statement	NK
Loyalists (89)	55%	35%	2%	7%
Republicans (240)	57%	29%	7%	7%
Total (332)*	56%	30%	6%	7%

*including three cases not identified as Loyalist or Republican.

Table 5.3: Total number of hours of interrogation before first statement by defendants in Diplock trials between January and April 1979

	Less than 1 hour	1-2 hours	2-3 hours	3-6 hours	7-9 hours	10 or more hours	No statement	NK
Loyalists (89)	13%	22%	17%	21%	7%	4%	2%	12%
Republicans (240)	7%	22%	20%	25%	5%	7%	7%	6%
Total (332)*	9%	22%	19%	23%	6%	6%	6%	8%

*including three cases not identified as Loyalist or Republican.

Table 6.1: The outcomes of cases dealt with in Diplock courts from 1973 until 1979

Year	No. of persons	Pleaded guilty		Pleaded not guilty and found guilty		Acquitted		Apparent rate of acquittal in contested cases
1973	137	77	56%	37	27%	23	17%	38%
1974	1,228	723	59%	350	29%	155	13%	30%
1975	1,177	768	65%	323	27%	86	7%	21%
1976	991	668	67%	255	26%	68	7%	21%
1977	1,157	729	63%	371	32%	57	5%	13%
1978	910	673	74%	189	21%	48	5%	20%
1979	851	676	79%	137	16%	38	4%	22%

Notes: These figures refer to individual defendants in separate trials; a number of defendants appeared in several separate trials. Pleas of guilty refer to any plea of guilty on any one charge, not necessarily on all charges. Acquittals refer to those acquitted on all charges.

Table 6.2: The effect of refusals to recognise the court on effective pleas of guilt and effective acquittal rates in contested cases for selected samples of cases

Sample year	No. of cases	Pleaded guilty		Found guilty: Refused to recognise the court		Found guilty: Pleaded not guilty		Acquitted		Acquittal rate in contested cases: Apparent	Acquittal rate in contested cases: Effective
1973	150	89	59%	20	13%	17	11%	23	15%	38%	57%
1974	237	142	60%	25	11%	36	15%	32	13%	34%	47%
1975	467	249	53%	111	24%	65	14%	37	8%	17%	36%
1976	525	327	62%	80	15%	71	14%	39	7%	21%	35%
1979	359	264	73%	15	4%	47	13%	25	7%	29%	35%

Table 6.3: The outcome of jury trials in Northern Ireland from 1974 until 1979

Year	No. of persons tried	Pleaded guilty		Pleaded not guilty and found guilty		Acquitted		Acquittal rate in contested cases
1974	719	577	80%	88	12%	54	8%	38%
1975	650	532	82%	59	9%	59	9%	50%
1976	608	549	92%	27	4%	32	5%	54%
1977	720	638	89%	32	4%	50	7%	61%
1978	882	772	88%	49	5%	61	7%	59%
1979	994	891	90%	42	4%	61	6%	59%

ALTERNATIVES TO DIPLOCK COURTS

The non-jury "Diplock" Courts established by the Northern Ireland (Emergency Provisions) Act 1973 for the hearing of scheduled offences have been in existence since October 15, 1973. In the time that has since elapsed, the judiciary have maintained a high reputation for the imparital administration of justice while sitting in an invidious position as arbiter of both law and fact. That notwithstanding, it must be remembered that the Diplock Commission's recommendations as a whole were designed to meet a specific emergency situation and it was not intended that the 1973 Act should become a permanent feature of the Statute Book. Indeed the Gardiner Committee subsequently stressed that the continued existence of emergency powers should be limited both in scope and duration. It is worth emphasising, with regard to the trial of scheduled offences, that the single judge system was introduced when Parliament faced the collapse of jury trial as a result of fear, intimidation and perversity. The Gardiner Report noted that trial by jury was the best form of trial for serious cases and said it should be reintroduced as soon as possible in Northern Ireland, adding that there were objections to its restoration at that time — the Report was prepared in late 1974 and presented to Parliament in January 1975.

It is contended that the most insidious feature of emergency legislation is the way in which it acquires an air of permanence and, despite the formal provisions for review by Parliament, procedure in that forum does not encourage searching questions on matters of detail as opposed to general principle. For this reason a further Gardiner-style review of the 1978 Act is urgently required. With regard to trial procedure the question must again be asked "is the time right for the re-introduction of jury trial" and, if not, "is there any better way of hearing scheduled offences than the present Diplock system?"

It is not the role of this paper to attempt to answer the first question, the purpose being solely to sketch some of the alternatives should the first question be answered in the negative. The paper is not intended to be comprehensive but merely seeks to encourage discussion of the question, how and when should the legal system begin the return to normality?

ALTERNATIVE TRIAL PROCEDURES

Alternative trial arrangements as such fall into three broad categories: —

(i) Variations on the right to trial by jury.
(ii) Lay assessor systems.
(iii) Collegiate court systems.

A fourth possibility which will be briefly examined is the possibility of descheduling some offences which are presently tried in Diplock Courts.

2. VARIATIONS ON THE RIGHT TO TRIAL BY JURY

During the passage fo the 1973 Bill three alternatives to the total abolition of trial by jury were canvassed: —

A right to jury trial except where the accused otherwise elects.

A trial on indictment of a scheduled offence may be conducted by the court without a jury if after hearing the prosecution and the defence the court is satisfied that the interests of justice would be better served thereby. Alternatively the onus could be placed on the defendant to show that his was not a terrorist offence and should therefore be tried by a jury.

Trial should be by jury unless the Attorney-General or DPP certifies than an alleged crime was carried out in pursuit of terrorism or, the onus can be reversed so that trial will be judge alone unless the Attorney-General or DPP certifies otherwise.

All these approaches lend flexibility to the system but all have their weaknesses: —

The election option allows a safeguard for the accused but makes fairness a one sided issue, the jury is still liable to intimidation and no account is taken of the variety of pressures to which a jury may be subject.

If the court was to decide on mode of trial it runs the risk of involvement in political controversy, there is also the risk that a finding against an accused in preliminary hearing could prejudice his chances of a fair trial although this risk could be offset by separating the two proceedings or, alternatively, if the judge thought he had been unduly prejudiced by what he had previously heard he could be given the power to direct a new trial and the trial would be conducted in accordance with his ruling.

With regard to certification by the executive or prosecution authority there is the risk that there will be a lack of objectivity and the review may become perfunctory.

All the variants weaken the concept of equality before the law in that similar types of offence may be tried before different forms of tribunal.

3. LAY ASSESSOR SYSTEMS

A trial on indictment of a scheduled offence shall be conducted by a court consisting of a judge and two assessors. When, in a case tried with the aid of assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the court may sum up the evidence for the prosecution and defence and shall then require each of the assessors to state his opinion orally on all the charges on which the accused has been tried, and shall record such opinion and for that purpose may ask the assessors such questions as are necessary to ascertain what their opinions are, and all such questions and the answers shall be recorded.

Arguments for

An element of lay participation would instil public confidence in the trial system.

Risks of error on matters of fact would be reduced without putting additional strain on judicial manpower.

It would be clear to all who was running the trial and who was making decisions on matters of law during the course of proceedings.

Arguments against

Gardiner came down against lay participation on the following grounds: —

(i) there was no agreement on the source from which assessors should be drawn or what the respective judge/assessor role would be; and

(ii) assessors selected on a rota basis would be subject to exactly the same pressures as ordinary jurors, perhaps more so due to the relatively small numbers involved.

The Attorney-General was concerned that the make-up court could appear unbalanced and lead to political controversy and a decline in public confidence.

4. COLLEGIATE COURTS

During the passage of the 1973 Bill the following alternatives were proposed: —

A trial on indictment of a scheduled offence shall be conducted by the court without a jury and where a trial is so conducted the court shall consist of a High Court Judge, who shall preside and two other persons who may be High Court or County Court judges or practising barristers or solicitors of not less than ten years standing (and no conviction shall be recorded against the defendant unless all three members of the court agree)*

*(......) the initial proposal for unanimity was dropped during the Committee's proceedings.

A trial on indictment of a scheduled offence... the court shall consist of two judges.

The qualifications in proposal (a) are similar to those for Recorders in England and Wales.

Arguments for

A three man court is more likely to inspire public confidence than that operated under the Emergency Provisions Act.

Given the religious divide in Northern Ireland and the relative sizes of the two populations, it is likely that both would be represented on the triumvirate bench.

Individual judges can acquire reputations sitting alone; this could affect public confidence. More importantly, the risk of error is reduced by increasing the numbers on the bench.

A judge sitting alone provides an isolated target for terrorist attack; a panel of three would in effect spread the risk and responsibility involved.

In comparison to a lay assessor system lawyers may be less of a security risk than the man in the street. The lawyer is already at risk in participating in the prosecution system, the ordinary man taken from his

community would inevitably be highlighted and placed in jeopardy of terrorist reprisal.

There are historical and contemporary precedents for the use of a three judge panel: —

(a) The Prevention of Crime (Ireland) Act 1882 established Special Commission Court judges who were charged with hearing the case against the accused in open court. The accused was to be acquitted unless all three judges concurred in his guilt and a judgement was to be given in open court stating the reasons for conviction. The criterion for the setting up of a Special Commission Court is also interesting. It had to appear to the Lord Lieutenant that a "just and impartial trial cannot be had according to the ordinary course of law".

(b) In the Irish Republic the Offences Against the State Act 1939 empowers the Government whenever it is satisfied "that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order" to convene a Special Criminal Court consisting of an uneven number judges not being less than three (this has been the figure in practice) who can find an accused guilty by majority decision though in public the verdict is pronounced as if unanimous.

The Bar of Northern Ireland had held a general meeting on 16 May 1973. 73 members were entitled to vote. 35 returned papers on the resolution "That the Bar of Northern Ireland strongly recommends three judges and not a single judge as the composition of the court to try Scheduled Offences". The voting was 29 in favour; 6 opposed to the resolution.

The reasons stated by the Bar for its decision were: —

(a) the proposed change was too drastic and would adversely affect public confidence in the administration of justice;

(b) a three judge panel would spread responsibility for judicial decisions and lessen the risk to individuals;

(c) the existence and efficient working of a similar system in the Republic would lessen criticism of the United Kingdom in any move away from jury trial;

(d) manpower difficulties should not be allowed to determine such an important issue.

The Bar was of the opinion that RMs or experienced QCs could be used on the bench if necessary.

Arguments against

The Attorney-General pointed out in Committee that solicitors in Northern Ireland were, unlike their English counterparts, not eligible for recorderships of the County Court bench.

Additionally he claimed solicitors who had no judicial experience would be reluctant to leave general practice for long and that the solicitor-community relationship would be undermined if they were to undertake this type of work.

The Lord Chief Justice and Attorney-General had agreed upon a single judge formulation for several reasons: —

(a) In other (non-criminal) areas of law, matters of great import are left to a single judge. For example, civil actions for damages. (This argument carries more weight in England and Wales than in Northern Ireland where jury trial of civil actions remains the norm.)

(b) Sentencing is always a matter for the judge alone as is the admissibility of statements. A ruling on admissibility will often decide the outcome of a case.

(c) A single judge is more likely to make sure that the onus of proof is discharged than are three judges sitting together — the sole judge will perform better because of the feeling of individual responsibility.

(d) No allegations were made prior to the Bill of either individual or collective judicial bias. Even under a rotation system questions would arise about the make-up of the bench in particular cases if all three judges were of the same persuasion.

(e) A three man bench would slow down the rate of trials and may in the end become self-defeating.

(f) With regard to a two judge court, problems could arise with conflict avoidance, who presides and makes decisions about points of law etc.

(g) There were administrative problems regarding the sufficiency of manpower available to man 3 men benches. (In 1973 there were 8 High Court Judges, 9 county court judges and 19 Resident Magistrates. In addition there were 17 QCs and 8 junior Barristers of ten years plus standing.)

However, the Attorney-General did state that administrative problems should not come before fair trial.

The Diplock Report (with which Gardiner concurred) concluded that Our adversarial system of procedure is ill-adapted to the collegiate conduct of a trial of fact. In criminal proceedings, in particular, immediate rulings on admissibility of evidence and other matters of procedure have constantly to be made by the single judge when sitting with a jury. It would gravely inconvenience the progress of the trial and diminish the value of oral examination and cross-examination as a means of eliciting the truth, if a plurality of judges had to consult together, albeit briefly, before each ruling was made.

AMENDMENT OF THE LIST OF SCHEDULED OFFENCES

While each of the alternatives so far considered has its advocates, they all have one fundamental weakness, each has been considered in turn by Diplock, Parliament and Gardiner and rejected: what has not been considered has been an amendment of the list of scheduled offences.

Between 1976-1980 convictions were secured in the Diplock Courts for 39 different offences ranging from murder to criminal damage. On preliminary examination of sentences imposed for each offence it

became clear that even for the most serious of offences a wide range of sentences was imposed.

Sample Sentences Imposed Diplock Courts 1976-1980

Offence (Max Sent.)	Total Convns.	Custod. Sents.	Non- than 5 Yrs	Less less than 7	5 Yrs & less than 10	7 Yrs & & Over	10 Yrs Life	Borstal or Tr'ning School
Causing Explsns. **[Life]**	244	18	10	14	23	169	4	6
Possessing Exlsvs with intent **[20 yrs]**	179	8	16	31	24	9	—	6
Possessing F'arm with intent **[Life]**	311	31	45	44	55	118	2	16
Robbery **[Life]**	976	219	180	179	151	91	—	156
Wounding with intent to cause grievous bodily harm **[Life]**	110	21	19	12	14	30	1	13

Some jury trials are included where the Attorney-General has certified the case out of scheduled trial. Where a person has been convicted of one or more serious offences only the most serious or that which received the longest sentence is recorded.

The same was true of lesser offences with the judiciary tending to employ the full range of options open to them. Scrutiny of the statistics revealed that there were variations in seriousness within each offence, just as terrorist colouration could apply to the least serious of crimes — hence it would be difficult to recommend that any particular individual offence be descheduled. However, in contending that a return to legal normality must, if possible, be commenced it is suggested that all offences with a maximum sentence of five years imprisonment or less be descheduled and returned to jury trial.

Arguments for

Such a move would demonstrate the society's commitment to restore trial by jury as soon as circumstances permit.

Among offences descheduled would be membership of a proscribed organisation, there is no more "political" offence on the statute book; to have such an offence tried by a jury would clearly demonstrate that there was no difference in principle between those offences remaining scheduled and all other offences. The basis for scheduling would not be the degree of terrorist colourisation of the offence but, that society is not prepared to use jurors in more serious cases where risk to their personal safety would be increased. In essence, and this is also the weakness of the proposal, limited return to jury trial would be based on the assumption that it would not be worth the paramilitaries' while to harrass juries in

minor cases. If this assumption proved wrong in practice the option of a return to Diplock trial remains open; if correct the way remains open for an extension of the system.

Arguments against

The risk of intimidation and perversity is too high to make such a change at present.

Such a move would be cosmetic in effect: many accused would be charged with a scheduled offence to ensure their trial before a Diplock Court and only the more trivial offenders would be tried by judge and jury.

However, to put this in context over 550 people were convicted solely of offences which would be descheduled under the five year provision, some 263 of these being convicted of membership of a proscribed organisation.

PRISONER'S RIGHTS

There are two points I would like to put to conference to begin:

1. My aim is to try and convey to conference the emotions and feelings involved with prison.
2. My concern is for reforms for all prisoners. I do not want to get caught up in the now international politics of H-Block. I can understand the issues involved there but feel that it is hindering progress on other reforms.

I speak about prisons from personal experience. I spent six months in Crumlin Road prison and four and a half years in Long Kesh as a Special Category prisoner. That experience convinced me that as a means of preventing crime or rehabilitating people it is a failure. Prison did not help or make me change. That came about through a deep personal Christian experience. If anything the system would have embittered me. Though prison populations rise, crime does not fall. When a man goes to prison it does not lessen, but often increases the chance that he will reoffend. The recidivist rate is enormous, well over 70%. In N. Ireland we are building even now more new prisons — at what cost! In God's name, why?

I strongly suspect that part of the answer lies with society itself. It has not yet decided whether people are sent to prison as punishment (i.e. loss extends the punishment). From my own experience, prison is a degrading and dehumanizing experience for both prisoner and prison staff alike. It embitters and serves only to contain people away from their community. It institutionalizes men, thus imposing an even heavier burden on society upon a prisoner's release. A model prisoner does not make a model citizen — it makes for a robot-like existence where the

individual loses the will to make decisions for himself.

Prison life contains many elements that could be changed quickly and easily, thus helping to relieve some of the existing pressure. The prison regime operates on a system of a few statutory rights overlaid with many privileges. The privileges are used as a means of discipline control; behave and you get a reward. Of all systems, this is the most degrading; to the prisoner who feels he is being treated like a performing animal, to the prison officer caught up in imposing petty, but often vindictive sanctions. This is not real control, it only buys time. Effective control is built on trust and mutual respect, which is earned, not bought. The answer lies in effective communication on the ground, employing well-trained and confident staff. A system of communication that allows for two-way dialogue and which lets the prisoner feel he is a human being and not just a caged animal. The discipline control system of privileges should be replaced by humane statutory rights for prisoners.

The Board of Visitors have a dual function inside prison that creates a crisis of identity, both for the Board and the prisoner alike. On the one hand, they serve a judicial function (adjudicating and awarding punishments in discipline cases) and looking after a prisoner's welfare. The two masks are not compatible in the eyes of the prisoner. In most cases, members of the Board agree. More information is needed as to how the Secretary of State decides who should sit on the Board and what criterion he uses in making that choice. Most prisoners feel that the members of the Board come from middle-class backgrounds and therefore do not relate or communicate easily with them. The powers of the Board in dealing with inquiries et cetera are far too limited and would need to be re-examined. The Board consists of members of the community who do care, but it needs to be reformed urgently.

The H-Block protest is concerned with people who are demanding Political Status. I was a Special Category prisoner and I feel I was entitled to that status. The laws and methods that were used to watch, arrest, interrogate, detain, try and incarcerate me were all Special and used because of the current political emergency. As Dermot mentioned earlier, the Law specifically refers to terrorists and defines terrorism as "acts of political violence". I do not feel that at present people are imprisoned in N. Ireland because of their political beliefs alone. Therefore there is not a case for Political Status, but there is a strong case for Special or Emergency Status. Whether you like it or not, most people involved in paramilitary violence do see themselves as fighting for a cause. They are not dealt with under due process of Law, but under abnormal Law. I think it is sad that the situation which could have been resolved by common sense has been allowed to deteriorate into an international propaganda war. The Government could have acted generously from a **position of strength** but lost the opportunity and in so doing either fairly or unfairly has become the focus for much international bitterness and suspicion of having something to hide. I do not know the solution, but I feel that for as long as it continues, the atmosphere needed for prison reform will not be in existence.

There are many basic reforms needed in our prisons. Reforms that would give prisoners basic human rights as guaranteed by Law and not as a system of privilege. The easiest and most efficient summary of basic human rights for the prisoner could be contained in the following statement: "That a prisoner has a statutory right to be treated as a citizen before the Law." If as it appears it is the case in N. Ireland, that the purpose and jusitification of imprisonment is ultimately to protect society, then I feel that the period of imprisonment should be used to ensure that upon returning to society the prisoner is better able to lead a law-abiding and self-supporting life. To this end, the prison should employ remedial, moral, spiritual, educational and other aids and apply them to the individual needs of the prisoner. As stated earlier, the prison regime should seek to minimize differences between prison life and liberty which tend to lessen the responsibility of prisoners and their dignity as human beings. The treatment of prisoners should emphasise not their exclusion from society, but their continuing part of it.

Given that prison is not working, why not look at alternatives? During my time of imprisonment, no one attempted to find out why I became involved in violence et cetera. Young people often feel neglected and overlooked by the rest of society and are usually lacking in social skills. We operate on a basic Victorian prison system overlaid with some reforms and comforts, but it is outdated. Prisons in N. Ireland may contain the most modern accommodations but still maintain an outdated prison system. We need to look at alternatives. Open prisons, extension of probation services, more development of community service orders (where the community benefits rather than suffers the burden of increased prison costs) and the further expansion of intermediate treatment centres. The number of young people in prison at present is double the figure of the 1950s and the number is increasing. We need to reform our existing prisons, reducing the prison population as quickly as possible and start looking at and making greater use of alternatives.

Mervyn T. Love

BREAKIGN THE CYCLE OF VIOLENCE

Over the past 5 years, the Peace People have prepared a number of documents, open letters to Parliament, and formal submissions to the Northern Ireland Office on issues of justice in this province. The substantive concern for justice — in the words of the Standing Advisory Commission on Human Rights "a justice that is seen to be just" — has been a focal point of our work. We have accepted wholeheartedly and from the inception of this movement Pope John Paul's message: "if you want peace work for justice".

Our own concerns and previous written submission cover all 5 areas for discussion at the conference. We have produced 4 papers, available

from 224 Lisburn Road, which we hope will be of some assistance to you in this conference. The first two papers, **The Case for the Replacement of the Emergency Provisions Act by Normal Judicial Process** and **Time for a Change**, represent our 1978 and 1980 reviews of the operation of the Emergency Provisions Act. The second set of papers, The H-Block: **The Hunger Strike in the Maze Prison** (October, 1980)) and **The H-Block Protest, Hunger Strikes and Emergency Law** (February, 1981) outline the facts, analyse points of contention and put forward proposals for resolution of this most difficult of Northern Irish situations.

It is our firm belief that some aspects of the administration of justice in Northern Ireland are counterproductive in effect. To put the argument in shorthand form: either the 7 years of operation of the Act (regardless of the previous 50 years of special powers) has been effective in radically reducing the violence, in which case there must be a question mark over many of the provisions required at the height of the emergency, if not the entire Act; or, the Act has not been sifnificantly helpful in reducing violence and bringing the emergency to an end, in which case an even more fundamental series of questions about having such legislation on the Statute Book arises.

We remain convinced that the tension between the preservation of individual liberties and the protection of public security demands a constant and substantial monitoring of the procedures of justice adopted in an emergency situation, particularly so when that emergency extends over a decade. We are disturbed, as we explain in **Time for a Change** (p. 6) that so little time is allocated in the Parliament for the twice a year reviews of public order legislation and policies in Northern Ireland. We are convinced that too many aberrations in our justice system, providing fuel to those who pretend by violence to be fighting for justice, have gone unnoticed and unremedied for too long;

— in 1968, Northern Ireland had the lowest prison population as a % of total population in W. Europe; today, it has the highest.

— according to widely accepted Queen's University study, up to 80% of all convictions in Diplock Courts have been based on out of court admissions under the "cruel, inhuman and degrading treatment" standard.

— one judge panels are convicting at a far higher rate than juries, going from almost identical rates of convictions in 1974 to an 85% rate of conviction in 1977 by judges as against a 50% convict rate by juries.

— between 1970 and 1978 an average of 90 home searches were conducted officially each day, according to the Chief Constable's report.

— after over 3,000 complaints against the police between 1970 and 1978 (same report), 19 prosecutions by the Department of Public Prosecutions resulted in 16 verdicts of not guilty, one nolle prosequi, and 2 not guilty on appeal. By law, D.P.P. investigations into these complaints are conducted, when requested, by the police.

— at least 9 people have been killed as a result of joyriding, either innocent victims knocked down by joy riders or joy riders shot by security forces. These 9-13 year olds get their thrills not from stealing the cars, as

is often blandly assumed, but by challenging the security forces with their own weapon, a careening automobile.

— according to September 1980 figures supplied by the Northern Ireland Office, two thirds of those serving long term prison sentences (over 4 years) were under 15 in 1969: one third were under 9.

Northern Ireland is 61 years old. Its history is heavily marked with Special Powers, Emergency Provisions and Public Order Acts. These special laws describe a society which has not been, or cannot be, governed by the standards of fair play and consent, which the English legal system largely introduced to the Western world. The facts which are briefly listed above all concern the current emergency, but we are certain that similar set of facts could be uncovered for any period in the history of the province. The problems are different from those presented elsewhere, perhaps in the entire English and worldwide experience. We recognise and accept that fact of life.

In all this time, with all these special laws, courts, provisions and practices, we have yet to see a comprehensive parliamentary assessment of the Administration of Justice in Northern Ireland, empowered to investigate and make recommendations regarding at least the 5 areas of concern outlined for this conference and mindful of the emergency times and emergency law history of this part of the U.K., would do much to reverse the cycle of violence which this province has periodically found itself since the Act of Union.

A PROPOSAL TO A PERMANENT "INDEPENDENT" ENQUIRY

The administration of justice has long been one of the main areas of conflict in Northern Ireland. Members of the majority community have tended to see themselves as victims of unjust violence inflicted on them by members of the minority community. They have therefore looked to the law to produce 'just' punishments for crime. On the other hand, members of the minority community have seen themselves as victims of unjust repression and discrimination at the hands of members of the majority community. They have therefore campaigned for laws to produce just treatment of themselves and their fellow citizens. Thus the principal expectations of what law is about have differed widely from person to person.

Those who administer the law — the police, the army, the civil power — have been caught in a trap created by these differing expectations, a trap which constantly threatens to undermine respect for the law itself and those who administer it. The threat takes many forms of which the following are examples:

a People inside the services which administer the law, e.g., policemen, etc., who see the law's significant role to be to punish the troublemakers, may from time to time be tempted or provoked into sanctioning excesses of brutality in enforcing the law.

b People outside the services which administer the law, who see law's significant role to be to punish the troublemakers, act as a constant lobby for "tougher", "stronger" and sometimes therefore inhuman administration of the law.

c People outside the services which administer the law, who see the law's significant role to be to provide even balanced humane justice for all citizens, and who see existing law administered as opposed to and discrimination against them, feel justified in using techiniques, ranging from propaganda to violence, to make the "unjust law" (as they see it) unworkable (e.g. by intimidating or shooting witnesses and attacks upon the administrators of the law).

Throughout recent history the administrators of whatever law has been current at the time have been subjected to pressures like these. And these pressures have constantly changed as law has changed and the focus of the conflict has changed. At one time it was the impartiality of the police which was under scrutiny; at another the jury courts were under duress; more recently interrogation procedure and prison conditions have been at the heart of controversy.

Considering the extent to which the administration of the law has been a battleground it is remarkable with what resilience our systems of administration have survived.

However, the danger to the law and its administration remains constant and constantly changing. If a new difficulty or abuse arises it can very quickly lead to a violent response. There is therefore need for a quick and effective non-partisan examination of any problem, followed by publicised remedy.

In a normal situation the law is not changed quickly and administrative procedures within the law are altered very cautiously. But in a situation where the administration of law is itself a weapon of conflict, quicker responses to failure or abuses are needed.

During the last ten years the method of response has usually been to establish a Government Inquiry or investigation and the long trail of such enquiries from the Devenny case through Compton, Scarman and Diplock to Bennett now fills our bookshelves. Such enquiries usually start long after the events to which they relate; act as prime centres of propaganda conflict while they are in ponderous process; and by the time their recommendations are implemented, are irrelevant and discredited in the eyes of some because they have been conducted by Government.

An independent non-governmental Enquiry with broad-based membership in constant session establishing over a period a record of thorough investigation and careful reports might improve the present situation significantly. Tackling each issue that arises as quickly as proper research would allow would enable the Enquiry to, for example, draw attention to the need to give the police new powers to tackle new riot techniques or give arrested persons new safeguards to avoid abuses

under interrogation.

We see the Enquiry consisting of some twenty persons held in high regard in the community with a small back up team of researchers. They would be able to select general issues to investigate from any area in the administration of justice -- policing, arrest and interrogation, court procedure, prison administration in any situation where they felt prima facie a general question arises which might become the subject of public conflict. Individual complaints would not normally be investigated unles they clearly related to an important issue of general principle.

When evidence had been sifted on a particular issue, the Enquiry would issue a report of its finidings publicly recording any area of doubt and divided opinions openly and honestly. By this process genuine problems would be differentiated from propaganda campaigns. It would be hoped that Government, the police and the community would find these reports helpful in defining emotive issues and suggesting ways to resolve problems.

The effectiveness of the Enquiry would depend on its credibility with the community, the police and the Government. This credibility could only be established slowly as its work gained respect. Thus the early work of the Enquiry would need to be of an especially high standard and the initial group of members would need to command widespread respect.

In Northern Ireland, where the administration of law often becomes the focus of conflict, even if the most perfectly just laws were enacted tomorrow, they would be under attack in one or more of the ways described earlier. We need a permanent "Ombudsbody" to protest the law itself, those who administer it and the community it serves, for at least as long as our community is deeply divided about what it expects the law to do.

For further information on this proposal please contact any of the following:
Peter McLachlan, John Morrow, Sinclair Stockman, Sister Anna, Peter Tennant, Margaret Watson.

The conference on the Administration of Justice in Northern Ireland on which this booklet is based was held in Belfast on 13 June 1981. It was chaired by Lord Gardiner, who was a member of the Parker Committee on interrogation procedures in 1972 and chairman of the last official review of emergency legislation in Northern Ireland in 1975. The conference was sponsored by a number of individuals who had been working separately and in various organisations to help secure a balance between individual liberty and public security in Northern Ireland. One object of the conference was to highlight those aspects of the existing law and practice which have given rise to particular difficulty in recent years. Another was to consider how the administration of justice might best be reviewed and monitored. The conference concluded by passng a unanimous resolution calling for the appointment of a new official review along the lines of the Gardiner Committee of 1975.

The conference was organised by the following group:

Peter Tennant Tom Foley Madge Davidson Steve McBride
Mairead Corrigan Peter McLachlan Margaret Watson
John Morrow Dermot Walsh Tom Hadden
Sinclair Stockman Sister Anna

Since the conference the organising group has been expanded to make it even more representative of the wide range of opinions held on these matters in Northern Ireland. A number of working parties have been established to continue the work of the conference. Those interested may get in contact by writing to the following address:

Joint Conference on the Administration of Justice
c/o 7 Lower Crescent, Belfast 7.