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Police Complaints Procedure

The attached paper was sent to the Secretariat in Belfast on 8 January for presentation to the British side. It has been cleared at official level (following consultation with the Department of Justice).

Declan O'Donovan
Anglo-Irish Section
9 January 1986

cc: Taoiseach
Tanaiste
Minister
Minister for Justice
Attorney General
Secretary
A-I Section
Mr. Nally
Mr. Ward
Mr. Russell

CONFIDENTIAL

Preliminary Views on Police Complaints Procedure in Northern Ireland

1. The Anglo-Irish Agreement makes specific reference to police complaints: the references are in Article 6 ('role and composition of the Police Complaints Board') and in Article 7 ('improvements in arrangements for handling complaints against the police'). The question has been gone into in considerable detail in the Consultative Paper issued by the NIO in April 1985 and in various submissions, for example the memorandum submitted by the Police Complaints Board to the Select Committee for Home Affairs. The question is undoubtedly complex. It needs to be considered carefully in regard to

   - the object of making the police more readily accepted by the nationalist community by, inter alia, improving the arrangements for handling complaints (Article 7(c) of the Agreement);
   - The need to make the complaints procedure more independent of the police while at the same time ensuring that police officers are protected from false complaints and are dealt with justly and that the position of the Chief Constable as chief disciplinary officer is not unduly impaired.

2. Police complaints and the procedure for handling them take on a particular significance in a divided society. Procedures that work well in 'normal' societies do not meet the requirements of the situation in Northern Ireland. A special effort has to be made to show that the procedures are impartial and effective. The police force itself will benefit if the aim of a complaints procedure which is credible to nationalists as well as unionists is attained.

3. Police complaints procedures are an important problem area, but they cannot be separated from the other issues which affect the acceptability of the security forces to the nationalist community. The level of acceptability in each problem area is linked to the level of acceptability in others. The acceptability of complaints procedures, and the police generally, will haved an impact on the willingness of the nationalist community to cooperate with the police.

4. The existing complaints system in Northern Ireland is based on Section 13 of the Police Act (NI) 1970. While the Consultative Paper recommends changes in the present system and the setting up of a new Police Complaints Commission, the proposals in that paper have been criticised by nationalists as falling short of what is acceptable. Proposals for improvement need to cover the following central elements in order to meet the criticisms of nationalists (and others).

   - the retention of the power of the Police Authority to set up Tribunals under Section 13 of the Police Act and the granting of judicial powers to these Tribunals;

   - the investigative/supervisory powers of the proposed Commission;

   - the independence of the proposed Commission in regard to the complaints procedure;

   - the Double Jeopardy Rule.

Tribunal

5. In one respect the Consultative Paper proposes the withdrawal of a measure which is very important to the issue of public confidence, namely the proposal to abolish the tribunal recommended by Cameron (Section 13 of the Police Act 1970). Under that Section, the Chief Constable, the Police Authority or the Secretary of State may cause a

tribunal "to consider and report on a complaint...made by a member of the public against a member of the police force". The tribunal was given no explicit judicial powers in the Police Act, and when in 1978 the tribunal was used for the first and only time, the High Court refused to interpret its powers as judicial and thus made it impossible for the tribunal to perform its task adequately. That tribunal (the Rafferty tribunal) and the Police Authority have recommended that future Section 13 tribunals should have at least some judicial powers (specifically to subpoena witnesses and documents and compel evidence on oath - there are others which should be considered eg. the granting of costs). The Bennett Report recommended similarly. In 1980, ICTU withdrew its representatives from the Police Authority on this point.

6. This issue is not perhaps one of inquisitorial versus judicial tribunals as suggested in Annex D of the Consultative Paper: it is very doubtful if a tribunal can adequately perform its tasks in this area without judicial powers. Rather, the issue is one of whether or not a judicial tribunal is a suitable measure for the investigation of complaints against the police, in particular complaints which suggest a very serious problem within the police and, therefore, damage public confidence. There are arguments against using judicial tribunals to hear complaints, but there is a strong case for allowing the Police Authority to retain its power to establish a tribunal (with judicial powers) on issues with important general implications precisely because there is a lack of confidence in the RUC by the minority Community. It can be reasonably argued that the Government is proposing to remove an important power of the Police Authority on the implicit assumption that there is no longer a major problem of public confidence in the RUC and/or that public concern can be met by the proposals for the new Complaints Commission.

Investigative/Supervisory powers of the proposed Commission

7. The need to allocate to the proposed Commission a role in the investigative process has been strongly argued in the Northern Ireland situation. Such a role could be performed in various ways. One possibility would be to ensure that the Police Complaints Commission should have the power to supervise all complaints and should have the power to conduct the investigation itself in the most serious cases. It should have an independent expert staff for this purpose. It should also have the power to recommend referral to the DPP of criminal cases, or to refer purely disciplinary charges to the Chief Constable, or to recommend the setting up of a tribunal where the case has major and general implications for public confidence in the police. Any new procedure would have to safeguard the disciplinary responsibilities of the Chief Constable. The problem is to define a measure of investigative responsibility for the new Commission while meeting this important requirement.

Independence of the Commission and the complaints procedure

8. The present "self-scrutiny" system - which operates in many countries - has been criticised in Northern Ireland on the grounds that the police force investigates complaints against itself. The independence of the complaints procedure will be tested by the nationalist community : on the power of the Commission to act independently of the police in investigation of complaints; on the procedures for receiving and making complaints; on action taken by the Commission following the investigation; and on the provision of information by the Commission to the complainant during the investigatory process and at its conclusion. It is important to be able to demonstrate that the Commission and the complaints procedure have these elements of independence, transparency and effectiveness.

9. The Police Complaints Board in its memorandum recommended the transfer of the initial screening and recording of complaints from the police to the Board with allocation to the Board of the power and responsibility to make contact with complainants. Such direct contact with the public (which would also include advising complainants how to make their complaints, weeding out trivial complaints and solving other complaints through conciliation) could have a useful confidence-building function. The Board's views are worthy of serious consideration.

The Double Jeopardy Rule

10 The double jeopardy rule is set out in the Police (NI) Order 1977. When a police officer is acquitted or convicted of a criminal offence the officer cannot be charged with any disciplinary offence which is in substance the same as the offence of which he has been acquitted or convicted. The memorandum of the Complaints Board states that "the application of the double jeopardy rule places an unwarranted restriction on the consideration of the disciplinary aspects of complaints". Nationalist criticism has echoed this statement but in stronger language.

11 This is a difficult issue where a balance must be maintained on the one hand between the right of a police officer not to be tried twice for the same offence and on the other the need to introduce an efficient and credible complaints procedure. A balance might be found along the lines recommended by the Complaints Board (memorandum para. 6) whereby a distinction might be made between complaints involving serious and less serious criminal offences with only the former being referred to the Director of Public Prosecutions. The Board has also referred to the possibility that the necessary distinction between serious and less serious offences could be made in performing the screening function.

Conclusion

12 As already stated the question is complex and it is necessary to reconcile needs which can diverge, that is, the need for a fully acceptable complaints procedure and the need to maintain police morale and discipline. It is proposed that work should begin in the Joint Secretariat to refine the areas of agreement and difference on the subject and to draw up possible models for a solution.

Mr Brennan

As discussed, I attached a revised draft of our document. I shall telephone you tomorrow (9th instant) to discuss the matter.

N. Ryan

8 January 1986

DRAFT

ANGLO-IRISH AGREEMENT : ARTICLE 8

NOTE BY MR RYAN AND MR BRENNAN

At the first meeting of the Intergovernmental Conference on 11 December 1985 we were instructed to consider how best to handle the matters connected with the administration of justice set out in Article 8 of the Anglo-Irish Agreement. We have since consulted about this within our respective jurisdictions and have met to exchange views. This note reports our conclusions.

Article 8 refers to three specific matters relating to the enforcement of the criminal law:-

1. whether there are areas of the criminal law applying in the North and in the South, respectively which might with benefit be harmonised;
2. the importance of public confidence in the administration of justice; and the need to seek, with the help of advice from experts as appropriate, measures which give substantial expression to this aim including the possibility of mixed courts in both jurisdictions for the trial of certain offences;
3. policy aspects of extradition and extraterritorial jurisdiction as between North and South.

We are agreed that machinery should be created under the auspices of the Conference to enable each of these matters to be addressed. We are also

agreed that the machinery should take the form of appropriate working groups of officials to prepare views and proposals for consideration by Ministers.

We agree that one such working group should be concerned with the administration of justice. On the Irish side, it would need to include officials from the Attorney General's Office, the Department of Foreign Affairs and the Department of Justice. On the UK side, it would require representation from the Northern Ireland Office, the Northern Ireland Court Service, the Law Officers Department, and the Home Office Legal Advisers Branch (which acts as advisers to the NIO on legal matters). The Conference Secretariat would also be represented.

Mr Ryan has reported the desire of the Irish side that such a group should give priority to the possibility of establishing mixed courts as described in Article 8, and has suggested that it should also examine the question of a mixed appeal court. Mr Brennan, while acknowledging that consideration of mixed courts is required by the Agreement, has recalled the consistent reservations expressed by the British side during the negotiation of the Agreement, about the idea of mixed courts, and has reiterated that discussion of them would have to be without any guarantee about the outcome. We are agreed that the working group would need terms of reference wide enough to enable it to consider any matter which either side might wish to raise, relating, in the words of Article 8, to public confidence in the administration of justice.

We are agreed that any work relating to the substantive or procedural criminal law should be kept separate from that relating to the judicial system, and that, accordingly, one or more separate working groups should be established

for the other purposes of Article 8. Mr Brennan has reported that the British side attaches major importance to a review of policy aspects of extradition and extraterritorial jurisdiction.

Work on the harmonisation of the criminal law (which could include both substantive and procedural law) can be pursued on a rather longer time-scale. We are agreed that the first step would be for officials to seek to identify areas of the law where harmonisation would serve a valuable and practical purpose, for instance, in facilitating extradition and extraterritorial proceedings; a review of the scope for harmonisation of offences relating to terrorism might be a priority task. Once areas of the law for examination have been identified, consideration could be given to involving persons outside government (eg. legal practitioners and academic lawyers) in the necessary studies (on the precedent of work in Great Britain by Law Commission working parties and the Criminal Law Revision Committee) although this technique has not hitherto been used in the Republic.

We are agreed that a working group would be set up to deal with harmonisation of the criminal law and that this group would be asked to give priority to policy aspects of extradition already referred to.

If the Conference approves our general approach, we would envisage that it would decide that there would be an early meeting of a Sub-group of the Conference at Ministerial level involving, on the Irish side, the Minister for Justice and the Attorney General, and on the British side the Secretary of State for Northern Ireland and the Attorney General or Solicitor General to decide on the terms of reference and composition of the working groups and their programmes of work. It might be useful if there could be a prior meeting of senior

officials from the relevant Departments in both jurisdictions to prepare the agenda for this meeting.

For O Tuathail From Ryan.

The document herein was givento the British side of the Secretariat (Miss Steele) today for transmission to Brennan (NIO). I have made it clear that it represents my personal view.

Brennan and I have now agreed to meet in London on Monday to discuss the matter.

Anglo-Irish Intergovernmental Conference

Article 8

Legal matters including the administration of justice

Proposal of Irish side (Mr. Ryan)

Background

1. At its first meeting on 11 December 1985 the Intergovernmental Conference agreed to ask Mr. Tony Brennan of the Northern Ireland Office and Mr. Noel Ryan of the Secretariat to consider ways of establishing machinery to further the issues identified in Article 8.

2. At the special Meeting of the Conference held on 30 December it was agreed that Messrs. Brennan and Ryan would be asked to expedite their work with a view to reporting to the next meeting of the conference.

Suggested Approach

3. A sub-group of the Conference would be established (pursuant to the provisions of Article 3 of the Agreement) under the joint chairmanship of the Irish and British Attorneys General to seek to identify measures which would give substantial expression of justice. The Attorneys General would meet in the near future to finalise the Agenda of the sub-group, to examine certain urgent problems and to commission certain work.

4. Priority would be given to considering the possibility of establishing mixed courts in both jurisdictions for the trial of certain offences: the remit of the group would also include the possibility of establishing a mixed appeal court (comprising judges from the Northern Ireland Court of Appeal and the Court of Criminal Appeal in Dublin) and also the desirability of establishing in Northern Ireland a Court of Human Rights.

5. Membership of the sub-group would include, from our side, officials from the Attorney General's Office, the Department of Foreign Affairs and the Department of Justice. The Secretariat would be represented. (N. Ryan from the Irish side).

6. Pending the outcome of the sub-group's deliberations, an early meeting of the Conference shall consider what interim measures could be taken by the British Government to improve the confidence of the nationalist community in the administration of Justice in Northern Ireland. The Irish side will put forward views and proposals for immediate action, including the following.

- the introduction of 3 judges instead of one in the 'Diplock' Court;
- the introduction of a requirement that there could be no conviction in cases of accomplice evidence without corroborating evidence;
- limitation on the number of defendants in 'Diplock' trials;
- action to secure the appointment of additional Catholics to the Bench in Northern Ireland in particular to the Higher Courts;
- introduction of a requirement of bail without surety by the 'Diplock' Court after a minimum period on remand (Baker Report SDP/Alliance Report);
- de-scheduling certain offences and the introduction of a mechanism for regular review of scheduled offences with a view to descheduling;
- Limitation on grant of immunity and inducements to witnesses. Disclosure of immunity and inducements to the defence before trial.

7. A sub-group would be set up with the more long term aim of examining areas of the criminal law that might with benefit be harmonised. On our side this would comprise representatives from the Department of Justice, Attorney General's Office and the Department of Foreign Affairs.

Flags and Emblems (Display) Act (Northern Ireland) 1954

1. The Flags and Emblems Act lays down that the flying of the Union Jack cannot in any circumstances be held to be a threat to the peace, and be removed on these grounds. The Union Jack therefore can be flown legally in any part of Northern Ireland.

2. There is no specific prohibition against the flying of the Irish tricolour (or any other flag) in Northern Ireland.

3. However, under the Flags and Emblems Act, the police are empowered to have a provocative emblem removed if, in the judgement of a policeman, the display of an emblem is likely to cause a breach of the peace. In making his judgement the policeman takes into account the time or place at which and the circumstances in which the emblem is displayed.

4. In practice the Flags and Emblems Act has invariably been used to prevent the display of the Irish tricolour as the RUC have traditionally tended to regard the flying of the Irish flag as likely to lead to a breach of the peace. This, in the past has led to frequent incidents when nationalists have refused to comply with police demands to remove the flag.

5. Although the Flags and Emblems Act does not formally prohibit the flying of the Irish flag, it is intended to prevent it. The practical effect of the Act is to discriminate between the flags which express the loyalties of the two communities. The Act is clearly discriminatory in intent and in its implementati

It is therefore at variance with both the spirit and the letter of the Anglo-Irish Agreement.

6. The Flags and Emblems Act 1954 was intended to be discriminatory. It is alienating and offensive to responsible nationalists as denying in practice their identity and legitimate aspirations. It is, moreover, profoundly distorting and damaging in its effect, in that it has enabled subversives to use the tricolour as a symbol of division and violence, contrary to the wishes of those who devised the flag as a major symbol of harmony and peace (the white central band) between the green and the orange, and not as a banner of nationalist chauvinism. That the purpose and meaning of the tricolour should be so abused in Northern Ireland, arising from the opressive intent of successive local administrations, is deeply offensive to the overwhelming majority of nationalists both in the North and in the South who reject the use of violence and who espouse the only real objective epitomised in their flag: peace.

Action proposed

7. The Flags and Emblems Act should be repealed forthwith. This action would be in full accordance with the wishes of the two Governments as expressed in the Preamble to the Agreement, in Article 4(a)(i) and more particularly in Article 5. Each of these is concerned with accommodating the rights and identities of the two communities in Northern Ireland. Repeal of the Act would mean that the same criterion, i.e. likelihood of public disorder, would apply to the display of all flags.

Flags and Emblems (Display) Act (Northern Ireland), 1954.

[1954. Ch. 10.]

ARRANGEMENT OF SECTIONS.

Section.

2 & 3 Eliz 2.

1954. Chapter 10.

An Act to make provision with respect to the display of certain flags and emblems.

[6th April, 1954.]

BE it enacted by the Queen's most Excellent Majesty, and the Senate and the House of Commons of Northern Ireland in this present Parliament assembled, and by the authority of the same, as follows :—

Display of Union flag

1. Any person who prevents or threatens to interfere by force with the display of a Union flag (usually known as the Union Jack) by another person on or in any lands or premises lawfully occupied by that other person shall be guilty of an offence against this Act.

Removal of provocative emblems.

2.—(1) Where any police officer, having regard to the time or place at which and the circumstances in which any emblem is being displayed, apprehends that the display of such emblem may occasion a breach of the peace, he may require the person displaying or responsible for the display of such emblem to discontinue such display or cause it to be discontinued ; and any person who refuses or fails to comply with such a requirement shall be guilty of an offence against this Act.

(2) Where—

(*a*) a requirement under the preceding subsection is not complied with; or

(*b*) the person responsible for such display is not readily available; or

(*c*) no person, or no person responsible for such display and capable of complying with such a requirement, is present on or in any lands or premises whereon or wherein such an emblem is being displayed;

a police officer may without warrant enter any such lands or premises, using such force as may be necessary, and may remove and seize and detain such emblem.

(3) It shall be a good defence to any proceedings (whether civil or criminal) against a police officer or constable in respect of anything done or omitted to be done for the purpose or in the course of carrying into effect the provisions of this section, to prove that anything in respect of which the proceedings have been instituted was done, or as the case may be omitted, in good faith for the purpose or in the course of carrying into effect any of those provisions.

(4) In this section the expression "emblem" includes a flag of any kind other than the Union flag, and the expression "police officer" means an officer, head-constable or sergeant of the Royal Ulster Constabulary.

Penalties.

3.—(1) Any person guilty of an offence against this Act shall be liable—

(*a*) on summary conviction, to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding six months;

(*b*) on conviction on indictment, to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding five years;

or in any case to both the fine and the imprisonment hereinbefore respectively provided.

(2) A court before which a person is convicted of an offence under section two of this Act may order any emblem in respect of which he is so convicted, and which

has been seized and detained under that section, to be destroyed or otherwise disposed of.

Restriction on prosecutions.

4. Where any person is charged with any offence against this Act the court may, if it thinks fit, order him to be remanded in custody or on bail, but save as aforesaid further proceedings on such a charge shall not be taken against him without the consent of the Attorney-General for Northern Ireland.

Short title.

5. This Act may be cited as the Flags and Emblems (Display) Act (Northern Ireland), 1954.

The Irish Language in Northern Ireland

1. The Irish language is central to the identity and tradition of Irish nationalists and thus involves rights and objectives espoused by the Anglo-Irish Agreement e.g.

   (The two Governments) "..... recognising the need for continuing efforts ..... to acknowledge the rights of the two major traditions (Premable)

   "Recognising and respecting the identities of the two communities in Northern Ireland (Preamble)

   "The Conference shall be a framework .... (i) for the accomodation of the rights and identities of the two traditions which exist in Northern Ireland ..... (Article 4),

   "The Conference shall concern itself with measures to recognise and accommodate the rights and identities of the two traditions in Northern Ireland... Matters to be considered in this area include measures to foster the cultural heritage of both traditions."

2. The Irish Joint Chairman, concerned that nationalists in Northern Ireland have felt that this vital aspect of their identity has been insufficiently recognised, respected and accomodated, will put forward views and proposals designed to give effect to the objectivesof the Agreement in this area.

3. Speedy action in four specific areas could and should be taken which would bring about an improvement in the existing situation.

These are:

(a) Placenames

(b) The use of the Irish language in official business.

(c) Arrangements for the 1991 Census

(d) Irish language publications, cultural events etc.

(a) Placenames

4. Under Chapter 21, Section 19, Sub-section (4) of the Northern Ireland Public Health and Local Government (Miscellaneous Provisions Act, 1949 (see attached), street names can be "put up or painted" in the English language only. This legislation was specifically intended to accomodate one identity at the expense of the other. Quite apart from the rights involved, the fact is that most of the placenames of Northern Ireland (many of them of immemorial antiquity), are Irish in their linguistic origin. Their "meaning" - mythological, historical and cultural - can thus only be elicited and appreciated by reference to their original Irish language form.

Action proposed

5. The relevant section of the 1949 Act should be repealed and replaced by a provision which would entitle the residents of a defined district, housing estate or street, to decide by an appropriate majority, to have street names etc. displayed in the Irish as well as the English language. Local referenda could be held to arrange for this along the lines practiced in Switzerland, or as in the case of Wales those relating to Sunday drinking.

6. It is proposed that the appropriate authority (Department of the Environment?) issue a list of the placenames in Northern

Ireland giving the original Irish as well as the English forms and that all the relevant Northern Ireland authorities (e.g. the Courts, the Post Office and the various licencing authorities) be authorised to acknowledge both the Irish and English language forms of placenames in their dealings with the public. The appropriate authority in Dublin, An Coimisiun Logainmneacha (The Placenames Commission), will be in a position to provide assistance to this work as appropriate. The principle of acknowledging both traditions should also be observed in the case of Government road signs. Major Government information publications should, in pursuance of the Agreement, indicate at least once in the text (e.g., in the case of the Ulster Year Book, in a map), the Irish form as well as the English approximation of placenames of Irish origin.

(b) Use of Irish language in official business

7. Irish as a language has hitherto had little more official status in Northern Ireland than languages such as French or Spanish. This is resented by nationalists and, as is well known, creates opportunities for subversive organisations to "appropriate" the Irish language, the fundamental symbol of nationalist identity.

Action proposed

8. Provision should be made for those wishing to do so to make use of the Irish language in transacting official business as is the case in the South. In Wales people have the right to use the Welsh language in the conduct of official and public business. Furthermore Welsh can be used in legal proceedings in Wales.

The appropriate legal model is the Welsh Language Act, 1967 and a similar Act should be introduced relating to the use of the Irish language in Northern Ireland. The Irish Government would be willing to help in any appropriate way, based on our own experience, in framing such a measure.

(c) 1991 Census

9. We understand that the NIO does not have accurate statistical information on the number of persons in Northern Ireland who profess to have a knowledge of the Irish language. It would seem to be useful, for the purposes of educational and cultural policy, that such information should be available.

Action Proposed

10. An appropriately framed question should be included in the 1991 Census which would establish this information.

(d) Support for Irish language publications, cultural events etc.

11. As we understand it, existing support comes from the Northern Ireland Arts Council and, as such, is judged centrally on the criterion of artistic merit, rather than in terms of the larger objective of accomodating the nationalist identity in this area.

Action proposed

12. That an appropriate authority be established to provide adequate support in this area with terms of reference which reflect the objectivesof the Anglo-Irish Agreement. (Note: the Unionist Party document, "The Way Forward", contains proposals which are generally along these lines).

Post Hunger Strike

On 6 January 1986, the first hunger striker, Bobby Tohill came off the strike. Tohill was followed within an hour or two by Gerard Steenson and Thomas Power.

Notes on contacts made in Northern Ireland in the aftermath of the hunger strike are attached. The first of these (reporting a contact with the prison chaplain, Fr. Murphy) indicates that Steenson conveyed the following demands through Fr. Murphy:

- the appeals to be heard within six months;

- a review of "the legal system in so far as uncorroborated evidence is concerned", to be completed in advance of the appeal date.

The response of a senior NIO official to these demands, as reported by Fr. Murphy, is also indicated.

Notices of appeal have been lodged by the defendants. The initial hearing of the appeal has been listed for Friday 10 January 1986 in the High Court. The purpose of this initial hearing is simply to decide on the transcript requirements for the appeal proper. The second of the attached notes sets out in detail the legal situation as it is likely to develop over the coming weeks.

Background

On 16-17 December, 1985 sentences were passed on the defendants in the Kirkpatrick case. On 19 December 1985, one defendant, Bobby Tohill commenced a hunger strike in the Maze Prison. On 26 December, he was joined by a second, Gerard Steenson and, by a third, Thomas Power on 2 January, 1986. There were plans for others to join the strike on a weekly basis thereafter.

On 22 December, following a meeting the previous day in Twinbrook, the Relatives for Justice held a press conference at which they presented the prisoners' demands: the announcement of an early date for the appeal hearing and an immediate review of all cases where the accused have been convicted on the uncorroborated evidence of informers. They also claimed that no "party" political organisation was involved in the strike and that only Relatives for Justice were mandated to speak for the strikers.

The Kirkpatrick case came to court on 30 January 1985. It was the ninth informer trial and involved the implication of some (originally) 33 men on the uncorroborated evidence of Harry Kirkpatrick, a prominent INLA member who is currently serving a life sentence for five murders to which he himself confessed.

Kirkpatrick was an experienced INLA gunman in Belfast with a career which started in the junior wing of the Provisional IRA when he was 13. From 1975-80 he was in prison on firearms charges but during the period 1980-82 he became heavily involved in INLA activities in Belfast and Armagh. He was arrested in 1982 on the word of other supergrasses and offered his own services as a supergrass after admitting to five murders and 72 other offences.

All the men accused on Kirkpatrick's evidence were INLA members. Thirteen of them were charged with the murder of six people between December 1980 and October 1981. The murder victims were five members of the security forces (2 RUC reservists, a British Army soldier and 2 UDR members) and a UDA commander, Billy McCullough.

On 16-17 December, 1985 Mr. Justice Carswell, who had heard the case from the outset, found the remaining 28 defendants guilty of nearly 200 charges. On 17 December he handed down jail sentences to 27 of them (see Annex).

Gerard Steenson (nicknamed "Doctor Death" by the INLA), was described by Carswell as the head of the INLA's Belfast brigade and an "enemy of society". It has been indicated to us that, in the nationalist community, Steenson and Brown are widely believed to be guilty of very serious crimes and are regarded as the most dangerous of these men. Power is regarded as a smaller fish and Tohill is possibly innocent of the specific charges on which he was convicted.

Position of the Minister for Foreign Affairs

The Minister for Foreign Affaris requested a special meeting of the Anglo-Irish Intergovernmental Conference at which the hunger strike was discussed.

At a special meeting of the Anglo-Irish Intergovernmental Conference on 30 December 1985, the Minister stressed the serious electoral threat posed to the SDLP by the hunger strikes and the implications a poor performance by the SDLP in the forthcoming by-elections would have for the success of the Anglo-Irish Agreement. It was suggested that quick action on the following points would assist in a speedy resolution of the strike:

- delays (such as the provision of transcripts) in the appeal process be overcome. The intention to accelerate the process to be made known

- arrangements for the presence of observers at the appeal

- the prisoners demands for a review of the existing convictions could be countered by expediting appeals

- the immediate announcement of the appointment of Michael Nicholson QC to the Bench

The British response to the suggestion that potential delays in the Kirkpatrick Appeal be overcome is outlined in the Joint Record of the meeting:-

"While there could be no question of taking any action which could be seen to be attributable to the pressure of the hunger strike, they (the British side) would be anxious to see a satisfactory outcome. They were hopeful that a provisional date for the hearings could be fixed within the next two to three weeks and that these would take place after or six months if the transcript requirements did not extend beyond the statements from the bench and the evidence of Kirkpatrick".

ANNEX

	Found Guilty of	Sentence
- Gerard Steenson (27)	All six murders	Six life sentences (with a recommendation that he serve a least 25 years)
- Patrick Fitzpatrick (25)	Murder of 2 RUC reservists.	Life sentence. (No recommendation made as to number of years to be served).
- Thomas Power (31)	Murder of 1 RUC reservist.	" "
- Patrick McAreavy (26)	Murder of UDR members	" "
- Robert Tohill	" "	" "
- Martin O'Prey (22)	" "	" "
- John McFadden (26)	" "	" "
- Thomas Malloy (31)	" "	" "
- Emmanuel Conway (29)	Murder of UDA Commander.	" "
- Stephen Downey (24)	" "	" "

- John Tomelty (30)
- Henry Mcnamee (28)
- Michael Kearney (30)
- Paul Donnelly (24)
- James Brown (29)
- Colm Peake (22)
- Martin McKnight (27)
- Anthony McGrann (25)
- Oliver Grewr (24)
- William Smith (33)
- Gerard Power (24)
- Joseph Heaney (37)
- James Bradley (29)
- Dermot Drain (26)
- Thomas Molloy
- Peter Connolly (24)
- Hugh Torney (31)

Other terrorist offences (such as INLA membership, conspiracy to murder, attempted murder, possession of arms and explosives).

Sentences ranged from 20 to 5 years.

SECRET

MEETING WITH P.J. McGRORY

BELFAST, 8 JANUARY 1986

I met P.J. McGrory, the Belfast solicitor who is representing 20 of the 27 defendants in the Kirkpatrick trial, in his offices yesterday.

He gave me the following up-to-date account of the legal position in regard to the Kirkpatrick case:

- The 27 defendants filled up notices of appeal on Christmas Eve and these were lodged with the Court of Appeal last week. Fuller notices indicating the arguments on which the appeals will be based are currently being prepared by the defence Counsel, Boal and Nicholson, and will be substituted for the earlier notices in the near future. Work on this has been delayed by Boal's illness and by Nicholson's need to focus on the Black appeal, originally due to be heard on 6 January. (The Black appeal has also forced Nicholson to postpone temporarily his appointment to the High Court; he is nevertheless already under armed protection, though still a barrister.)

- This week, Boal and Nicholson, in contacts with the Crown Counsel, have been trying to reach agreement on the transcripts required by either side for the Kirkpatrick appeal. They are hopeful that agreement may be reached in time for tomorrow's initial hearing of the Kirkpatrick appeal in the High Court - which, in fact, came unexpectedly early but has been lumped together with other appeals (Mc Grady, Quigley, etc.) in order not to give the impression that Kirkpatrick has been singled out for special attention. Under pressure of the continuing hunger strike, the Crown Counsel were in a cooperative mood on Monday and Tuesday of this week. McGrory's private speculation is that they may have had an approach from Tony Campbell, Q.C., Attorney General's representative in Northern Ireland. However, the ending of the hunger strike may induce a different frame of mind. If they really wanted to be difficult, the Crown Counsel could (as happened in the Black appeal) request the complete transcript of the Kirkpatrick case. McGrory is confident, however, that at least partial agreement will be reached on the transcript requirements between both sides in time for tomorrow's hearing.

- If this is the case, the Court of Appeal will order the transcripts involved. In order to shorten the time necessary for their preparation, McGrory wondered whether the Irish Government (e.g. the Attorney General in contact with the Lord Chancellor) might ask the British Government to provide a team of Hansard-type stenographers who could be sent to Northern Ireland to handle current trial work, thereby releasing the existing stenographers for the Kirkpatrick and other appeals. An appropriate financial inducement could be offered. There are precedents for this, including a team of stenographers despatched, at considerable public expense, to assist in the Scarman tribunal proceedings.

- The Court of Appeal will also ask the defence to submit the amended, fuller notices of appeal within the next two or three weeks. According to McGrory, this deadline will certainly be met.

- The defence Counsel plan to avail of the forthcoming Black hearing to approach the Lord Chief Justice (who is presiding) with a view to having him announce, while the Black hearing is still in progress, a date for the Kirkpatrick hearing. If he agrees to this at all, he will probably insist on mentioning dates for the McGrady and Quigley appeals also. It would, however, be unusual for Lowry to announce a date for an appeal hearing before the relevant transcript is available. This, of course, will not be the case in the next three to four weeks. McGrory is doubtful, therefore, about the prospects of obtaining a date at this stage, at least for the Kirkpatrick appeal.

- His own estimate is that, assuming goodwill on both sides and no unforeseen complications, the Kirkpatrick appeal cannot be heard before early September. He predicts that McGrady will be heard in April, Quigley in May/June and that, with the summer recess intervening, Kirkpatrick cannot be heard before the first week of September. He was surprised, therefore, to be told by the former hunger strikers when he visited them on the evening of 7 January that they had received an indication to the effect that a hearing in May might be possible. ("They did not, however, throw up their hands in horror at the prospect of September."). McGrory had no idea where the May date, which seems quite unrealistic to him, could have orginated. While the men did not disclose their source, he suspected that the prison chaplain may have given them an over-optimistic reading of the prospects. Asked, however, by Pat Kenny on "Today Tonight" later on 7 January whether, in his view, a 'deal' had been done, he had carefully refused to be drawn into any speculation on this subject.

- The Court of Appeal in the Black case will consist of Lowry, McDermott and Higgins. While Higgins (who rejected the evidence in the "Budgie" Allen case) is opposed to the use of "supergrasses" and likely, therefore, to overturn the Black judgement, McDermott could "go either way": on the one hand, he convicted in one of the earliest supergrass trials (the East Antrim UVF case), and upheld on appeal, yet on the other, he has been remarkably lenient in cases involving Republican prisoners over the past year or so. In McGrory's view, Lowry will decide "what the system needs" at the time the judgement is to be written and will put pressure on the other judges accordingly. Factors which could dictate a positive outcome are:

  - Lowry will not want an uncomfortable 2 : 1 situation on the Court; thus, if he were thinking of quashing the appeal, he would probably not have appointed O'Higgins;

  - An element of personal pride may enter into it: knowing that his own judgement in the McGrady case is likely to be overthrown, his own self-respect may require that he overthrows the judgement of a lesser judge, Kelly, in the preceding Black case.

- It is impossible to predict at this stage the composition of the Court for the Kirkpatrick appeal. There will by then be a number of new faces, as O'Donnell is due to retire before the summer and there are also rumours that Gibson may retire. It is possible that Lowry may appoint himself to the Court: with an eye to his own retirement (which is rumoured to be not far off), and to suggestions that Carswell (whom he dislikes) may replace him, he may decide to give his putative successor "a kick in the teeth" by personally overturning Carswell's judgement in the Kirkpatrick case. Finally, McGrory has been told by the former hunger strikers that there are three judges whom they will not accept on their Court of Appeal: Messrs Kelly, Murray and Hutton.

David Donoghue

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9 January 1986

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(7)

The supergrass system

Origins

The term "supergrass" is London slang which emerged in the mid 1970s to describe criminal informers who turned Queen's evidence against large numbers of their criminal colleagues. The first was Bertie Smalls who was given complete immunity from prosecution and who gave evidence in 1974 against 26 people, of whom 16 were ultimately convicted. Several other supergrasses followed and by the end of the 1970s the use of the supergrass had become common practice for the metropolitan police. The supergrass phenomonen started in Northern Ireland in November 1981 with Christopher Black, an IRA man who was arrested in North Belfast. On the evidence of this first Northern supergrass, 38 people were charged and in a trial lasting from December, 1982 to August, 1983, 35 were convicted. Like Smalls, the first London supergrass, Black was granted immunity from prosecution.

Supergrass Trials

Christopher Black; 38 defendants were put on trial on Black's evidence. The indictment contained 184 charges, based on 145 separate incidents. The trial lasted from December 1982 to August 1983, occupying 120 court days. The evidence of over 550 witnesses was either called or read out. The principal and in many cases the only evidence against 37 of the defendants came from Christopher Black. 35 of the defendants were convicted by Mr. Justice Kelly. Black was given immunity from prosecution.

Joseph Bennett; Bennett had been a very senior member of the UVF. His evidence led to the trial of 16 men in respect of crimes including one of murder. Bennett himself had been involved in the crimes and in another particularly brutal crime, the murder of an elderly country postmistress at Killinchy, Co. Down. There was little corroborative evidence. Mr. Justice Murray said of Bennett, " A man who has committed murder I am sure would not have scruples of perjury if it suited him". Nonetheless, Murray decided that Bennett's evidence "had a clear ring of truth in (my) ears" and convicted all but one of the sixteen defendants in April 1983. Lord Justice Lowry overturned the Crown Court's verdict on appeal in December, 1984. Bennett was given complete immunity for all his crimes.

Kevin Mc Grady; Mc Grady returned voluntarily to Northern Ireland in January 1982 from Amsterdam and confessed to a number of crimes. He said his motive was due to a religious conversion. He was convicted of three murders and several other crimes during 1975 and was charged and sentenced to life imprisonment. Ten men were charged on the basis of Mc Grady's committed

evidence for three murders, four attempted murders and four conspiracies to murder among other charges. All defendants were members of the IRA. Again there was little corroborative evidence. Four of the defendants had made written statements implicating themselves. They were all convicted. In spite of his recognition of Mc Grady's false evidence in various points, Lord Lowry declared that Mc Grady's evidence on one of the murders had 'the ring of authenticity to me'. Although he threw out some of the charges, Lord Lowry basically sustained the evidence given by Mc Grady and sentenced seven of the defendants to lengthy prison terms.

John Grimley; Grimley was a member of the INLA who had been a habitual criminal for most of his life. He had a history of physciatric illness. 18 people were charged with a serious of offences ranging from attempted murder to INLA membership on his evidence. The Grimley trial ended relatively quickly on the 27th day when Lord Justice Gibson accepted that there was no case to answer against anybody implicated on Grimley's evidence alone. However, on 23 November, 1983, Gibson, although aquitting 7 of the 18 people, sentenced 8 of the remaining eleven to a total of 51 years in prison while three others were given suspended sentences. The judge considered that there was additional evidence warranting their conviction. Those acquitted nonetheless were in remand custody from February 1982 to November, 1983. Grimley was given immunity from prosecution.

John Morgan; Morgan was a former IRA and INLA member. Seven people were charged on his evidence. On 19 December, 1983, Mr. Justice Murray acquitted four of the accused after describing Morgan as "a dishonest witness, a most unreliable one. There was virtually no corroboration of his evidence." One of the four acquitted was however rearrested on the evidence of Harry Kirkpatrick. Morgan was given immunity from prosecution.

Robert Quigley; Quigley was a member of the IRA. There were 20 defendants in his case. Ten of the accused (all from Derry) were given heavy sentences in May 1984. In language which was to be echoed later by Mr. Justice Carswell, Mr. Justice Hutton described Quigley as "a deplorable character " but also "an impresssive witness". Quigley was given immunity from prosecution.

Raymond Gilmore: 45 people were charged on the basis of Gilmore's evidence as a former member of the IRA. In December, 1984 28 of the accused were acquitted. Lord Lowry stated that Gilmore was "unworthy of belief". Seven of those charged on Gilmore's evidence are serving sentences on other supergrass evidence. Gilmore was given immunity from prosecution.

William "Budgie" Allen: Allen was a member of the UVF. Over 40 people were charged on his evidence. Allen's evidence failed to persuade Mr. Justice Higgins (Catholic) and 36 of the

defendants who had been charged on his uncorroborated evidence were acquitted. A further seven remained in custody. Allen was not given immunity.

Harry Kirkpatrick: His trial is dealt with in a separate note. Charges were brought against 38 of Harry Kirkpatrick's colleagues in the INLA. The trial lasted almost a year and in December, 1985 Mr. Justice Carswell, having found Kirkpatrick credible in relation to the crimes of which the defendants were accused, convicted them. Kirkpatrick was not given immunity but obviously expected mitigation of the sentence of life imprisonment imposed at his own trial in June 1983.

Appeals

In December, 1984 Lord Justice Lowry upheld the appeal of the 14 UVF men convicted on the evidence of Joseph Bennett. Since the success of that appeal a number of informers, including Eamon Collins and John Gibson, have retracted their evidence.

The appeal in the Black supergrass trial was due to open in The Court of Criminal Appeal on 7 January, 1986 before Lord Chief Justice Lowry sitting with Mr. Justice McDermott and Mr. Justice Higgins. At the request of the defence, the appeal was adjourned for a week because of the illness of the defence Senior Counsel, Mr. J.D. McSparran QC. It has taken over two years to prepare for the appeal in the Black case.

Effect on Catholic population

It should be noted that the result of the Allen case in which Mr. Justice Higgins acquitted most of the defendants earlier this year, and Lord Justice Lowry's upholding of the appeals in the Bennett case, means that the Loyalist population have escaped the effect of the supergrass trials. On the other hand, those convicted on the nationalist side remain in prison. The Kirkpatrick will also take about two years to prepare for appeal. However, because transcript material is already available of Kirkpatrick's evidence, it may be possible to shorten considerably the time required for the preparation of appeal in the Kirkpatrick case.

Discussion at the Special Meeting of the Intergovernmental Conference on 30 December 1985

The Minister raised the question of supergrass trials at the meeting of the Conference on 30 December. The Minister pointed out that these trials are now perceived as a "system", that all those currently in prison as a result of the trials are nationalists and that the supergrass system is becoming internment in another form.

Legal points against the use of "accomplice" or informer evidence in the "Diplock" Courts include:

- dubious quality of the witnesses who themselves have committed serious crimes and are offered immunity;

- much of the evidence is uncorroborated;

- the "warning" customary in the case of uncorroborated evidence is made by the single "Diplock" judge to himself (not before other Judges or a jury);

- the large number of defendants and charges;

- the delays between remand and trial and later the long delay before appeals can be heard.

In reply the British side argued that supergrass trials were not a "system", it is up to the police and the Director of Public Prosecutions to decide whether or not a particular case should go forward, consulting the Attorney General in certain specific instances. The intimidation of ~~the~~ witnesses was also a problem which led to a greater reliance on the use of supergrasses.

Minister Barry urged that the work of the Ryan-Brennan subgroup on Article 8 (the administration of justice) be speeded up. It was agreed that the Conference would then decide on the programme put forward by the subroup.