



An Chartlann Náisiúnta National Archives

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Appendices not attached.

Secret

Some comments on evidence of bias in the
Northern Ireland Judiciary

At the outset, it should be said that firm evidence in this area is difficult to secure, and any study must be relatively unscientific. There has however been disquiet for some time at the possibility of anti-nationalist or pro-unionist bias (not identical conditions) on the part of N.I. judges particularly at County or District Court level. In the last few months an attempt has been made to monitor newspaper reporting of court decisions and judges' comments in Northern Ireland. This paper tries briefly to outline some instances of apparent leniency by certain judges towards offenders from the unionist community. Relevant newspaper cuttings are attached.

Perhaps the most egregious example of willingness to adopt the most positive interpretation of excuses by loyalist defendants lies in the judgements of Judge Andrew Donaldson. A particular case of excessive understanding on his part would appear to be his recording of prison sentences against three UDF members who were found guilty of possession of firearms in February 1987. The tone of the judge's remarks came close to one of amusement and certainly displayed a remarkable tolerance of offences which traditionally have attracted stiff sentences. See Appendix A.

In October, Judge Donaldson dismissed a claim by one Seamus Nugent who alleged he had been punched and kicked by members of the UDR patrol after being dragged out of a car. Judge Donaldson described himself as "satisfied that the members of the UDR behaved properly at all times". (Of note here too is that there is no evidence of an RUC presence with the UDR patrol). See Appendix B. Mr. O'Donovan's report of 14 October also reveals, at least anecdotally, the kind of thinking that appears to be behind much of Judge Donaldson's judgements. See Appendix C.

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Judge Peter Gibson, on 1 December, gave light sentences to eight Derry loyalists who were accused of offences during the day of protest against the Agreement on March 3 of last year. Judge Gibson accepted the defence argument that several of the accused were of "low intelligence" and had been unduly influenced by loyalist leaders. The 30 offences admitted by the men included possession of a rifle, rioting, intimidation, arson, and criminal damage in which homes and vehicles were attacked. The heaviest sentence was three years jail to one offender. See Appendix D. It should also be noted however that Judge Gibson on 23 November had refrained from giving a Derry woman a jail sentence when she pleaded guilty to possessing explosives, magazines, cartridges, ammunition, and a rifle which were found in a hide at her home. Recording a six year sentence for three years Judge Gibson said he believed it would be counterproductive to send the woman to jail. (Currently, however, Crown prosecution had accepted she had had "a change of heart" before her arrest). See Appendix E.

The above examples are intended to illustrate that a) there is reason to be concerned at the apparent bias of some of the N.I. judiciary particularly judges such as Donaldson but that b) some if not many of the judgements may owe more to conformist or conservative tendencies on the part of the judges than to a deliberate policy of bias. More particularly it might be said, that some judges are unusually open to persuasions from the loyalist/unionist/crown side and have a tendency to show leniency towards nationalist defendants only where the prosecution is already signalling a willingness to accept such a sentence. (This latter problem has, of course, implications not only for the judiciary, but also for the prosecution services).

It follows from this that, without detailed examination of individual cases, it is difficult to codify what are tentative patterns at best. What case can be made from such evidence as we have is a matter for consideration. It might be worth in the interim

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- (a) continuing to monitor the newspaper reports of, in particular, County Court judgements, as these, it would appear, are not recorded elsewhere.
- (b) considering the sponsorship, however indirectly, of an academic study in Northern Ireland of patterns of County Court judges. It might be necessary to have this undertaken in a sociological rather than a legal context, as any such study is likely to attract attention, possibly unwelcome, among the judiciary concerned.
- (c) expanding our contact efforts with sympathetic barristers to provide us with information or examples of cases where judges show undue sensitivity to defence pleas on behalf of unionist defendants, or appear excessively accepting of prosecution recommendations.

Ken Dowling

Anglo-Irish Section,
9 December 1987.

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