

LAW AND ORDER

The present campaign of terrorist violence, which began in 1969, has resulted to date* in 2450 deaths and 27,269 injuries. It has also seriously damaged Northern Ireland's prospects of economic regeneration and political stability, and has engendered a climate, especially in the more deprived urban areas, in which other forms of crime have flourished.

2. The present level of violence is however much lower than it was in earlier years. For example, in 1972 (the worst year of "the Troubles"), 467 people died in security incidents; this compares with 64 last year and 41 so far this year.[†] During the early and mid-seventies, the security effort was based largely on extra-judicial measures such as executive detention, and on the Army as the main instrument of enforcement. However, following a major reassessment of policy in 1975-76, successive administrations have been committed to dealing with terrorism through the criminal law, enforced by a greatly expanded and professionalised police force. This policy has succeeded to the extent that in most areas of the Province the police require only technical or occasional support from the armed forces.

3. Conceptually and politically, this approach is based on a rejection of the terrorists' claim to be fighting a war - whether the cause happens to be the attainment of a United Ireland or the maintenance of the Union with GB. Governments have thus refused to regard a crime committed from allegedly "political" motives as distinguishable legally or morally from a similar offence carried out for other reasons. Such a policy both affirms the principle that the rule of law is at the heart of a democratic society, and helps to counteract the attempts of propagandists to discredit state procedures and institutions.

4. There are nonetheless several factors which make it particularly difficult to deal with terrorists in Northern Ireland by means of normal legal processes.

[*at 31 August 1985]
[† at 31 July 1985]

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5. First, it is often hard to isolate terrorists from these sections of the community who share their political aims. Sectarian divisions run deep and loyalties are fiercely held. Especially at times of heightened community tension, these predispositions can produce, in otherwise law-abiding citizens, an ambivalence towards violence from their own side. This manifests itself in a reluctance to help the security forces bring the perpetrators to justice. Secondly, even those who wish privately to support the security forces may be deterred from doing so by threats or by the fear of violence and intimidation. Such intimidation has also been the main argument against a return of jury trials for alleged terrorist offences. Finally, despite the great improvements over recent years in security co-operation with the Irish Republic, it remains the case that terrorists operating in remote areas can with little difficulty escape into or return to the South. The border is over 300 miles long, running for the most part through sparsely populated rural areas and rarely following natural boundaries whether geographical or cultural. Despite frequent demands from Unionists to "seal the border", Governments have always recognised that any benefits would be greatly outweighed both by the inevitable forfeiture of effective co-operative with the Irish authorities, the severe disruption of normal economic and social intercourse in the border areas and the enormous investment of manpower and resources needed to make such a measure operationally feasible.

6. It is primarily the responsibility of the police to overcome these constraints and difficulties and to sustain the community's confidence in the impartiality and effectiveness of the law, and of those who enforce and administer it. They are, of course, assisted where necessary by the Army, including the locally recruited Ulster Defence Regiment (IDR). Regular Army support is now largely confined to certain border regions (notably South Armagh), West Belfast and West Londonderry, where normal policing is still not possible. The RUC has approximately trebled in size over the last fifteen years to its present* level of 8190 regular, 2697 fulltime and 1803 part-time reservists. Meanwhile the Regular Army presence has more than halved from the peak of 21,776 reached in 1972. The Chief Constable and the GOC are firmly committed to close co-operation

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between their respective forces, and to the doctrine of police primacy. There is an extensive network of joint planning and operational relationships between the police and the Army, with NIO participation where policy matters are involved. At the top of the pyramid is a monthly Security Policy Meeting chaired by the Secretary of State and attended by the Chief Constable and the GOC.

7. The RUC has in recent years made some progress towards winning the respect and acceptance of the Catholic community, although this can be hampered and indeed temporarily reversed by events such as those surrounding the hunger strikes in 1981 and the attempted arrest of Noraid leader Martin Galvin in West Belfast on 12 August 1984. One of the RUC's continuing problems has been to increase the number of Catholics within the force: however despite strenuous efforts by the Police Authority the proportion of Catholics within the force, which is estimated to be about 5%, remains worryingly low. On the other hand a number of Catholics have risen to senior positions; Catholic recruitment to the RUC has risen to about 12%; and the RUC continues to devote considerable energy to its wide-ranging community relations programme. They also have plans to develop the network of liaison committees where local views can be voiced and discussed.

Current Terrorist Threat

8. Following an erosion of their public support and in the face of increasing security force successes, the Provisional IRA (PIRA) decided in the late 1970's to reorganise their operational structure into small, self-contained cells, known as Active Service Units (ASU). These were designed to be less susceptible to intelligence penetration than the larger "battalions", which they replaced.

9. PIRA's present pattern of violence consists largely of shooting and bombing attacks, particularly on "soft targets" such as off-duty members of the RUC and UDR; coupled with attempts to destroy commercial property and to murder VIPs such as Unionist politicians or members of the judiciary. Compared with earlier years, there has been a sharp decline in sectarian feuding and street violence. However sectarian violence can and does flare up at intervals.

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10. PIRA's leadership are increasingly aware of the political repercussions, both locally and internationally, of their terrorist campaign, though such considerations weigh less heavily with the rank and file, who have from time to time embarrassed PIRA's political wing, Sinn Fein, by particularly brutal crimes, such as a fatal punishment shooting in a West Belfast club shortly before the 1984 European election. Three murders by PIRA of Roman Catholics in August 1985 - two as a result of "mistaken identity" and one as a "punishment" for having a commercial relationship with the security forces - have disgusted the minority community. PIRA are also able to exploit the general perception of a decline in violence by gaining more sharply focussed public reaction and media coverage in response to isolated serious incidents, eg the two van-bombs in Belfast in June and July.

11. The other main republican terrorist group is the Irish National Liberation Army (INLA), which is smaller and less disciplined than PIRA. INLA has been responsible for some of the worst atrocities of recent years, such as the Ballykelly bombing in December 1982 which killed 17 people; but it is characteristically reliant on the energies and organisational abilities of relatively few individuals. Its former leader, Dominic McGlinchey, is presently appealing against his conviction for murder following his extradition in March 1984 from the Irish Republic in a case creating precedent. In his absence a violent leadership struggle is under way.

12. On the loyalist side, the largest paramilitary group is the Ulster Defence Association (UDA), which was prominent in the political strikes of 1974 and 1977 but now seems to be a greatly diminished force. It has never overtly claimed responsibility or advocated support for terrorist acts and remains a legal organisation. Other loyalist groups have been proscribed, of which the most significant are the Ulster Volunteer Force (UVF) and the Ulster Freedom Fighters (UFF). These are little more than localised sectarian gangs whose violent acts tends to be random and largely reactive to republican excesses.

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Outlook and Current Issues

13. A comprehensive discussion of the key security issues is to be found in the report (January 1985) of the 1984 Security Policy Review a copy of which should be available in the Private Office.

14. All Northern Ireland Secretaries of State are held accountable for the full range of security matters, both by the public and by the political parties, who often seek to exploit issues for their own ends. Many, often including the Irish Government, fail to perceive the distinction between Ministers' responsibility for security policy and that of the RUC and Army commanders for operational activities. Since policy is well established as are the main lines of public criticism, there is an element of predictability about the events and competing pressures with which the Secretary of State and Ministers must deal. However, pressures do shift from time to time and at present the ones attracting most attention are security co-operation with the Irish authorities; the RUC's handling of Loyalist parades; the Unionist fear that the Irish authorities will be given some influence over security issues in Northern Ireland; and the risk of a violent Loyalist reaction to the outcome of the Anglo-Irish talks (deliberately exacerbated by a stepping up of terrorist activity by PIRA). Annexes on these issues and on emergency legislation, plastic baton rounds and the use of 'former accomplice' evidence are attached.

NORTHERN IRELAND OFFICE

September 1985

Annexes:-

- A. Security co-operation with the Irish Republic in legal and operational spheres.
- B. Emergency Legislation
- C. Parades and Marches
- D. Loyalist Backlash.
- E. Plastic Baton Rounds
- F. Evidence of former terrorists.
- G. Shootings by the security forces.

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ANNEX A

SECURITY CO-OPERATION WITH THE REPUBLIC OF IRELAND

Co-operation in security matters with the Irish authorities is vital to the extradition of terrorism. The border has assumed an increasingly important place in the Provisional IRA's campaign as the security forces have maintained the pressure on their activities in Belfast and Londonderry. Large numbers of terrorists live in the Republic, crossing the border to mount terrorist attacks or even mounting attacks from the soil of the Republic. Supply lines run through the Republic, training camps may be held there and so on.

2. There can be no doubt that successive Irish Governments of whatever party, have been totally opposed to the Provisional IRA and other terrorist groups. They have shown themselves willing to take extremely tough action against Republican terrorists. On the other hand there is within Irish society a degree of ambivalence towards Republican terrorists (who rarely cause any death, injury or loss in the Republic) which means that they are operating in a less than hostile environment. It is also the case that the Irish security forces in the border area (Garda and Army) are not particularly well-equipped or motivated to take an active role against the terrorists. To be fair, in relative terms, the Irish devote very considerable resource to policing the border, particularly when one takes account of the appalling crime problems in Dublin.

3. At operational level the RUC and Garda work closely and effectively and this co-operation continues to pay dividends, particularly in terms of finds of arms and explosives. There has, however, been a coolness between the RUC and Garda at senior levels which has drawn political interest. The coolness has arisen from personality factors, from an incident in 1982 when RUC officers are believed to have operated covertly in the Republic and then tried to hush it up, and from Garda suspicion (which they have been unable to substantiate) that senior RUC officers conspired with previous senior Garda officers to interfere with a witness at the trial of Garda Nangle (brother-in-law of the then Irish Minister for Justice). Despite the Chief Constable's efforts (some of

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them less than tactful) to improve the degree of contact, there have been no meetings between the Chief Constable and the Garda Commissioner for over three years: contacts at Chief Office levels are few and far between: the formerly regular meetings of RUC and Garda Chief Superintendents from Border Divisions have lapsed; and meetings between Border Superintendents have only just fitfully resumed.

4. The Secretary of State and the Irish Foreign Minister (Mr Barry) have agreed to encourage greater contact at senior police levels; NIO links with Irish Department of Justice officials have been extended (one result has been a joint research programme into ways of inhibiting the production of Home-Made Explosive); and efforts have been made to secure a meeting between the Secretary of State and the Irish Minister for Justice. It is to be hoped that any Anglo-Irish agreement will make it easier to secure better co-ordination and contact between the RUC and Garda at senior levels, and reinforce the commitment of the Irish agencies to co-operate energetically with us in eradicating terrorism.

5. On the legal front developments have been more encouraging. Although extradition arrangements between the UK (including Northern Ireland) and the Republic are based on simple procedure by which arrest warrants issued in one jurisdiction may be backed and acted upon in the other, the Irish courts have traditionally held that terrorist fugitives are excluded from these arrangements on the grounds that they are 'political offenders'. Both British and Irish legislation prohibits extradition on charges of a political character. However, the ruling in the Irish Supreme Court in December 1982 that Dominic McGlinchey should be extradited on a charge of murder, for the first time appeared to draw a distinction between terrorist and political offences. McGlinchey absconded whilst on bail and the extradition order was not put into effect until March 1984 when he was arrested by the Garda. The extradition caused some concern in Nationalist circles in the South, partly because of the traditional antipathy towards the handing over of suspects to a jurisdiction which the Republic's constitution does not recognise, and also because McGlinchey had committed a number of serious crimes within the Republic itself and could have

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faced trial there. The subsequent extradition in July of Seamus Shannon, on charges of murdering Sir Norman Stronge and his son at Tynan Abbey in January 1981, has reaffirmed this positive approach being taken by the Irish judiciary. There are still uncertainties about how widely these two positive court decisions will be applied to terrorist extradition cases. Other cases are in train.

6. In addition to extradition, prosecutions can be brought in the Republic for certain offences committed in the UK (and vice versa). The extraterritorial legislation, which makes this possible, was enacted in the mid-1970s but was largely ineffectual until late 1981. In the Republic for terrorist crimes committed in Northern Ireland; similarly the London bomber Gerry Tuite, was convicted for bombing offences committed in England. This legal mechanism is more cumbersome and less satisfactory than extradition: it can, however, achieve the desired result.

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EMERGENCY LEGISLATION

The scale of terrorist violence has led successive Westminster Governments to follow the recommendations of independent enquiries held by two eminent jurists. Lords Diplock and Gardiner, and to introduce certain emergency provisions - currently the Northern Ireland (Emergency Provisions) Act 1978 (EPA) - on a temporary basis. To continue in force, the powers conferred by this Act must be renewed every six months by an affirmative vote in both Houses of Parliament. In addition to this close Parliamentary scrutiny, the EPA has been the subject of a further independent review conducted by Sir George Baker and published on 10 April 1984 (Cmnd 9222).

2. The key provisions of the EPA:-
 - (a) confer a power of executive detention (dormant since June 1980; not used since 1975);
 - (b) establish a class of serious terrorist-type crimes ("scheduled" offences) and provide that persons charged with such offences shall be tried by a court sitting without a jury;
 - (c) give the police a power to arrest suspected terrorists without warrant and hold them without charge for up to 72 hours;
 - (d) impose stricter than normal bail conditions on those charged with "scheduled" offences and provide that bail can only be granted in such cases by a High Court judge;
 - (e) confer a wide (though time-limited) power of arrest on members of HM Forces;
 - (f) empower the Secretary of State to proscribe organisations he believes to be involved in terrorism, or in promoting or encouraging it;

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- (g) relax the criteria which would otherwise have to be met before confessions could be admissible in "scheduled" cases, and shift the onus of proof where a person is charged with possessing a proscribed article (explosive, firearm etc);
- (h) confer wide powers of search and seizure on the security forces, together with powers to stop and question persons, to order groups to disperse and to interfere with rights of property and with highways.

3. Sir George Baker concluded that there was little scope for amending the Act but recommended that:-

- (i) the detention provisions should be repealed;
- (ii) there should continue to be provision for no-jury courts but more cases should be tried before a jury;
- (iii) police emergency arrest powers should be amended to bring them into line with those in the (UK-wide) Prevention of Terrorism Act;
- (iv) the onus in bail applications in "scheduled" cases should be shifted towards the prosecution;
- (v) the emergency arrest powers given to HM Forces should be constrained;
- (vi) the law on the admissibility of confession evidence should be amended to restate and clarify the judges' discretion to reject such evidence; and
- (vii) the revised Act should have a maximum life of five years and be subject to annual renewal.

4. Broadly, it is proposed to accept (ii), (iii), (iv), (vi) and (vii) and to reject (i) and (v). A draft Bill incorporating these amendments is in course of preparation in the expectation of securing a place in the 1986/87 legislative programme. It may need also to

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include provisions relating to the control of the private security industry and provisions to vary the application to terrorist suspects of the legislation equivalent to the Police and Criminal Evidence Act 1984 which it is hoped to introduce in Northern Ireland by Orders-in-Council over the next year or so.

5. Northern Ireland is also within the scope of the Prevention of Terrorism Act 1984 (PTA), which applies throughout the United Kingdom. There has been a PTA since 1974; the present Act embodies some modifications to the PTA 1976 stemming from a review of that Act in 1983 by Lord Jellicoe. This is again temporary legislation and is subject to renewal by Parliament every 12 months. It enable terrorist suspects to be held by the police for 2 days and then for up to a further 5 days on the express authority of the appropriate Secretary of State, separately given in each case. It also enables the Secretary of State to exclude persons from either GB or NI, or the UK as a whole.

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PARADES AND MARCHES

There are hundreds of parades in Northern Ireland each year both Loyalist (eg Orange Order) and Republican (eg Ancient Order of Hibernians). There are nationalist parades around St Patrick's Day (17 March) but most parades occur in "the marching season" - July and August. Most pass off entirely peacefully.

2. A few, however, may be seen as triumphalist and - insofar as they pass through areas inhabited mainly by people from the other side of the community - provocative. Attempts to re-route such parades have in the past provoked counter-demonstrations. Both parts of the community, especially the Unionists - whose parade routes tend to be hallowed by tradition, seem to feel a need to assert their "territorial" claims in this way.

3. The Chief Constable has been concerned about the divisive effects of provocative parades for some years. The RUC's reputation for impartiality has also been affected by the need for it to protect provocative Loyalist parades. This year the Chief Constable, with the full support of the Secretary of State, decided to make more extensive use of the police powers to re-route or impose conditions on public processions. The Secretary of State also banned two provocative Loyalist parades in Castlewella Park on the advice of the Chief Constable. The main focus for counter-demonstrations was in Portadown where Orange Order and Royal Preceptory marchers were turned away on 12 and 13 July from a route which had been followed for at least 150 years. The protests were given an added edge by the belief that the re-routing resulted from a request by the Irish Government and was indicative of growing Irish influence over security issues in Northern Ireland.

4. The RUC, with Army support in reserve, controlled the marches very effectively. For the future, the relevant legislation is under review, with a view to strengthening the powers of the police to control provocative parades.

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LOYALIST BACKLASH

A spate of successful terrorist attacks in the border areas and the two van-bombs in Belfast during the summer have kept Unionist worries about the security situation at a high level. The election of 59 Sinn Fein councillors in the District Council elections as a constant source of frustration and provocation. Unionists remain intensely suspicious that the Anglo-Irish talks will result in a weakening of the Union or a greater role for Dublin in the internal affairs of Northern Ireland, particularly security. The Chief Constable's action in re-routing a number of Loyalist parades during the summer was seen as evidence of Dublin's influence. Republican terrorists have sought to exploit this sense of fear and uncertainty by maintaining a fairly high level of terrorist activity.

2. The net result is that the Unionist community is in a particularly unsettled mood which could be whipped into hysteria. When essential Unionist interests have appeared threatened in the past (eg 1912, 1974) the Unionist community has shown itself capable of operating in a co-ordinated way, using mass demonstrations backed up by the threat of violence to achieve a common political goal.

3. The UUP and DUP leaderships are in contact about proposals for responding to any outcome to the Anglo-Irish talks (expected in October) which might prejudice the Unionist position. An organisation called the United Ulster Loyalist Front, which involves some hardline Unionist politicians, representatives of the UDA and others with links to Loyalist paramilitary groups, has been set up to co-ordinate resistance to the re-routing of "traditional" parades and to prepare a Loyalist response to any Anglo-Irish agreement. The UULF has left the running to the UUP/DUP for now but it could become a vehicle for organising or reinforcing concerted Unionist action intended to force a change of Government policy.

4. Contingency plans have been drawn up to enable the Government to defeat any such attempt and these will be refined as the situation develops.

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PLASTIC BATON ROUNDS

Plastic baton rounds (PBRs), popularly known as plastic bullets, are the security forces' principle means of dealing with serious rioting. PBRs are about 4 ins long, 1½ ins in diameter and weigh 135 grams: they are more stable in flight than the rubber baton rounds they replaced. The guidance over the circumstances in which they may be fired is clear and provides that the target area is the lower body of specific rioters and that they should not be used at a range of less than 20 metres, unless the lives of members of the security forces or innocent civilians are seriously threatened. At less than 20 metres the dangers of PBRs are, of course, increased.

2. By definition, riot control measures are only necessary when there are riots. During 1981, the year of the hunger strikes, the security forces fired 29,695 PBRs; 489 and 661 were fired during 1982 and 1983 respectively; this rose to 1768 in 1984; and around 1100 have been fired so far in 1985. Since the introduction of plastic baton rounds in 1973, 12 people have died from injuries apparently caused by their use. Two people were killed by rubber baton rounds. In all cases involving death or serious injury thought to have been caused by PBRs, the police send a detailed report to the DPP. He has directed that a charge of manslaughter should be brought against one policeman (arising from the death of Sean Downes on 12 August 1984); he has directed no prosecution in all other cases.

3. Baton rounds are an extremely effective way of keeping rioting crowds at a distance. Without them, rioters would gain an advantage and real bullets might have to be used instead. Some criticism of PBRs stems from propaganda motives. But there is genuine and widespread concern that people have been killed, especially about children whose participation in rioting has in some cases been questioned. There is also anxiety that the security forces may not invariably adhere strictly to the instructions about when and how to use them. Moreover, it is widely believed, though wrongly, that the Home Secretary has banned their use in England and Wales; their use in Northern Ireland is therefore portrayed as an illustration of double standards.

4. Other European countries use different and less dangerous riot control weapons, such as water cannon and CS smoke, but these have

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not been found to be effective in dealing with the serious rioting that can occur in Northern Ireland. Nevertheless, possible alternatives for the control of riots are being studied, in consultation with the Home Office and Scottish Office.

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EVIDENCE OF FORMER TERRORISTS

1. Considerable controversy has been aroused over the last three years by the willingness of some former terrorists to testify in court against their previous accomplices and associates. Such witnesses are described by the RUC as "converted terrorists" (CTs), and more popularly as supergrassess. CTs have emerged from within all the main terrorist groups, both republican and loyalist, and have had a major impact on terrorist activity and morale.

2. The CTs who have come forward to date have varied in their terrorist importance; their resolve to stay the course; their character and credibility as witnesses; their motives for turning Queen's Evidence; and the nature of the charges (if any) which they themselves faced. Their use has been criticised principally by political representatives of the cause espoused by the defendants: and against the background of the informer's reviled role in Irish history. Of potentially greater concern are the widespread reservations which have been expressed by responsible opinion over both the reliability of evidence given by a witness who, if immunity has been offered, can plausibly be accused of trying to save his own skin; and the morality of allowing people who are themselves criminals to go free. To some extent, these criticisms have been answered by the obvious care and probity which the courts have brought to bear on the individual merits of each case. In political terms, however, there is little prospect of gaining credit from the not infrequent acquittal of defendants in such cases, since the counter-argument is then that the accused should never have been remanded in custody.

3. In responding to public pressures on this matter, Ministers have sought to emphasise that decisions on prosecution and the granting of immunity are a matter for the police and the DPP, not for the executive. Similarly, it is for the judiciary to assess the reliability of evidence provided in court (whether or not by an informer) and the legality of the means by which it was obtained. Ministers have also pointed out that acceptance of

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testimony from people who have turned Queen's Evidence has long been a feature of the British legal system, as was made explicit by the Attorney-General in a Parliamentary Answer of 24 October 1983 (copy attached).

4. In practice, virtually all the major 'converted terrorist' cases have collapsed or resulted in acquittals (either at the main trial or on appeal). At present a trial based on the evidence of (INLA) is in progress and there is only one small 'converted terrorist' case now outstanding, though it is not impossible that others will emerge in future.

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SHOOTING BY THE SECURITY FORCES

1. Between November 1982 and 29 August of this year members of the security forces on duty opened fire on terrorist suspects killing 26 people. More were injured. These deaths provoked considerable controversy among the Catholic community (all except two of the dead were Catholics) and fuelled a propaganda campaign alleging that the security forces (and in particular the RUC) had been allowed to embark on a "shoot-to-kill" policy.
2. The Chief Constable emphatically denies this charge. The police are well aware that they must themselves obey the law which they enforce. Any incident where death or injury results from the use of firearms by the security forces is closely investigated by senior police officers and a report is submitted to the Director of Public Prosecutions, who is empowered to call for any additional information he considers necessary.
3. The DPP has so far directed prosecutions in 3 such cases. Private Thain was convicted of murder and sentenced to life imprisonment in December 1984. Constable Robinson was acquitted on 3 April 1984 of murdering the two INLA suspects whom he shot and killed in December 1982. Three RUC officers were also tried for the murder in November 1982 of a PIRA suspect, and were also acquitted. In addition, 8 UDR men and 1 policeman face serious charges, including murder, arising out of alleged off-duty sectarian activities.
4. The Government's position, and that of the security forces, is that policemen and soldiers must themselves be accountable to the law they enforce. Equally, they are as entitled as anyone else to a presumption of innocence unless or until proven otherwise. In political terms, controversy is inescapable either way. If security force members are charged with such offences then Unionists tend to deplore the fact that shooting "known terrorists" is regarded as a crime. If there are no prosecutions, or if prosecutions result in acquittals, then many nationalists will allege that the security forces are above the law and immune from its sanctions.

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