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P.2

**CONFIDENTIAL**

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## **Suspects Questioned Under The Criminal Evidence (Northern Ireland) Order 1988**

### **Background**

The Criminal Evidence (Northern Ireland) Order was made on 14 November 1988. The Order amended the law on evidence to permit the courts in Northern Ireland to draw such inferences as appear proper from the fact that an accused remained silent. On the basis of such inferences the court could treat the refusal to answer questions as, or as capable of amounting to corroboration of other evidence. The accused will be warned both by the police through various forms of caution and at any resulting trial of the consequences of remaining silent.

There are 4 situations where such inferences may be drawn. Article 4 of the Order (where the accused is called upon to give evidence in court) became effective from 23 November 1988 and Articles 3 (silence during police questioning followed by explanation at court) 5 (refusal to account for marks/substances on clothing) and 6 (refusal to account for presence at a particular place) became effective on 15 December 1988 under cover of a Practice Note on Guidance to the Chief Constable. This report only considers that part of the Order relating to police questioning. The monitoring of other aspects of this legislation would require data to be collected at court.

Therefore the newly worded cautions came into use during December 1988. Before questioning can begin about a suspected offence the suspect must be informed that silence may support any relevant evidence against him in court. Questioning can occur prior to this on other issues but once the suspected offence becomes the focus of questioning the caution or cautions (of which there are 3 types) must be given. It should be remembered that these cautions (see Annexe 1) do not remove a suspect's right to remain silent.

Even though the cautions do not remove the right to silence concern has been expressed (Standing Advisory Commission on Human Rights Fifteenth Report) about the working of the caution which has been described as 'arguably oppressive'. There have been fears from some quarters that the new cautions alter the psychology of the interview situation in such a way as to imply to the suspect that he has been charged (when he has as yet not been charged) and that his silence may be taken as evidence of guilt. Those in favour of greater control over the presentation of the caution to the suspect argue that suspects should be allowed to consult a solicitor before reaching a decision regarding silence. This report provides some statistical background within which the above issues will continue to be debated.

### **The Cautioning Procedure**

The Northern Ireland Office 'Guide to the Emergency Powers' states that an interviewing officer may (if it deemed necessary) explain in his own words the meaning of the caution(s). Cautions must be given prior to questioning about a suspected offence for the purpose of obtaining evidence and officers must ensure that a suspect is aware that he is still under caution at each interview (of which there may be many eg R v McGrath, 1990, when at least 41 interviews took place). This means that the cautioning procedure may not be fixed in terms of the words used or the number of times it is given to the suspect. This is relevant to the present exercise which does not record such details about the cautioning procedure. All that can be assumed is that the caution was given even though terrorist and non-terrorist suspects may have different experiences of what this entailed.

## Methodology

Between January and June 1990, 526 suspects were interviewed at Castlereagh (291), Strandtown (204) and Portadown (31) about mainly 'serious arrestable offences' ie offences which could result in a prison sentence of 5 or more years if found guilty. Annexe 2 shows the pro-forma completed on each suspect. It should be noted that while interview locations were chosen in order to yield a balanced sample, suspects were not randomly selected and as such the representativeness of the information cannot be ascertained. Occasionally data was missing from the pro-formas, this accounts for variation in the tables where numbers may not sum to 526.

## Terminology

The term 'silent' as used in the report refers to one or both of 2 situations. The first situation is where the suspect refuses to answer any questions whatsoever. The second refers to those suspects who were either totally silent or who while not silent would not answer questions relevant to the suspected offence. This latter definition of silence shall be referred to as 'essentially silent'. The term 'proceeded against' refers to suspects who have been either charged, summonsed, released on bail pending further enquiries or cautioned.

## Characteristics of suspects

Just over half of the suspects were interviewed at Castlereagh Police Office, 39% were from Strandtown and the remaining 6% from Portadown Police Office. The majority of the suspects (92%) were male. Three-quarters of the suspects were adults ie 21 years of age or over, the remainder were almost all between 17 and 20 with only 21 (4%) in the 10 to 16 age range. Of the 526 suspects interviewed, 288 were questioned about crime of a terrorist nature (see figure 1). The percentage of females questioned about terrorist and non-terrorist crime was 7% and 10% respectively (see figure 2). The proportion of adult suspects was much greater in the cases involving crime of a terrorist nature. Only 12% of the terrorist suspects were under 21 years of age compared to 45% of non-terrorist suspects.

## Silence

Those who refused to answer any questions whatsoever and those who refused to answer questions relevant to the offence are considered to be 'essentially silent'. A much higher percentage of terrorist suspects remained essentially silent under questioning (38%) than non-terrorist (6%). A large percentage of terrorist suspects (70%) who remained silent had no proceedings taken against them. This compares with only 4 of the 14 non-terrorist suspects who were silent. Most (80%) of the non-terrorist suspects who totally co-operated in answering questions had proceedings taken against them compared to only 37% of terrorist suspects.

## Grounds for suspicions against suspects

Grounds for suspicion cover numerous options (which were not mutually exclusive). As regards terrorist suspects, in 28% of the cases the ground was 'eye witness evidence'. This ground was quoted in 76% of non-terrorist cases. Eye-witnesses could be 'independent', 'victim', or 'police officers'. Over half of the terrorist suspects (52%) were suspected because of 'information from another suspect'. This compares with 12% for non-terrorist suspects. The average number of grounds against a terrorist suspect was 1.3 compared to 1.4 for non-terrorist suspects.

### Legal Advice

A large percentage of terrorist suspects requested access to a solicitor (87%) compared to 32% of non-terrorist suspects. Denial of such access occurred in 38% of terrorist suspect cases and 4% of non-terrorist cases. In a minority of cases (4% of terrorist suspects and 8% of non-terrorist suspects) access was granted but not achieved. Presumably this was due to non-availability of a solicitor, inability to contact a particular solicitor or the suspect released before such access was achieved. Detailed information on this issue was not collected for this exercise.

### Value of the interview evidence

The interviewing officers indicated whether the interview evidence was essential, important etc in reaching a decision of whether or not to prosecute. In 74% of cases involving terrorist suspects the interview evidence was considered to be 'very important'. The equivalent figure for non-terrorist suspects was 56%.

### Final decision taken

Fewer terrorist suspects (about 4 out of 10) were proceeded against than non-terrorist suspects (about 8 out of 10). This will be due to a number of factors such as silence, grounds for suspicion (number and quality of these grounds) and combinations of these and other factors such as number of previous convictions (a measure of familiarity with the system), number of accomplices and the advice given by solicitors. It is possible to use multivariate statistical procedures to explore how these factors 'go together' and to rank them in order of their importance to the final decision. An investigation of this sort would require further analysis.

### Summary of results

There were 288 (56%) terrorist and 223 (44%) non-terrorist suspects.

74 suspects remained totally silent throughout the interview. Only 1 of these was a non-terrorist suspect.

38% of terrorist suspects remained essentially silent compared to 6% of non-terrorist suspects.

22 (17%) of the silent terrorist suspects were charged.

87% terrorist suspects requested legal advice compared to 22% of non-terrorist suspects. Almost all (97%) suspects who requested legal advice received it (even if after an initial delay).

About 38% of the terrorist suspects were denied access (at some stage) to a solicitor compared to about 4% of the non-terrorist suspects.

179 (36%) suspects were proceeded against. Twenty nine per cent of the terrorist suspects were proceeded against and 79% of the non-terrorist suspects.

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CTN 440 25132

10 JAN '94 16:36

P.5

**RUC Officers rate interview evidence as 'essential' even when it does not result in a charge. This is because interview evidence is used to decide not to proceed as well as to proceed.**

In general, terrorist suspects compared to non-terrorist suspects are (i) likely to remain silent (38%) (ii) not likely to be prosecuted (72%) (iii) often suspected due to 'information from another suspect' (52%) (iv) numerically less likely to have grounds against them than non-terrorists and (v) likely to request legal advice (87%).

Non-terrorist suspects are (i) unlikely to remain silent (6%) (ii) likely to be prosecuted (77%) (iii) often suspected due to 'eye witness evidence' (66%) (iv) not likely to request legal advice (78%). Both groups of suspects receive legal advice if requested though terrorist suspects usually have such advice delayed at some stage.

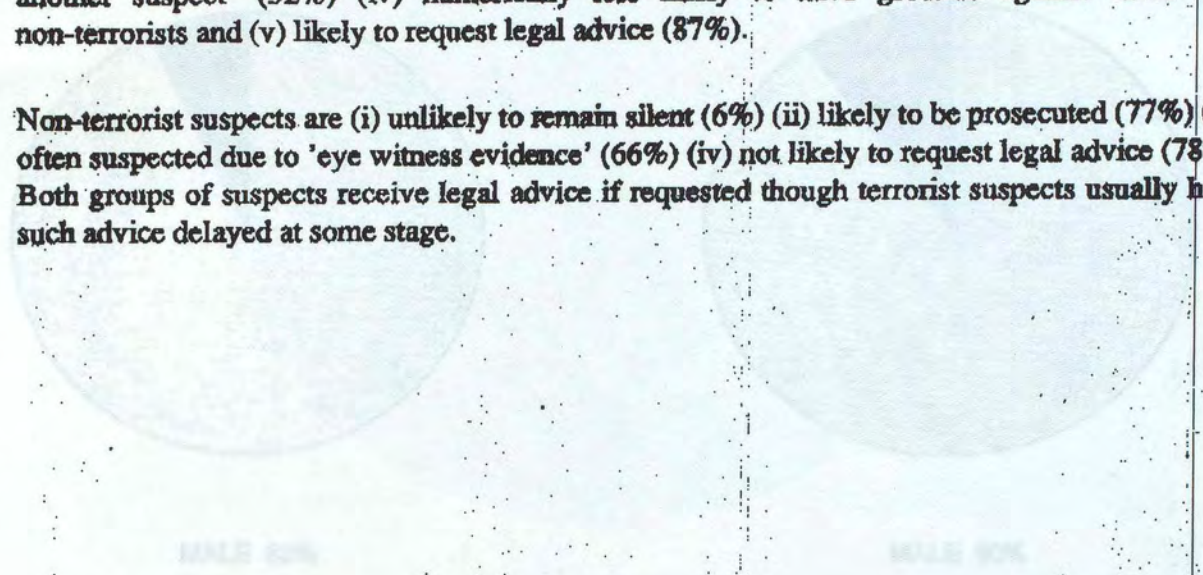


Figure 2 Age Of Suspect By Type Of Suspect



Figure 1

## Sex Of Suspect By Type Of Suspect

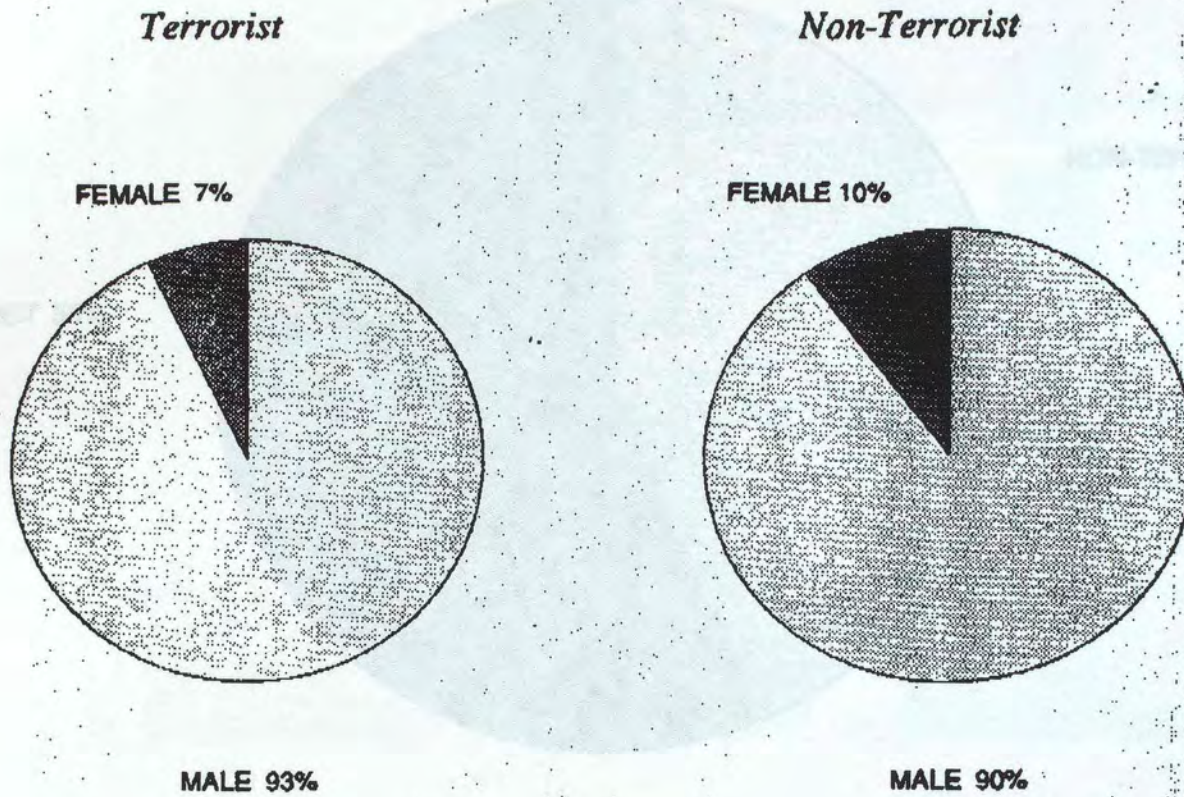
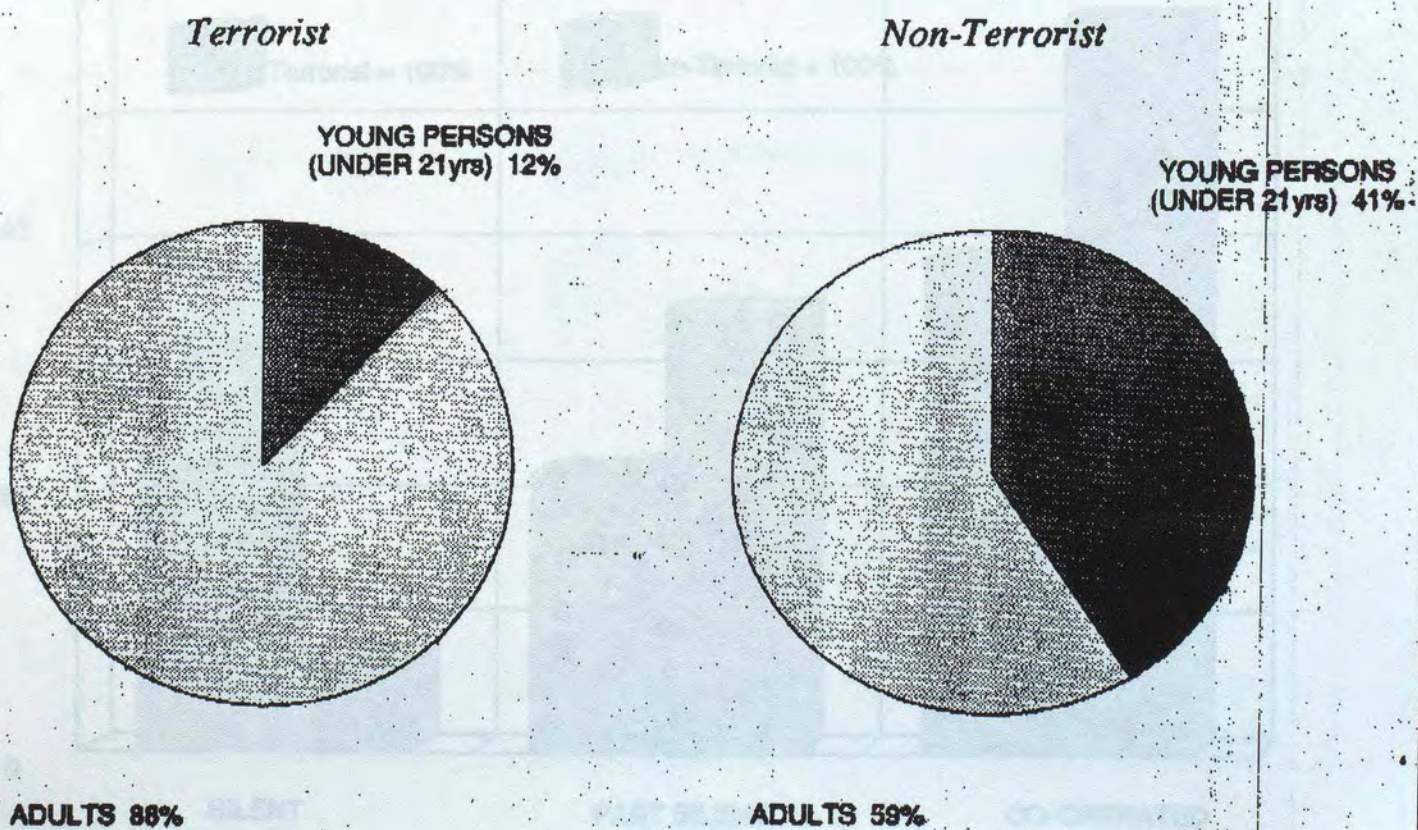


Figure 2

## Age Of Suspect By Type Of Suspect



# Type Of Suspect

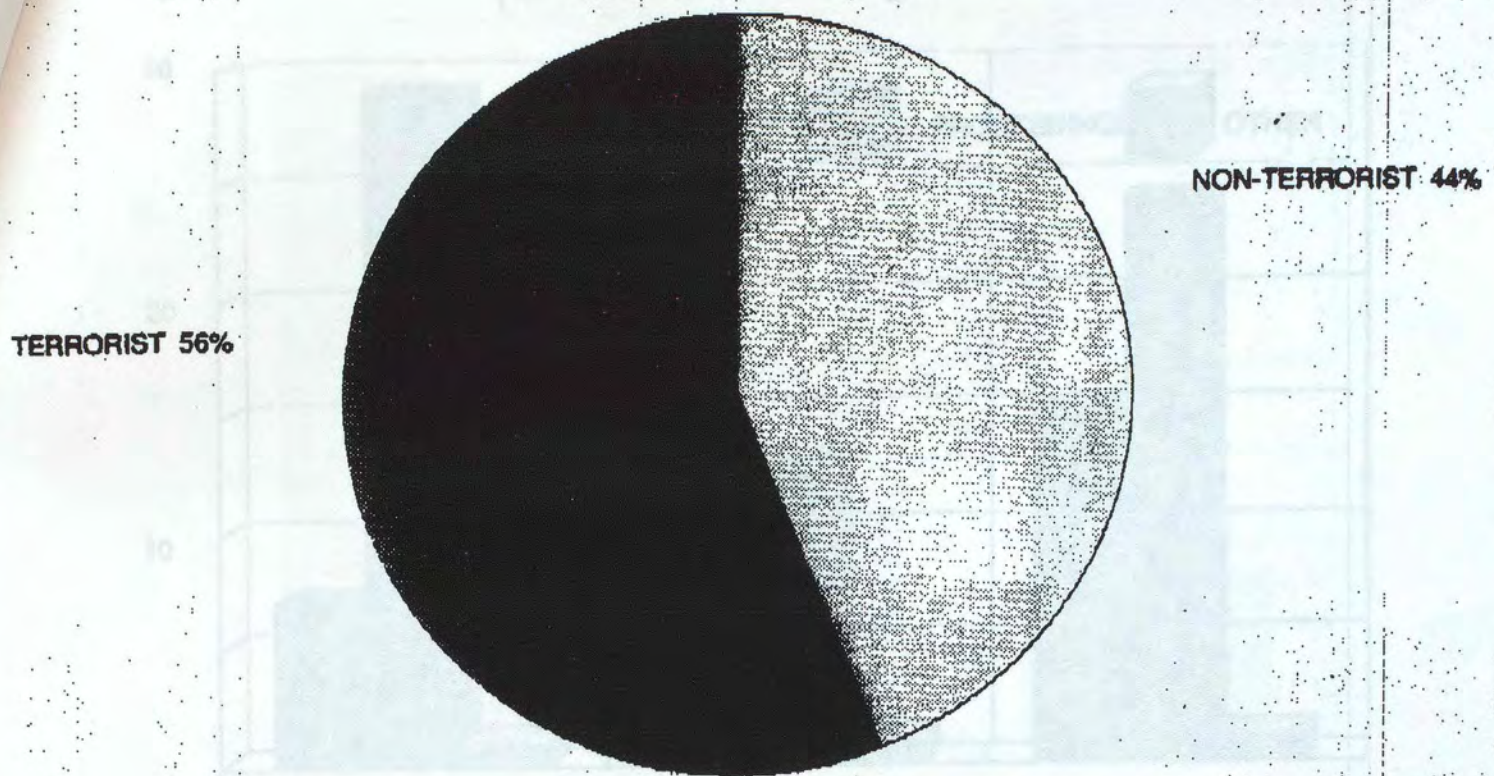
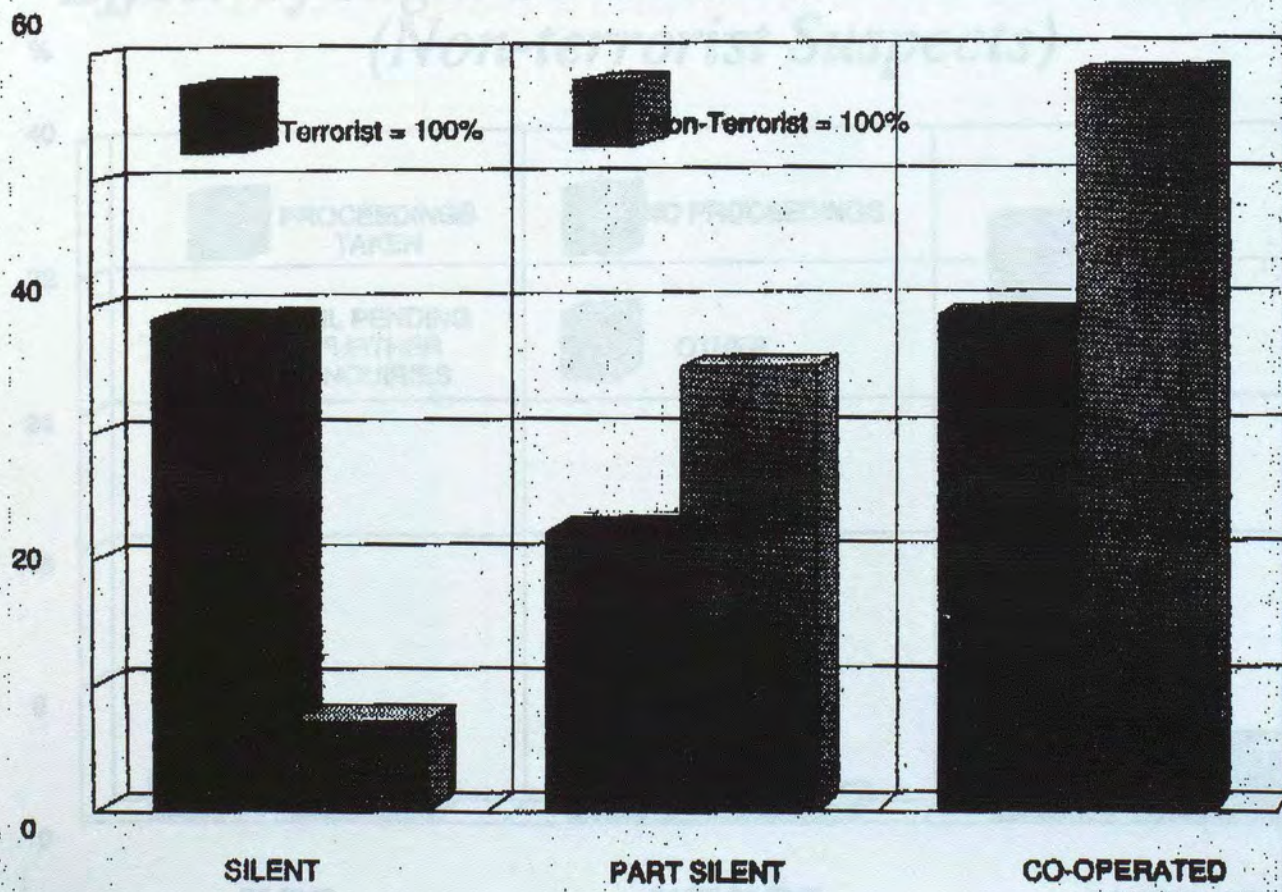


Figure 4

## % Use Of Right To Silence By Type Of Suspect



### Figure 5 Effect Of Right To Silence On Decision Made (Terrorist Suspects)

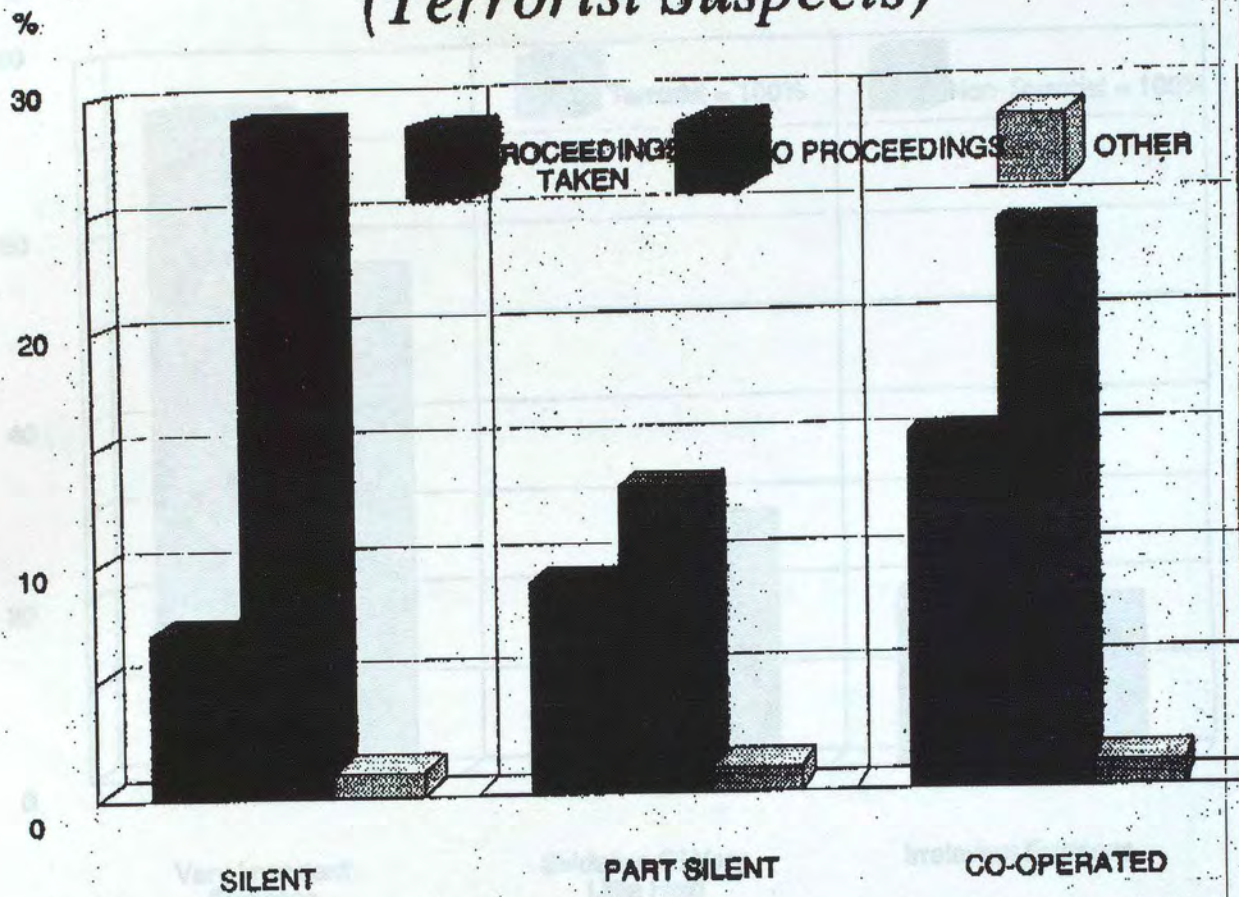
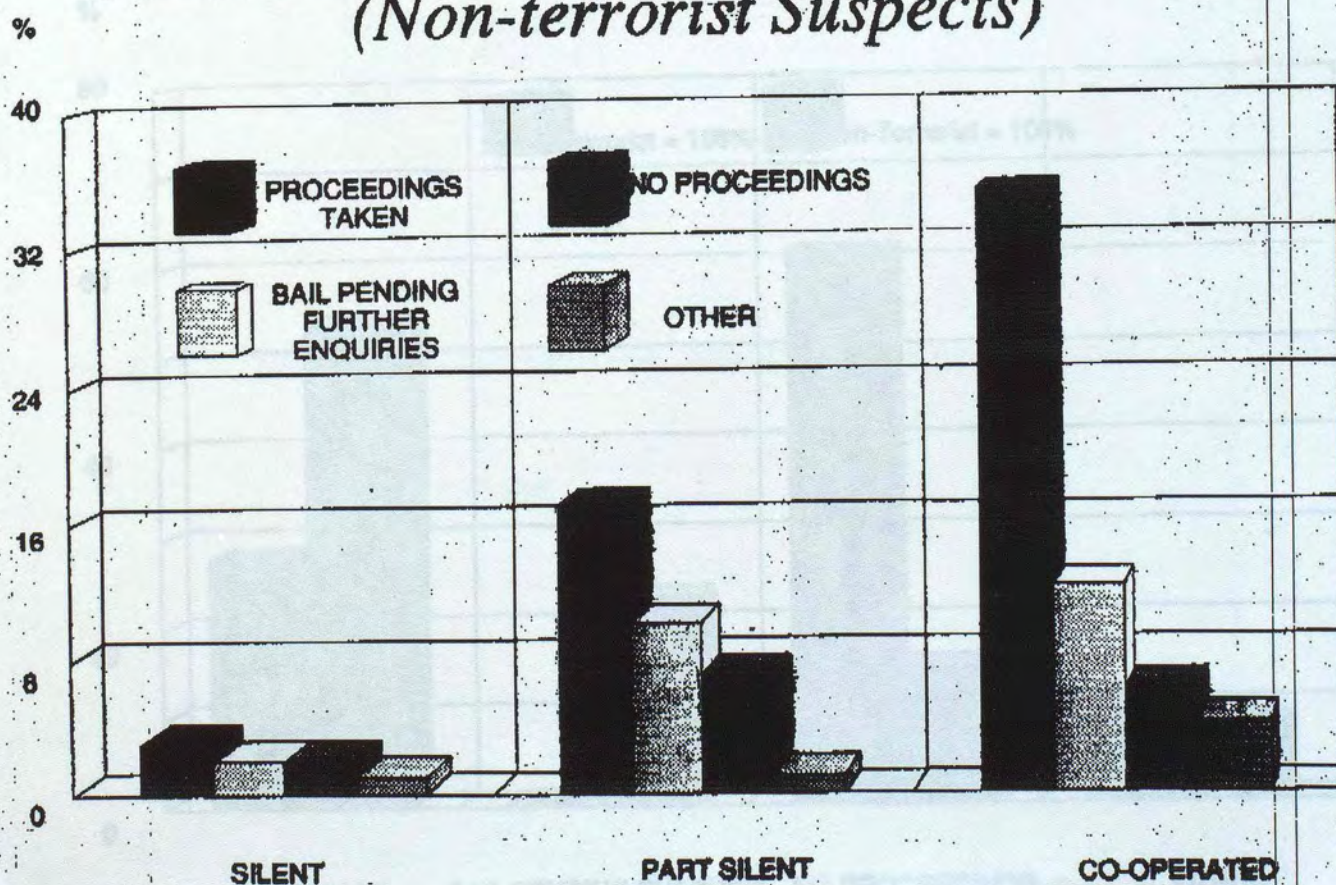


Figure 6

### Effect Of Right To Silence On Decision Made (Non-terrorist Suspects)



## Value Of Interview Evidence

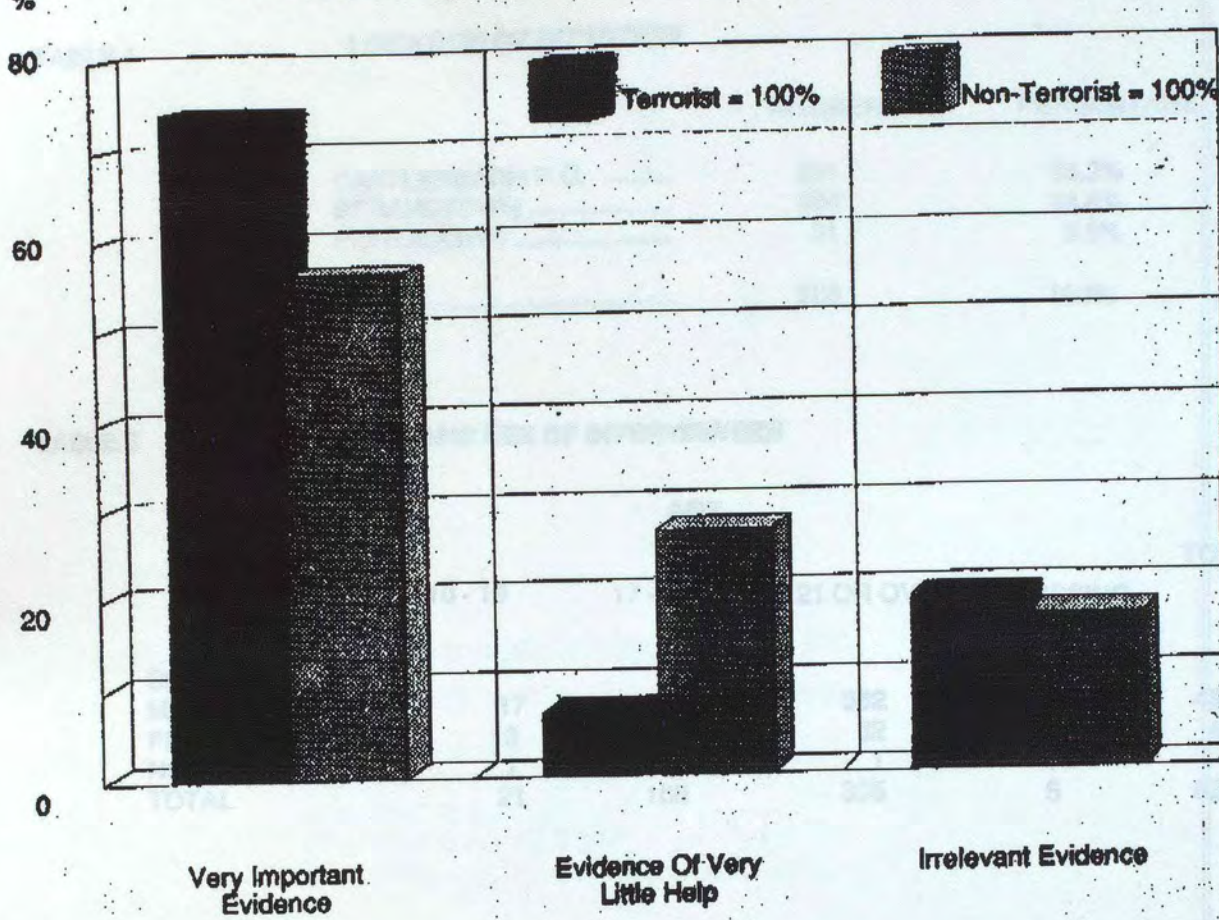
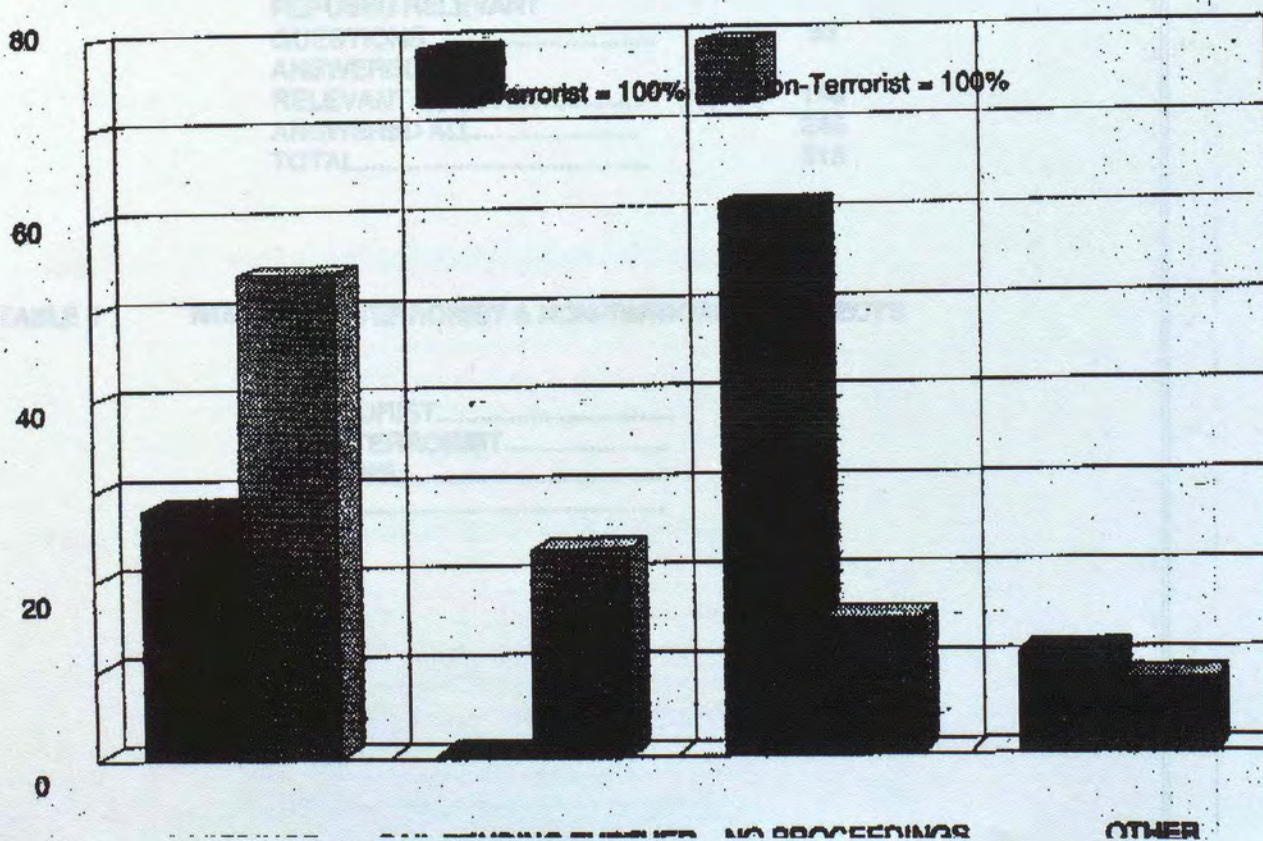


Figure 8

## Final Decision Made On Type Of Suspect



10 JAN '94 16:40

P.10

TABLE 1

LOCATION OF INTERVIEW

|                       | NUMBER | PERCENTAGE |
|-----------------------|--------|------------|
| CASTLEREAGH P.O. .... | 291    | 55.3%      |
| STRANDTOWN .....      | 204    | 38.8%      |
| PORTADOWN .....       | 31     | 5.9%       |
| TOTAL .....           | 526    | 100%       |

TABLE 2

AGE AND SEX OF INTERVIEWEES

|                    | AGE     |         |            | MISSING | TOTAL |
|--------------------|---------|---------|------------|---------|-------|
|                    | 10 - 16 | 17 - 20 | 21 OR OVER |         |       |
| SEX                |         |         |            |         |       |
| MALE .....         | 17      | 98      | 362        | 4       | 481   |
| FEMALE .....       | 3       | 7       | 32         | 0       | 42    |
| NOT RECORDED ..... | 1       | 0       | 1          | 1       | 3     |
| TOTAL .....        | 21      | 105     | 395        | 5       | 526   |

TABLE 3

NUMBER OF SUSPECTS REMAINING SILENT ETC.

|                                        |     |
|----------------------------------------|-----|
| SILENT THROUGHOUT .....                | 74  |
| REFUSED RELEVANT QUESTIONS .....       | 53  |
| ANSWERED SOME RELEVANT QUESTIONS ..... | 145 |
| ANSWERED ALL .....                     | 246 |
| TOTAL .....                            | 518 |

TABLE 4

NUMBER OF TERRORIST & NON-TERRORIST SUSPECTS

|                     |     |
|---------------------|-----|
| TERRORIST .....     | 288 |
| NON-TERRORIST ..... | 223 |
| MISSING .....       | 15  |
| TOTAL .....         | 526 |

TABLE 5

## NUMBER OF SUSPECTS WITH KNOWN ASSOCIATES

| ASSOCIATES   | SUSPECTS |
|--------------|----------|
| NONE.....    | 21       |
| 1.....       | 90       |
| 2.....       | 62       |
| 3.....       | 68       |
| 4.....       | 52       |
| 5.....       | 37       |
| 6.....       | 6        |
| 7.....       | 17       |
| 8.....       | 7        |
| 9.....       | 5        |
| 10.....      | 2        |
| 11.....      | 1        |
| 12.....      | 8        |
| 17.....      | 13       |
| 22.....      | 1        |
| 37.....      | 3        |
| UNKNOWN..... | 135      |
| TOTAL.....   | 526      |

TABLE 6

NUMBER REQUESTING LEGAL ADVICE ETC.  
(CATEGORIES NOT MUTUALLY EXCLUSIVE)

|                                       |     |
|---------------------------------------|-----|
| NOT REQUESTED.....                    | 192 |
| DENIED AT SOME STAGE.....             | 101 |
| GRANTED & ACCESS GAINED.....          | 252 |
| GRANTED & ACCESS NOT<br>ACHIEVED..... | 18  |

TABLE 7

## FINAL DECISION

|                     |     |
|---------------------|-----|
| RUC BAIL.....       | 53  |
| CHARGED.....        | 179 |
| SUMMONSED.....      | 23  |
| NO PROCEEDINGS..... | 216 |
| OTHER.....          | 27  |
| TOTAL.....          | 498 |

TABLE 8

## PREVIOUS CONVICTIONS OF INTERVIEWEES

|                |     |
|----------------|-----|
| YES.....       | 255 |
| NO.....        | 138 |
| NOT KNOWN..... | 121 |
| TOTAL.....     | 514 |

TABLE 9

## USEFULNESS OF INTERVIEW EVIDENCE

|                   |     |
|-------------------|-----|
| ESSENTIAL.....    | 236 |
| IMPORTANT.....    | 110 |
| OF SOME HELP..... | 63  |
| NEUTRAL.....      | 19  |
| UNHELPFUL.....    | 20  |
| IRRELEVANT.....   | 63  |
| MISSING.....      | 15  |
| TOTAL.....        | 528 |

TABLE 10

### **GROUND S FOR SUSPICION (CATEGORIES NOT MUTUALLY EXCLUSIVE)**

|                                       |     |
|---------------------------------------|-----|
| MATERIAL OR FORENSIC EVIDENCE.....    | 104 |
| INDEPENDENT EYE-WITNESS.....          | 102 |
| POLICE EYE-WITNESS.....               | 95  |
| VICTIM EYE-WITNESS.....               | 59  |
| DISTINCTIVE MODUS OPERANDI.....       | 20  |
| CIRCUMSTANTIAL EVIDENCE.....          | 146 |
| INFORMATION FROM ANOTHER SUSPECT..... | 180 |
| OTHER.....                            | 8   |

TABLE 11

### **SUSPECTS RESPONSE TO INTERVIEW QUESTIONS**

|                              | TYPE OF SUSPECT |                 |
|------------------------------|-----------------|-----------------|
|                              | TERRORIST       | NON - TERRORIST |
| SILENT.....                  | 73              | 1               |
| ESSENTIALLY SILENT.....      | 36              | 14              |
| ANSWERED SOME QUESTIONS..... | 64              | 78              |
| ANSWERED ALL QUESTIONS.....  | 109             | 130             |
| TOTAL.....                   | 282             | 223             |

TABLE 12

### **FINAL DECISION**

|                     | TYPE OF SUSPECT |                 |
|---------------------|-----------------|-----------------|
|                     | TERRORIST       | NON - TERRORIST |
| CHARGED.....        | 79              | 97              |
| SUMMONSED.....      | 0               | 23              |
| POLICE BAIL.....    | 1               | 52              |
| NO PROCEEDINGS..... | 177             | 34              |
| OTHER.....          | 12              | 12              |
| CAUTIONED.....      | 1               | 0               |
| TOTAL.....          | 270             | 218             |

## ANNEXE I

### Treatment of suspects in custody

This applies even if the person makes no request for medical attention and whether or not he has recently had medical treatment elsewhere (unless brought to the police station or police office direct from hospital).

45. If it appears to the custody officer, or he is told, that a person brought to the police station or police office under arrest may be suffering from an infectious disease of any significance he must take steps to isolate the person and his property until he has obtained medical directions as to where the person should be taken, whether fumigation should take place and what precautions should be taken by officers who have been or will be in contact with him.
46. If a detained person requests a medical examination he should be informed that a Medical Officer will be available for consultation at a pre-arranged time each day. This is without prejudice to the arrangements at paragraph 44.
47. If a person is required to take or apply any medication in compliance with medical directions, the custody officer is responsible for its safe keeping and for ensuring that he is given the opportunity to take or apply it at the appropriate times. No police officer may administer controlled drugs for this purpose. A person may administer such drugs to himself only under the personal supervision of a Medical Officer.
48. If a detained person has in his possession or claims to need medication relating to a heart condition, diabetes, epilepsy or a condition of comparable potential seriousness then, even though paragraph 44 may not apply, the advice of the Medical Officer must be obtained.

### Cautions

49. A person whom there are grounds to suspect of an offence must be cautioned before any questions about it (or further questions if it is his answers to previous questions that provide grounds for suspicion) are put to him for the purpose of obtaining evidence which may be given to a court in a prosecution. He therefore need not be cautioned if questions are put for other purposes, for example, to establish his identity, his ownership of, or responsibility for, any vehicle or the need to search him in the exercise of powers of stop and search.
50. Depending upon the nature of the questions which a police officer wishes to put to a suspect, he may be cautioned in one of three different forms. More than one type of caution may be administered if the nature of the questioning so requires, either before the interview begins or while it is in progress. The cautions to be used are as follows –
  - (i) Where a constable is to question a person in order to discover whether, or by whom, an offence has been committed; or where he has sufficient evidence which would afford reasonable grounds for

Treatment of suspects in custody

suspecting that a person has committed an offence, he must caution that person by saying –

“You do not have to say anything unless you wish to do so but I must warn you that if you fail to mention any fact which you rely on in your defence in court, your failure to take this opportunity to mention it may be treated in court as supporting any relevant evidence against you. If you do wish to say anything, what you say may be given in evidence”.

- (ii) Where the arresting constable is to question an arrested person about objects, substances or marks found on his person or clothing, or in the place where he was arrested, and the constable reasonably believes that these may be attributable to the person's involvement in the offence, he must caution the suspect that –

“You do not have to say anything unless you wish to do so but what you say may be given in evidence.

On (date) at (place) a (object/substance/mark) was found on your person/in or on your clothing or footwear/in your possession/in (place) where you were at the time/a mark was found on such object, that is (substance)/and I have reason to believe that this was attributable to your participation in an offence of (name of offence).

I therefore request you to account for this (object/substance/mark).

I must warn you that if you fail or refuse to do so, a court, judge or jury may draw such inferences from your failure or refusal as appear proper”.

- (iii) Where the arresting constable is to question an arrested person about his presence at a particular place at or about the time that an offence, for which he was arrested, was committed, he must caution the person that –

“You do not have to say anything unless you wish to do so but what you say may be given in evidence.

On (date) at (time) about the time the offence of (specified) is alleged to have been committed I have reason to believe your presence at that time may be attributable to your participation in the commission of that offence.

I therefore request you to account for your presence at (place) at that time.

I must warn you that if you fail or refuse to do so, a court, judge or jury may draw such inferences from your failure or refusal, as appear proper”.

Treatment of suspects in custody

51. These cautions complement the provisions of the Criminal Evidence (Northern Ireland) Order 1988.
52. When there is a break in questioning under caution the interviewing officer must ensure that the person being questioned is aware that he remains under caution. If there is any doubt, the caution should be given again in full when the interview resumes.
53. In considering whether or not to caution again after a break, the officer should bear in mind that he may have to satisfy a court that the person understood that he was still under caution when the interview resumed.
54. A record shall be made when a caution is given, either in the officer's pocket book or in the interview record as appropriate.
55. If it appears that a person does not understand what the caution means, the officer who has given it should go on to explain it in his own words.
56. No police officer may try to obtain answers to questions or to elicit a statement by the use of torture, inhuman or degrading treatment, violence or the threat of violence, or shall indicate, except in answer to a direct question, what action will be taken on the part of the police if the person being interviewed answers questions, makes a statement or refuses to do either.
57. If the person asks the officer directly what action will be taken in the event of his answering questions, making a statement or refusing to do either, then the officer may inform the person what action the police propose to take in that event provided that that action is itself proper and warranted.
58. As soon as a police officer who is making enquiries of any person about a specific offence believes that a prosecution should be brought against him and that there is sufficient evidence to warrant a charge being brought, he shall without delay cease to question him about that offence, subject to paragraph 59.
59. Questions relating to an offence may not be put to a person after he has been charged with that offence, or informed that he may be prosecuted for it, unless they are necessary for the purpose of preventing or minimising harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement, or where it is in the interests of justice that the person should have put to him and have an opportunity to comment on information concerning the offence which has come to light since he was charged or informed that he might be prosecuted. Before any such questions are put he shall be cautioned according to paragraphs 49 and 50 above.

## ANNEX 2

This form should be filled in by the interviewing officer each time a final decision about a suspect who has been interviewed about a serious arrestable offence has been made

## 1. LOCATION

CASTLEREAGH PO  
MUSGRAVE STREET  
PORTADOWN

please circle

(1)

(2)

(3)

## 2. REFERENCE NUMBER \_\_\_\_\_

## 3. IS THE SUSPECT:

MALE  
FEMALE

please circle

(1)

(2)

## 4. WHAT AGE IS THE SUSPECT

10-16  
17-20  
21 or over

please circle

(1)

(2)

(3)

## 5. DESCRIBE BRIEFLY THE MAIN SUSPECTED OFFENCE:

6. IS THE SUSPECTED OFFENCE OF A "TERRORIST" NATURE:  
(ie is there paramilitary involvement).

YES  
NO  
NOT KNOWN

please circle

(1)

(2)

(3)

OUTCOME OF INTERVIEWS

## 7. DID THE SUSPECT EXERCISE RIGHT TO REMAIN SILENT:

choose one option only

SUSPECT REMAINED  
SILENT THROUGHOUT

please circle

(1)

SUSPECT REFUSED TO  
ANSWER ANY QUESTIONS  
RELEVANT TO THE OFFENCE

(2)

SUSPECT ANSWERED SOME  
QUESTIONS RELEVANT TO  
THE OFFENCE

(3)

SUSPECT ANSWERED ALL  
QUESTIONS RELEVANT TO  
THE OFFENCE

(4)

## 8. NUMBER OF SUSPECTS KNOWN TO BE CONNECTED WITH THIS OFFENCE(S) - INCLUDING THOSE NOT HELD IN CUSTODY AND THIS SUSPECT

enter number below

(if number of suspects not known, please enter "NK").

10 JAN '94 16:43

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P.17

**LEGAL ADVICE - PLEASE  
CIRCLE ALL OPTIONS THAT  
APPLY**

- NOT REQUESTED THROUGHOUT
- DENIED AT ANY STAGE
- GRANTED - ACCESS ACHIEVED
- GRANTED - ACCESS NOT ACHIEVED

please circle

- (1)
- (2)
- (3)
- (4)

**10. PLEASE CIRCLE ALL GROUNDS  
OF SUSPICION AGAINST  
SUSPECT**

- MATERIAL EVIDENCE OR FORENSIC  
EVIDENCE
- INDEPENDENT EYE-WITNESS
- EYE-WITNESS EVIDENCE FROM  
POLICE OFFICERS
- VICTIM EYE-WITNESS
- DISTINCTIVE MODUS OPERANDI
- CIRCUMSTANTIAL EVIDENCE
- INFORMATION FROM ANOTHER  
SUSPECT

please circle

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)

**11. WHAT WAS THE FINAL  
DECISION**

- SUSPECT CHARGED
- SUSPECT CAUTIONED
- SUSPECT ISSUED WITH SUMMONS
- POLICE BAIL PENDING FURTHER  
ENQUIRIES
- NO PROCEEDINGS
- OTHER (please give details)

please circle

- (1)
- (2)
- (3)
- (4)
- (5)

**12. HAS THE SUSPECT HAD ANY  
PREVIOUS CONVICTIONS  
(excluding motoring offences)**

- YES
- NO
- NOT KNOWN

please circle

- (1)
- (2)
- (3)

**13. PLEASE INDICATE THE  
IMPORTANCE OF THE  
INTERVIEW EVIDENCE IN THE  
DECISION WHETHER OR NOT TO  
PROCEED**

- ESSENTIAL
- IMPORTANT
- OF SOME HELP
- NEUTRAL
- UNHELPFUL
- IRRELEVANT

please circle

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)