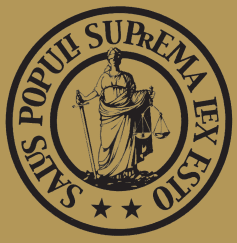

"THE PRICE OF LIBERTY?"

By Michael W. Stitt QC

THE INTERNATIONAL ACADEMY OF TRIAL LAWYERS
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"THE PRICE OF LIBERTY?"

PREPARED AND DELIVERED
BY MICHAEL W. STITT QC
ON APRIL 10, 2010 AT
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INTERNATIONAL ACADEMY OF TRIAL LAWYERS

Mr President, First Lady, Fellows of the Academy, special guests and friends.

It is an honour to be standing here as Dean of this great Academy.

I am deeply conscious of the historic significance of the Dean's Address and I hope that this morning's presentation is a worthy successor to those that have gone before.

It was shortly after receiving the news of my admission to the Academy that the sleep disturbance began. I had a recurring dream; I would walk into the opening night reception (keeping an eye out for a surprise attack by the heavy hors-d'oeuvres – whatever they were) and plucking up all my courage would approach one of our number. He was 6'4" and 240 lb – he looked down at me; he stretched out his hand and said: "Hi Mike, I see you are from Ireland. What's your biggest verdict?" This was reassuring; he was actually interested in my practice – so I told him. He stared at me and gradually a smile appeared followed by outright laughter; he called over his friends and their impossibly good-looking spouses and said: "Listen everyone – this is Mike from Ireland and his biggest verdict is …" The laughter echoed around the room, I backed off and made my escape through a door marked "Emergency Exit".

Happily the reality could not be more different. I have been treated with such friendship and respect by everyone whom I have met in the Academy. I know I can speak for all those International Fellows who are regular attenders at our meetings when I take this opportunity to offer our thanks for the manner in which we have been made to feel so welcome and part of this great Academy.

Some of you know that my wife, Jane, has not been too well recently and cannot be here today. I dedicate this Dean's Address to her.

Today we in Northern Ireland have emerged from thirty years of conflict to enjoy the freedom to once again lead "normal lives". This morning my question is:

"What has been the price of that new-found liberty?"

On a gable wall not far from the Law Courts in the centre of Belfast these words are written: "*A nation which keeps one eye on the past is wise; a nation that keeps both eyes on the past is blind*." The obvious intended reference is to recent Irish history where both Republicans and Loyalists have used the events of the past to justify their acts of violence.

I want to talk about the efforts to adhere to and support the Rule of Law by both the Bar and Bench in Northern Ireland from 1970 to date. I believe that it is important to cast one eye over the past in order to better understand how in 1970 Northern Ireland came to be staring over the abyss.

We need to start with a short history review. Great Britain has not always been the proud independent nation which it is today. Before it became the crucible for the industrial revolution and later arguably the world's greatest colonial power, Britain had frequently been invaded and governed by foreign powers. The Romans came, made their mark and then left in AD 64; but probably the most significant invader in modern times was William, The Conqueror, who in 1066 brought with him Norman rule. More importantly, however, he brought with him Christianity which was, of course, governed by the then all-powerful Catholic Church. Thereafter Britain was controlled just as much by the Cardinals in Rome as by the Norman lords who were then based in England.

However every half-millennium or so an event occurs in our history that changes the basis of society. The Romans come, the Romans go. The Normans come and between their arrival in 1066 and the outbreak of the Great War in 1914 there was one seismic event which arguably has had a greater effect on the modern history of Britain (and especially Ireland) than any other – the Reformation in England.

Henry VIII married Catherine of Aaragon but her inability to produce a male heir (or any child) did not behove well for the marriage. Henry wanted to divorce and argued that this should be acceptable to the Catholic Church as he claimed that his marriage to Catherine was invalid in any event as she was the wife of his dead brother. Rome was unimpressed.

There then occurred an amazing historical coincidence: Henry had ascended to the Throne in 1509 and just eight years later on October 31st, 1517 the German priest, Martin Luther, nailed his 95 theses to the church door in Wittenberg. Protestantism was born. Henry's subsequent association with Protestantism was a marriage of convenience rather than the voice of conscience which had inspired Luther. The final blow to the power of Rome in England was the dissolution of the monasteries by Thomas Cromwell between 1536 and 1540. Thereafter England was a Protestant nation governed by a Protestant royalty.

England was immediately aware of the threat of invasion from its Catholic neighbours, namely France and Spain. The Spanish Armada, organised by Phillip II and supported by the Pope, set sail in 1588 but was attacked by the English fleet off Dover and fled north, eventually being blown onto the rocks off the west coast of Ireland. The French and Spanish both tried to invade Ireland subsequently with a view to gaining a toe-hold in England's back yard.

This provoked two main responses:

- The first was to place a fortified semi-circular line around Dublin known as "*The Pale*" within which the Queen's Writ governed and outside of which was "*beyond The Pale*".

- The second response was the "*Plantation of Ulster*" when Protestants, mostly Scots, were paid to move to the northeast of Ireland (which 200 years later was to become the political entity known as Northern Ireland) to live and work and effectively become a further line of defence for the English Crown. The arrival of the Scots did not go down well with the native Catholic population who were shifted further and further west. To the east was better quality land and easier communications with Britain and Europe.

Relations between the Catholic Irish and the English Crown were not helped by the Great Famine when the potato harvests failed between 1845 and 1850. Many of the Irish peasants who depended upon the potato for their very survival were simply left to starve. There were, of course, landlords who were compassionate but at least as many who were not. Many Irish Catholics sailed westwards to set up a new life in the north eastern states of the USA. Meanwhile at home the Irish Catholic, anti-English/republican sentiment flourished both beyond The Pale and on the border of the Ulster Plantation area.

Ireland historically had thirty-two counties. When the new state of Northern Ireland came into existence in 1921 six of those counties (essentially where the Plantation had taken place) remained part of Great Britain whilst the other twenty-six counties became the new political entity which is the Republic of Ireland. Northern Ireland was split approximately 60% Protestant and 40% Catholic, whereas the Republic of Ireland was only 10% Protestant and was 90% Catholic. The government in Dublin, the capital of the Republic, was staunchly conservative and Catholic. Divorce was immediately banned - the dead-hand behind the politicians was the Catholic Church. The northern Protestants feared not only a military invasion from The South but also being ultimately out-voted by Catholic voters in The North.

There were two major political groupings in The North, the Republicans and the Unionists (also known as "Loyalists"). The Unionists' main aim was, as the title suggests, to maintain the union with Great Britain, whilst the Republicans' sole desire was to abolish the state of Northern Ireland and establish a United Ireland. Both were, of course, entirely legitimate aims. The problem was, however, that the northern Protestants, in order to ensure their continuing majority, drew many of the boundaries of the different voting constituencies in such a manner as to ensure that as many Catholics as possible were grouped together in one voting area, thus reducing the

chances of taking additional parliamentary seats. This practice was known as Gerrymandering and did nothing to endear the Catholic population to their Protestant neighbours or to the English Crown. The Protestant logic, however, was that if Catholics gained power that would be tantamount to the end of the State of Northern Ireland and that Protestants would be either forced to live under the Catholic dominated south or retreat back to Scotland.

Those of you who were at the Annual Meeting in Atlanta will remember the inspirational address given by Bernice King, the youngest daughter of the Reverend Martin Luther King. She explained the six principles of the Civil Rights movement which were essentially non-violent in nature.

As a result of perceived injustices perpetrated against the Catholic minority, a Civil Rights movement was established in Northern Ireland in 1969. It took its inspiration from Dr King. Unfortunately, although its leaders had embraced the six principles of non-violence, this non-violent protest lasted but a short time before the growth of the soi-disant Provisional IRA, who believed that the only language which the British government would understand was the language of the gun which their predecessors, the Official IRA, had used in the past.

I remember discussing this with Bernice and asking her how in the USA with all the provocation which the Civil Rights Movement endured, they managed to remain non-violent. She felt that it was due to the strength of the personality of her father. I believe that one of the reasons why violence took over in Northern Ireland was that the leaders of the Civil Rights Movement there did not command the same devotion and respect as the late Dr Martin Luther King.

There were other factors at work such as the use by the British government of a Reserve Police Force known as the "B Specials". Their ranks were made up of members of the Unionist community. They were seen by the Protestants as upholders of law and order in dangerous times; to the Republicans they were a Protestant militia who could not be trusted.

Another major reason for the surge in IRA support was the attitude displayed by the British government that the Irish problem could be simply dealt with by overwhelming force. There were indeed echoes of the sentiment first expressed at the beginning of the 1st World War – "*It will all be over by Christmas*". The British underestimated the strength and depth of Republican sentiment.

Perhaps the single greatest event which inflamed Republican passions occurred on 30th January 1972 when the British army entered the Republican Bogside area of Londonderry City and twenty-seven civil rights protestors were shot by the Parachute Regiment. Thirteen men, seven of whom were teenagers, died immediately while the death of another man four and a half months later has been attributed to the injuries he received on that day.

History has shown that all were unarmed. The battle lines between the two sides in the conflict were now set in stone.

In Northern Ireland a period of darkness had begun which was to last over thirty years. From the death of the first civilian in January 1971, explosions and shootings escalated at a staggering rate. It must be remembered that this was not in any way a conventional battle but that many of the explosions were without warning and usually involved the civil population and the shootings were not between armies firing at one another but the victims were often part-time policemen shot on their farm in the early morning as they went to milk their cattle or taxi drivers being shot for simply picking up a fare in the wrong part of the city. It is difficult to describe life in Belfast during the early 1970s.

I must thank former President Bill Whitehurst for drawing my attention to an article written by an American travel writer in one of the airline magazines in 2009. The author compared and contrasted his experience in Belfast in the early 1970s with the normality of the present day. I believe that he captures something of the atmosphere of that time when he writes:

> *"If I had a meal out, typically it was Irish stew washed down with a pint of Guinness. Dinner was always eaten fast, with no eye contact with other diners, because this was a city on edge, where nerves were raw and you did not want to cross the wrong person.*
>
> *In 1969, the start of "the troubles"—the name given to the sectarian conflict—until 1998 when the so-called Good Friday Peace Accord was signed, Belfast streets were empty at night. The British military patrolled much of Northern Ireland during that time. I can recall walking past a bush late one night and seeing a long rifle barrel pointing out. "Hello" I stuttered, and in reply I heard "Evening Sir" from someone I believed to be a British soldier hiding in the hedge. Doubtless there were more soldiers I didn't see and there were probably IRA figures in hiding as well – but you get the point. In Belfast at night, I wanted to be in my room with the door locked."*

The statistics relating to bombings and shootings help to paint the bleak picture to some degree. It must be remembered that all of these events relate to terrorist activity (and I make no apology for referring to the Provisional IRA and the Protestant Ulster Volunteer Force [the UVF] as terrorists). Northern Ireland measures 100 miles from east to west and approximately the same distance north to south. The majority of the shootings and bombings were in the city of Belfast which had a population of less than five hundred thousand. Many of the bombs were placed in cars and no warning was provided as to where and when the bomb would explode. It became a criminal offence to leave an unattended vehicle parked on a city street. If one saw an

empty car one would cross to the other side of the street in order to lessen, to some small degree, the chances of serious injury should it explode.

Statistics: In August 1971 there were 142 bombs, in September – 186, October – 155, November – 117, December – 123, January 1972 – 156 (bombs), February – 140, March – 136. I could go on but you get the drift.

As regards shootings, there were 182 in August 1971, September – 278, October – 420, November – 243, December – 314, January 1972 – 336 (shootings), February 391, March – 399, April – 724, May 1 – 223, June 1 – 215 and July 1972 – 2,778.

Notwithstanding the many deaths and serious injuries sustained as a result of all of the above, perhaps the most significant victim of terrorist activity was the Rule of Law. If I am to adequately describe how this came about and how the Bar and Bench responded to it, it is, in my view, important to place the legislative restrictions on the Rule of Law against the background where the ordinary population were living in fear of their lives. Let me give you two brief examples:

On 3rd January 1972 my late mother decided that she would take her law student son into Belfast for the January sales. I wasn't a great shopper so the highlight of my day was going to be lunch in the city. We chose a restaurant in a narrow city centre street called Calendar Street. The restaurant was on the first floor and afforded a wonderful view of the busy shopping street below through the large windows. Unfortunately my mother took one look at the tablecloth which was stained and declared that she was not prepared to trust the hygiene of the kitchen if they couldn't even provide clean linen. I was dragged out under protest and we moved two doors along to a ground floor restaurant with a heavy duty curtain covering the window. I was not pleased as my view of the passing talent had been completely obscured.

As we ordered lunch, unknown to us, an open-backed delivery lorry pulled up onto the sidewalk between the two restaurants. It was laden with hundreds of wooden cases, each one containing a dozen bottles of beer. It was also loaded with 100 lb of explosive. No warning had been given, the restaurants were full and the street busy. When the bomb exploded, shards of the wooden cases flew like arrows in all directions, the fragments of glass bottles did the same and debris from the adjacent buildings fell down into the street. We were blown off our seats but not injured. The ceiling collapsed. The lights went out. We staggered out into the daylight to be met with a scene that you can only imagine. Amazingly no-one was killed but dozens of people were very seriously injured. Some of the worst casualties were in the first restaurant with that wonderful view of the street – but no curtain. Thanks Mum.

On 21st July 1972 the IRA launched a new terror tactic. Linked and/or simultaneous no-warning bombs. On that day twenty-two bombs exploded in Belfast within one hour. This created, as you might expect, panic and pandemonium. As I have said Belfast was not a large city and every two or three minutes another huge explosion would occur and a smoke plume rise up into the air.

One of the worst of the bombs was directly outside my father's office at Oxford Street bus station. No sufficient warning had been given and the public were being moved out of the area when a car bomb exploded killing two British soldiers, Philip Price (27) and Stephen Cooper (19) and four bus company employees, John Gibson (45), Thomas Killops (39), William Irvine (18), and William Crothers (16). One of the most haunting images of the entire troubles were the photographs of the fire service shovelling up body parts outside the bus station.

I was a law student. I knew about the Rule of Law. I appreciated that all citizens were entitled to due process. My parents were intelligent and moderate people who believed in basic fairness, but my parents and I were of the opinion that the Government should do whatever it took to end this terror and carnage. The Rule of Law would have to take second place. If this was the opinion of moderate and educated individuals you can well understand the sense of outrage felt by the community as a whole. The country was on the brink of civil war. The Protestants were forming armed militias to combat the IRA. They believed that the British government was not doing enough to protect them and that they were going to take matters into their own hands.

Against the escalating rise of terrorist activity, on 9th August 1971 the Prime Minister of Northern Ireland, Brian Faulkner, introduced a new law giving the authorities the power to indefinitely detain suspect terrorists without trial – Internment. The move was welcomed by Unionists and fiercely condemned by Republicans. In his statement the Prime Minister said Northern Ireland was "*… quite simply at war with the terrorist*". (Does that sound familiar?)

The provision for detention without trial was introduced overnight by Ministerial Order under the old Civil Authorities (Special Powers) Act 1922. It was a prosecutor's dream charter.

Paragraph 23 of the Schedule to the Act allowed for indefinite internment without trial – "… *of any person whose behaviour is of such a nature as to give reasonable grounds for suspecting that he has acted or is acting or is about to act in a manner prejudicial to the preservation of the peace or maintenance of order*".

Internment was brought in to try to reassure the public that something was being done and was also a rather crude attempt to contain terrorism by

rounding up and imprisoning suspected ring leaders. History has recorded that it was not a success. If anything it alienated large sections of the population whose men folk were being detained. One internment camp was described as "a recruiting centre for terrorists" – (President Obama on Guantanamo – 21st May 2009).

After one year of internment 924 men were detained. Serious rioting ensued. Twenty-three people died in three days. The British Government attempted to show some balance by arresting some loyalist paramilitaries later, but out of the 1,981 men interned only 107 were Loyalists. This reflected the relative lack of organisation of the Protestant militias in those early days.

One of the main differences between Guantanamo and the detention camps of the 1970s in Northern Ireland was that the latter were strictly segregated between Republicans and Loyalists. Each group was given a huge amount of autonomy.

The theory was that those in the camps were not convicted criminals in the normal and accepted sense and therefore should be treated somewhat differently from someone who had received due process.

Secondly, it was an attempt to appease the families and communities of the detainees.

The prisoners were left very much to their own devices. The prison guards tried to avoid going into the compounds within the prison as much as possible. The detainees organised themselves along army lines with differing levels of military ranks.

There was an internal system of discipline whereby an offender could be fined by an "army tribunal" – he could have privileges withdrawn, or in the more serious cases could be subject to a substantial beating.

The prisoners were required to attend various classes organised by the IRA and/or the UVF which would include the theory, practice and tactics of warfare. Needless to say when the detainees were eventually released, not only did they swell the ranks of the terrorist organisations, but they were significantly more disciplined and educated.

Internment without trial did violence to the principle that a person is innocent until proven guilty. The Rule of Law had been by-passed by the politicians leaving the lawyers to do the best that they could for their clients. The most that can be said for this system is that legal aid was available and prisoners were entitled to a defence lawyer of their choice. After that the proceedings became something of a farce.

Each prisoner was allowed to challenge his detention but there was no appeal from that challenge. The Tribunal which heard the matter usually consisted of a retired judge flown over from England and the prosecutor would have been an English QC. The procedure was finely balanced between comedy and tragedy. No details of the case against the prisoner were disclosed to the defence legal team other than the charge. This was always vague and included a huge amount of hearsay. Typically the charge might read: "*It is alleged that you Sean O'Callaghan were in possession of an offensive weapon on a certain occasion.*" No details were given as to the nature of the weapon, the date or time of the alleged offence or the location of the same.

The difficulties faced by defence counsel were compounded by the fact that the evidence at the hearing was given by a witness whose identity was concealed by a curtain drawn across a portion of the courtroom. Only his feet could be seen and his voice could be heard. Defence counsel therefore lost the important ability to be able to watch the witness, read their body movements and note their response to various questions. In addition the evidence would not be given by someone who had actually seen Sean O'Callaghan with the offensive weapon but would be given by a policeman or a member of the intelligence services who would report what they had learned through their investigations. No questions were permitted as to the provenance of that information. Any inquiry which might in any way be interpreted as likely to identify the informant was met with the standard response: "*For reasons of confidentiality I cannot answer that question.*"

The informants might either have been genuine or alternatively might have had ulterior motives for providing the information on an anonymous basis. The motive might have been simply a question of revenge or there might have been some financial advantage to the detainee remaining in prison whilst the informant was free to run a dubious business unchallenged in the outside world. There was one actual case where it was proven that the informant was having an affair with the detainee's wife – a relationship which was much easier to conduct with the husband locked up without trial.

The Bar was intellectually opposed to internment but was determined to do its best to represent those from whom the protection of the Rule of Law had largely been withdrawn. The Bar and Bench used every method open to them to try to persuade the politicians that internment without trial was not working and would be unlikely ever to work. It was an insult and an affront to the common law principles of justice which had been built up over the centuries. The statutory provisions enabling detention without trial were finally repealed in December 1975.

The second attack on the Rule of Law was the removal of the right to a trial by jury in cases of serious criminal offences which were known as "*Scheduled Offences*" being those offences scheduled to the relevant Emergency Provisions Act. These

cases were to be tried by a judge alone and courts were established in response to a report from the English Law Lord, Lord Diplock, and were established in Northern Ireland in 1972. They became the eponymous "*Diplock Courts*".

There had been a precedent set in the Republic of Ireland when the Special Criminal Court was established under the Offences against the State Act 1939. The important difference however between the two systems was that previously in the Republic three judges sat on every case when there was no jury and verdicts were by a majority vote. Obviously in Northern Ireland with just one judge the criticism could be more easily levelled that justice was not being seen to be done and that the judge may well become a mere puppet of the State.

The Bar feared that with the greater turnover of cases (as removal of juries substantially reduced the length of a trial) that judges would become "*case hardened*", less sympathetic to the nuances of the defence argument and more likely to convict as a result.

The reason for the introduction of the non-jury court was, of course, due to the ease with which jury members could be intimidated. They could be followed from the court at the end of the day's proceedings as they took public transport back to the area in which they lived. Those in command in either the IRA or the UVF would let it be known that it would be appreciated in a certain case were a particular verdict reached by the jury. Again it must be remembered that Northern Ireland geographically was a small tight-knit community and the jurors did not enjoy the type of anonymity which they perhaps might have expected in a large metropolis such as New York City.

The Diplock report was presented to parliament in December 1972 and, as I have indicated, the central recommendation was that certain offences should be tried in the ordinary courts but without a jury. The report concluded:

> "*The rational basis of trial by jury is that a citizen should be tried by twelve of his fellow citizens elected at random. This is not practicable in the case of terrorist crimes in Northern Ireland. The threat of intimidation of witnesses extends also to jurors. A frightened juror is a bad juror even though his own safety and that of his family may not actually be at risk.*"

There were safeguards built into the Diplock Courts:

- While a jury verdict is not capable of detailed analysis, the legislation required that the judge gave a full judgment stating the reasons for the conviction.

- There was an automatic right of appeal.

- The judgments in the Diplock Courts were frequently lengthy and contained a detailed summary of the evidence, of the judge's findings of fact and of the principles of law which were applied. Therefore when a convicted person exercised their automatic right of appeal to the Court of Appeal, the reasons both of fact and law which caused the trial judge to convict were fully exposed in the judgment for the scrutiny of the Court of Appeal.

- There was a further appeal to what was then the House of Lords in London (now the Supreme Court) although they retained the sole right as to whether or not to hear such an appeal. I recall one of my more junior colleagues bravely suggesting to the Court of Appeal that his client's case should be sent immediately to the House of Lords for an early appeal hearing. The Lord Justice, who, of course, had no power to dictate to the House of Lords as to which Appeals they should hear, looked over his half-rimmed glasses and said in haughty terms:

  "*Their Lordships are not attracted by table d'hôte – they always dine a la carte!*"

- Finally there was an independent Criminal Cases Review Commission which looked at potential miscarriages of justice and in a recent report they confirmed that the instances of complaint of miscarriage of justice was smaller in Northern Ireland than any other part of the United Kingdom.

With the establishment of the Diplock Courts there developed a further difficulty faced by the judiciary. Those members of the bench who were Roman Catholic were seen as traitors to the Irish National cause by the IRA. They were specifically targeted in an attempt not only to take their lives but also "pour encourager les autres" who might be thinking of taking "The Queen's Shilling", leaving the Bar and joining the Bench.

Initially judges were given little or no protection against this threat, however from the mid-1970s judges' houses were turned into fortifications. Closed-circuit TV covered all of the boundary, the fence was generally a solid eight foot high construction with razor wire at the top; infra-red beams criss-crossed the periphery of the garden; very often the children of the family were taken out of Northern Ireland and sent to school in England for their own safety. Often armed policemen would live in a specially constructed cabin in the garden and would be there twenty-four hours per day, seven days per week. All travel, whether to Court or social, was done in an armoured car with a specially trained police driver and in the front passenger seat a heavily armed marksman. The strain under which the judges and their families were placed was immense.

Against this background it might have been suspected that the Judges would find a defendant guilty in a terrorist trial on even the most slender of evidence. It is the overwhelming view of my colleagues who represented defendants in those early days, that the judges were both fair and reasonable and did their level best to achieve the right result whatever this would be in any given case. In many respects the judges continued to try cases in the same manner as they had done when there had been a jury present.

By way of an example, I will quote from the actual charge which Judge John McKee QC gave "to himself" in open court at the conclusion of a trial in the early 1980s. He has kindly permitted me to quote his words. Time constraints force me to shorten the charge but I hope that the gist of the same is clear.

> "*My approach to this trial is the same as my approach to every criminal trial. The legal principles which govern all criminal trials are exactly the same whether the trial is conducted before a judge and jury or before a judge sitting alone.*
>
> *First and foremost I remind myself that the presumption of innocence applies in this trial as in every criminal trial. The defendant is entitled to the benefit of this presumption. It is not for him to prove his innocence indeed, apart from establishing his identity, he may remain silent throughout the trial if he chooses so to do. The burden of proof is and remains throughout on the prosecutor so that, whether with regard to propositions of law or propositions of fact, the prosecutor must prove these to the requisite standard. That standard is fixed by law. The presumption of innocence applies until every relevant proposition upon which the prosecutor relies is proved beyond any reasonable doubt. As has been so often stated in the past and so also now and hopefully into the future it is accepted that it is better that ten guilty men go free than one innocent man may be convicted. The burden on the prosecutor is and is intended to be a heavy burden. It is no light matter to allege, let alone convict a defendant, of a criminal charge.*
>
> *After my consideration of the individual issues raised by the prosecution and by the defence, if any, is complete, it is my duty to review the case as a whole and only then if I am satisfied to the extent of certainty can I bring in a verdict of 'guilty'.*

It was in the realm of identification evidence that it would have been easiest for a judge to stitch up a defendant and find him guilty as charged. Desmond Boal QC was probably the leading criminal defence barrister throughout the 1970s and 1980s within Northern Ireland. He tells me that he has no doubt that the judges acted fairly and scrupulously when it came to identification evidence. Of the very many murder trials in which he was involved, Desmond

points to the Travers case as an example of identification evidence being thoroughly tested by the trial judge.

Tom Travers was a respected judge who sat in the Belfast courts. One Sunday morning as Tom, his wife and their daughter, Mary, were leaving church after Mass they were shot by an IRA gang on the steps of the chapel. Mrs Travers was seriously injured, Tom escaped with minor injuries but their daughter, Mary, died in the attack. Both Tom and his wife stated that they had seen the attacker and at the trial of the accused both gave evidence that the defendant was the one that had murdered their daughter. Notwithstanding the fact that the evidence came from such an articulate and intelligent source, the trial judge refused to convict the defendant on the basis that he could not rely on the identification evidence as their recollection must have been affected by the suddenness and shocking nature of the attack.

The Travers case is a good example of the Rule of Law being upheld even in the absence of a jury.

- Firstly, the trial judge would have known the Travers family who were universally admired and respected. The easy decision would have been to accept their identification evidence and convict. The judge chose however to adhere strictly to the principles of the law as he saw them and acquit.

- Secondly, defence counsel was a friend of the Travers family. He was a Protestant member of Parliament. He was representing a Catholic suspected terrorist. He used all of his powers of intellect and advocacy to obtain that acquittal.

- Finally, Mr and Mrs Travers themselves never expressed any outward grudge that the system had somehow let them down. They acknowledged that the Rule of Law was sacrosanct and that if their identification evidence was not sufficient to obtain a conviction, so be it.

It is difficult to overstate the courage, fairness and determination showed by the judges in criminal cases in Northern Ireland between 1970 and approximately 2000.

When Maurice Gibson was called to the Bar in the 1950s, he had aspirations of hopefully making a success of his career at the Bar probably dealing mostly with company and trust disputes and possibly dabbling in the odd criminal trial. Because of his outstanding abilities he was appointed a High Court Judge in 1968 at a time when, of course, there was no civil unrest within Northern Ireland. After 1971, as I have already indicated, the judiciary became a prime target for the terrorist. Notwithstanding this sudden change

in profile Sir Maurice (as he then was) continued to discharge his duty to the best of his abilities without fear or favour.

It was typical of Sir Maurice that in travelling home from holiday in England with his wife, Lady Cecily, he drove his own car and refused the use of the armoured vehicle, driver and armed escort. Somehow word of this reached the IRA and as they crossed the border between the Republic of Ireland and Northern Ireland a roadside bomb was detonated as they drove past, killing them both instantly. This represented a huge personal and professional loss to all who knew them, but strengthened the resolve of the Bar and Bench to uphold the Rule of Law in lawless times.

The liberty which we in Northern Ireland enjoy today owes much to the integrity and courage of those judges who were murdered during the Troubles. Remember that in the early 1970s the judges received very little protection.

- On 11th October 1972 Judge William Staunton had just driven his daughter and two friends to their school on the Falls Road in Belfast. As the children walked into the convent school a motorcyclist pulled up beside Judge Staunton's car and shot him. He lapsed into a coma where he lay for three months until his death on 25th January 1973.

- At 8 am on 16th September 1974 Judge Rory Conaghan QC opened his front door to be confronted by a masked IRA gunman who shot him dead on his doorstep. He was a decent, honourable man and a devout Catholic who was simply doing his best to ensure that the Rule of Law was upheld in difficult times.

- On that same morning, half an hour later, Judge Martin McBurney answered the front door bell, presumably expecting the morning postal delivery. He too was faced with a hooded gunman who shot him dead. The death of these two popular and respected judges on the same morning sent shockwaves throughout the Bar and Bench.

- On 16th January 1983 Judge William Doyle QC was leaving Mass from the same church where the Travers shooting had occurred when he was shot dead on the steps of the chapel. Although he was a Roman Catholic and one of Her Majesty's judges, Billy, as he was known, still frequented his holiday home in Donegal in the Republic of Ireland. I remember asking him if he feared for his safety particularly crossing the border in those difficult times. His reply was that he a job to do, he did it as fairly as he could and he did not believe that he would be targeted. Sadly he was wrong.

- On 7th December 1983 Edgar Graham, a colleague of mine at the Bar, and a part-time law lecturer at Queen's University, Belfast, was shot dead in the grounds of the university. His crime – being a politician and a barrister who was not afraid to speak his mind.

    - Strange how the terrorist abhors freedom of speech and action in others;
    - Strange how, in the terrorist mind, due process only has a role to play after their arrest. Their victims do not get the benefit of due process.

    - Strange, also, how the convicted terrorist argues with such passion his human rights (as of course he is entitled to do) but denies the human right of life to the victim.

With the signing of the Good Friday Agreement in 1998 and subsequently the St Andrews Agreement, Northern Ireland has returned to virtual normality. People are pleased and proud of how they have moved on:

- Internment has long since been confined to the dustbin of history.

- In 2007 The Justice & Security (Northern Ireland) Act effectively abolished the Diplock Courts. The presumption now is that all criminal trials are held with a jury although the Director of Public Prosecutions has the power to issue a certificate which permits the trial to take place without a jury if he or she is satisfied that "… *there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury*". Unfortunately there is no statutory appeal mechanism and a dissatisfied defendant must challenge the Non-Jury Certificate by means of an application for Judicial Review. This obviously represents a much higher hurdle than a simple review of the relevant background facts. Fortunately, to date, such certification has been rare.

One can only hope that as Northern Ireland gradually returns to normality the non-jury trial will in itself amount to no more than an historical curiosity.

We look around the world and see so many simmering conflicts which do not appear to be approaching resolution. We acknowledge, of course, that the current terror threat is a different animal to that which thrived in Ireland during The Troubles. It is tempting to make suggestions as to how the current terrorist threat should be countered but the problem is – "one size does not fit all". What worked in the streets of Belfast will not sort out the problems in the mountains of southern Pakistan.

The question can, nevertheless, be asked just what have we in Northern Ireland learned as a result of the conflict?

Firstly – Detention without trial does not work. In Northern Ireland it did not even work in the short term – as soon as the first detainee was locked up, the IRA had a martyr to the cause. Those who had previously waivered in their support for violence found it easier to go with the flow rather than fight the fascist dictat – "If you are not with us you are against us".

Secondly – Suspects should be given due process as close as realistically possible to the regular court system. In this regard I note the attempts by the current Administration to try Khalid Sheikh in a conventional criminal court in Manhattan.

Thirdly – The courts must adhere as closely as reasonably possible to the normal rules of evidence with particular reference to hearsay and identification evidence.

Fourthly – The principle of "The Three Js": Judges + Jurors = Justice

We, in Northern Ireland, had Judges with integrity – other countries may not be so fortunate in the future.

The law in England has recently been changed to allow trial without a jury in fraud cases. This is the first attack on the right to jury trial there since it was enshrined in Article 39 of the Magna Carta nearly eight centuries ago.

By contrast a major study completed in February 2010 by University College, London, gave a strong endorsement of the jury system, saying jurors appear to try cases on the evidence and the law. 68,000 verdicts were examined and more than 1,000 jurors interviewed. It concluded that juries convict more than they acquit, even at Courts with a reputation for leniency. They are most likely to convict in cases of deception, drugs and theft, and least likely to do so in cases of non-fatal offences against the person. In rape cases juries convict more often than acquit (which surprised me); there was no evidence that all-white juries had a tendency to convict a black or Asian defendant more than a white one. Finally (wait for it !) … women jurors change their minds more than men. The author of the report, Professor Thomas, said: "*This research shows that juries in England and Wales were found to be fair, effective and efficient*".

I want to finish by telling you of one other member of the judiciary renowned for his honesty, fairness and sense of duty.

During the Second World War he flew many combat missions in a little plane known as a Swordfish. This was an open cockpit bi-plane affectionately known as

"the Stringbag". It was armed with a machine gun and could carry one torpedo. Its maximum speed was just 139 mph. The pilots were required to dive from 5,000 feet to just 20 feet above the water before releasing the torpedo towards the German warship. The pilots had to have nerves of steel. I asked this particular Judge why he had never been shot down and his answer, with a wry smile, was that his plane was so slow that the enemy gunners fired too far in front!

On 27th March 1943 as he landed his bi-plane on the deck of the aircraft carrier HMS Dasher there was a massive explosion and the huge ship keeled over and exploded in flames. I asked the Judge what had happened and he explained that as the pitch of the aircraft carrier got steeper and more and more men slid off the low side into the water he found himself on the topside and he was forced to jump a very considerable distance down into the water below. He was upwind of the sinking vessel. The fuel on the surface caught fire and all those on the downwind side perished. Of the 528 men on board only 140 survived. I remarked that he had shown great courage to which he responded that he was simply lucky. He was later awarded the Distinguished Service Cross.

After the war he returned to Northern Ireland, was called to the Bar and eventually became a QC and also a Member of Parliament. Then came the troubles. He was required to sit as judge alone in some of the most serious terrorist cases. His children were moved out of Northern Ireland for their own safety and educated in Scotland and in England. He too had the armoured car, driver and armed guard. His house was protected day and night. But unlike many other judges he was asked to travel regularly to the far west of Northern Ireland to sit as the Judge dealing with farmers' boundary disputes and the inevitable cattle rustling cases. In order to perform his role as the local judge he had to be driven 90 miles each way every day through what was then described as "Bandit Country". I asked him why he was prepared to travel the thin blue line from Belfast on such a regular basis when he knew that he was a prime target. He smiled and said simply: "*It was my duty*".

That man is His Honour Judge Babington DSC, QC, MP, Jane's father and, I am proud to say, my father-in-law.

By the way, he turned ninety yesterday…

What is this Liberty which we now enjoy?

- That Liberty to walk the streets of Belfast without fear that the next car will explode.

- The Liberty to drive a taxi and pick up a fare in any part of the city.

- The Liberty to tend to one's cattle in the early morning without fear of the gunman.

- The Liberty to lead a normal life.

What has been the price of that Liberty?

- Was that price the effective loss of Liberty by the judges and their families due to their being such a security risk?

- Was it the loss of life of all of those judges who died in the course of duty?

- Was it the death of William Crothers at aged just sixteen when simply trying to keep the buses running?

- Was that price the patience and resilience of all the relatives and friends of the innocent victims of thirty years of The Troubles?

- Was it the stoic acceptance by Mr and Mrs Travers that the man whom they believed had murdered their daughter had walked free from court due to the operation of the Rule of Law?

It was, of course, all of these, and more.

Those of you who were at our Meeting in Key Biscayne will remember the formidable Dean's Address delivered by President Searcy when he passionately evoked the call of the gladiator before doing battle in the arena. If I may, Mr President, I would like to paraphrase that salute and say to all in Northern Ireland who have paid a price for that liberty which we now enjoy:–

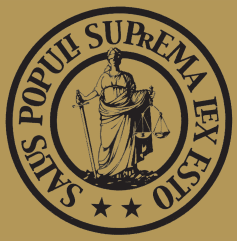
"Nos qui libertate fruimur vos salutamus"

"We who enjoy Liberty, salute you".

Finis.

Post Script:

The exigencies of the timetabling of the delivery of the Dean's Address meant that my original version required to be foreshortened. In this written version I have chosen to reinstate four passages from the original. They are to be found on pages 5, 11 and 13.



INTERNATIONAL ACADEMY OF TRIAL LAWYERS

EXECUTIVE OFFICE 5841 Cedar Lake Road, Suite 204
Minneapolis, MN 55416

TOLL FREE 866-823-2443
PHONE 952-546-2364
FAX 952-545-6073
WEB www.iatl.net