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PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Standing Committee B

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) BILL

Twelfth Sitting
(Afternoon)
(Part I)
Tuesday 17 January 1989

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Standing Committee B

Tuesday 17 January 1989

(Afternoon)

[Part I]

[SIR MICHAEL SHAW *in the Chair*]

Prevention of Terrorism (Temporary Provisions) Bill

Clause 17

INVESTIGATION OF TERRORIST ACTIVITIES

Amendment proposed [this day]: No. 129, in page 11, line 39, at end insert "and it shall be a reasonable excuse for a solicitor to make a disclosure for the purpose of seeking his client's instructions or giving him legal advice.".—[*Mr. Cash.*]

4.30 pm

Question again proposed, That the amendment be made.

The Chairman: I remind the Committee that with this we are considering the following amendments:

No. 130, in page 12, line 16, at end insert—

"(1A) A person shall not under this section be required to disclose any information which he would be entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the High Court.".

No. 145, in page 12, line 16, at end insert—

"(1A) A person shall not be required by reason of this section to disclose any information which he would be entitled in proceedings in the High Court to refuse to disclose on grounds of professional privilege.".

Before I call the right hon. and learned Member for Warley, West (Mr. Archer), I should like to say that it would appear that the Dining Room facility will be fairly well used this evening, as it was last night, so with the Committee's support I propose that we should break at 7.30 pm for one hour and a quarter.

Mr. Peter Archer (Warley, West): The Committee will have heard that statement with gratitude and some relief. I was in mid-sentence when we broke and explaining that the common factor between the amendments tabled by the hon. Member for Stafford (Mr. Cash) and those tabled by me was that they were inspired by the Law Society. I was puzzled that although I had tabled two amendments, as he had, one of mine had been called but not the other. I think that the explanation is that amendment No. 129 and amendment No. 144 are identical, whereas amendment No. 130 and amendment No. 145 are slightly difference because I had the temerity to try to improve on the draftsmanship of the Law Society. I think that it will be academic, because as the hon. Gentleman believes that it may be better to give everyone an opportunity to reflect on amendment No. 129 and not press it to a Division, I would not have sought to press my amendment to a Division either.

The anxiety expressed by the hon. Member for Stafford, which was in the mind of the Law Society, is understandable. I say to my hon. Friends who were muttering occasionally this morning that the amendment is designed not to protect or benefit solicitors but to do justice to their clients. It is important that people should be able to take legal advice without hindrance and the fear that what they say to their solicitors may be passed on to the authorities. Solicitors should be able to say to their clients, "This is what I have heard is proposed; this is what the other side is proposing to do; what do you say about it?" Without fear that they will be in breach of the law. It is important that they should be enabled to take legal advice in that way and that they should be encouraged to do so. If people are to remain within the law, it is important that there should be free intercourse between solicitors and their clients so that they may readily understand what is within the law.

The hon. Member for Stafford said this morning that the Bill was worthy to rank with Magna Carta. That may be a slight overstatement. I am not sure that I would put it in that league, but it is fundamental to the rule of law and I fully echo what the hon. Gentleman that it is of much importance.

It may be argued that a solicitor who is prosecuted will be able to urge in his defence that he had a reasonable excuse for making a disclosure. This issue was raised in relation to a similar provision in section 31 of the Drug Trafficking Offences Act 1986. In the case of R *v.* Central Criminal Court ex parte Francis and Francis, an obiter dictum from Mr. Justice Webster, which was approved by the noble and learned Lord Griffiths, stated that that would provide a reasonable excuse. Most of us would regard that as pretty good authority on which to proceed and would not want to question it much further. However, not everyone may know of or have read the report of R *v.* Central Criminal Court ex parte Francis and Francis. If the Government intend that a solicitor should be protected when he makes a disclosure to his client, it is much better that that is said clearly in the statute so that we do not have to rely on obiter dicta. I hope that the Minister will not rely on that consideration as a reason for rejecting the amendment.

I agree that a solicitor needs to know that he is protected when it is vital for him to take instructions from his client, not later when he may be prosecuted for having done so. It would be better for everyone if the position were clear from the outset.

I do not believe that the hon. Member for Stafford was saying that what a solicitor discloses to his client may not prejudice the investigation; I am certainly not saying so. If it does not, the question will not arise, but we are assuming for the purposes of the argument that it may. If it does prejudice the investigation, should not justice and the rule of law prevail over possible prejudice in investigation?

I hope that we are pushing at an open door. The Government have already taken this point on board; it is in schedule 7 for all to see. An order for the

[Mr. Peter Archer]

production of such documents under schedule 7 cannot be made. Paragraph 3(2) says that such an order cannot include—

The Parliamentary Under-Secretary of State for the Home Department (Mr. Douglas Hogg): Items subject to legal privilege. So does paragraph 2(1)(b) of schedule 7.

Mr. Archer: I am grateful to the Minister. I was looking up the exact words. I have had occasion to be grateful to him in the past in court when I led him and he did exactly the same service for me.

The schedule refers to

"items subject to legal privilege",

so the Government have already taken on board that no order should be made for the production of such items. It is difficult to see the distinction in principal between that provision in schedule 7 and that that we are discussing.

It could be suggested, as the hon. Member for Stafford said, that amendments Nos. 130 and 145 are more serious. They deal with the obligation to give information to the authorities, and we shall discuss the subject at a later stage. We are talking not about committing an offence by saying something to someone but about committing an offence by not saying anything and by keeping quiet. We contend that it would be wrong to make it an offence to disclose privileged information.

I am trying to think ahead to what the Minister will say, and perhaps that is a mistake. He may say that when we are discussing what would be privileged from disclosure in the High Court someone is present to adjudicate. The judge may be told, "This should not be disclosed because it is the subject of privilege." Under the Bill, I assume that the issue will arise in the same way. If someone has information that he has not disclosed and is prosecuted for not doing so, he can say to the court, "I should not be prosecuted for not disclosing this information because it would have been privileged", so there is still a judicial ruling on whether information is subject to privilege.

I shall not try to improve on what the hon. Member for Stafford said. If the rule of law is to remain inviolate, we should take the greatest care to ensure that communications between a solicitor and his client for the purpose of taking and giving instructions are not brought within these provisions.

It is obvious—this has already been said by my hon. Friend the Member for Huddersfield (Mr. Sheerman)—that we are not saying that these provisions should not be in the Bill. We are not saying that we want something in the Bill to facilitate the fight against terrorism and when it appears, as the Minister said this morning, that we want it whittled down. We want to ensure that it does not make inroads into the rule of law, which every Committee Member would regard as unacceptable. Therefore, I support the hon. Member for Stafford and, for the moment, I am content to hear what the Minister has to say.

Mr. Bruce George (Walsall, South): I rise to disprove the view that this is a cosy gathering of lawyers espousing fine constitutional principles which occasionally coincide with the interests of the legal profession.

Many years ago, I made the mistake of criticising lawyers in the House and the combined weight of criticism of me—including the accusation of being a Marxist—led me to the conclusion that one should criticise the legal profession with care.

I carefully read the brief for the Law Society, which appears to have much merit. Although the hon. Member for Stafford (Mr. Cash) introduced it courageously, he uncourageously decided not to press it to a vote, giving sound reasons for that. Nevertheless, this is a further element of the Bill where the interests of the accused, or the soon to be accused, and those of the state in pursuing that person may occasionally conflict. So far, the Committee has erred on the side of the state. The relationship between a client and his solicitor is important, but will it survive this aspect of the legislation?

Will the Minister help us to understand the clause further? Is there a lack of precision? Will his reply encourage us to believe that, although we wish to combat terrorism resolutely, that strategy must be set against a firm background—which has been said many times in Committee, especially by Opposition Members—of important principles that go back further than the rise of terrorism and will outlive terrorism?

On occasions, the Minister can be helpful and I hope that he will reassure the Law Society, the legal profession and Committee Members that important constitutional principles will be maintained and that this historic and important principle of client-lawyer relationship will survive.

Mr. Douglas Hogg: I shall split my reply into two parts. First, I shall deal with the amendments to clause 17 and, secondly, deal separately with the two amendments to clause 18. They are different in kind and my comments may perhaps suggest a different approach.

With regard to amendments Nos. 129 and 144, the questions the Committee will want to consider are whether a solicitor should have a specific defence to the penal section that appears in clause 17(2). The former Solicitor-General, the right hon. and learned Member for Warley, West (Mr. Archer), is right to start from the need to analyse the nature of the offence. He said that it is right for us to begin by accepting that the disclosure that gives rise to the offence is likely to prejudice the investigation. We must face that because it is the core of the problem. It is right that there should be a general defence such as that now being raised in respect of cases where there is a disclosure likely to prejudice the defence?

4.45 pm

I have to state as a fact, but with great regret, that there are in Northern Ireland a number of solicitors who are unduly sympathetic to the cause of the IRA.—[*Interruption.*] I repeat that there are in the Province a number of solicitors who are unduly sympathetic to the cause of the IRA. One has to bear that in mind.

Mr. Seamus Mallon (Newry and Armagh): I note what the Minister said, and that he has repeated it for emphasis. That is a remarkable statement for a Minister to make about members of a profession who have borne much of the heat in a traumatic and abnormal situation. Such words should not be said without the courage to support them. I find it appalling that the Minister should make such an accusation with such emphasis and without, it seems, the intention of substantiating it. I now ask the Minister, in the interests of the integrity of every solicitor operating in the North of Ireland, to provide specific support for what he has said, otherwise his words will be seen as a cowardly and unsubstantiated attack on people who work in the most difficult circumstances imaginable.

Mr. Hogg: I have three choices. For the purposes of the discussion, let us assume that it is true that there are a number of solicitors in Northern Ireland known to be sympathetic to one or other terrorist organisation. I have three choices. First, I could choose not to make that fact plain to the Committee. Secondly, I could put it in the terms that I have used, and make the general statement that there are a number of solicitors in Northern Ireland known to be sympathetic to one or other terrorist organisation. The third possibility is for me to say that Mr. So-and-So is known to be a solicitor sympathetic to the cause of the IRA. Let us examine those choices. They are the only three choices that I have.

Would it be right for me to withhold from the Committee my belief, based on advice, that there are a number of solicitors in Northern Ireland known to be sympathetic to one or other terrorist organisation? That is true and it is relevant to what we are discussing. It seems to me plain that if I believe that to be true I should state it. I do believe it to be true, and I state it.

Mr. Cash: My hon. Friend has made a serious allegation against certain members of the legal profession. I do not wish to go further than merely record the fact that that allegation has been made, but I must express my fear that if nothing is done about the timing difficulty that I mentioned with respect to the relationship between the taking of proceedings and the arrival at a point at which a reasonable excuse may be found in proceedings, my hon. Friend's present contention does not advance his case. The position has already been created without any remedy.

Mr. Hogg: I was dealing specifically with the point that was raised by the hon. member for Newry and Armagh (Mr. Mallon). In his first question, he asked whether I thought it true that a number of solicitors in Northern Ireland are known to be sympathetic to one or other terrorist organisation. I do believe that that is true, and I am stating it, on advice. It is something that the Committee should know.

If that is true, where do we go from there? Do I rest on that general statement, or do I start pointing fingers at particular people? I have thought about the matter carefully, and I say to the Committee—no doubt I shall be asked to say it several times, but I shall say it once—that I shall not identify specific instances, specific individuals or specific cases. I shall go no further than what I have said—that is, that a number of solicitors in Northern Ireland are known to be sympathetic to one or other terrorist organisation. I shall go on to say that I believe that it will be dangerous to give them a specific defence against passing of information about an investigation to their clients.

Mr. Mallon rose—

Mr. Hogg: I shall give way, but I know that the hon. Gentleman will be very disappointed, and I shall give him the same answer, however often he asks me to name individuals.

Mr. Mallon: That seems very much like a statement that the Minister has a closed mind on the matter and that, irrespective of anything that I or anyone else says, his mind will remain closed.

I find it astounding that such a statement should be made under privilege, in these circumstances and without any qualification of the words, "I believe". Even this draconian legislation requires something more than someone's belief; it requires reasonable suspicion.

Is the Minister saying that he—I take it that "he" means he as a person—believes for some reason or other that people who are practising as solicitors in the North of Ireland are sympathetic to the IRA? Or is he saying that information given to him would suggest that that is so? Or is he saying that intelligence to which he has access leads him to believe so? Or is he saying that it is a prejudice that would say so? I find it difficult to understand.

The Chairman: Order. The hon. Gentleman is beginning to make a speech. This is an intervention. In Committee, hon. Members can make speeches as often as they catch the Chairman's eye, but interventions should be brief.

Mr. Mallon: I accept your ruling, Sir Michael. I find it remarkable that, in a Committee such as this, which is laden with members of the legal profession, it should fall to one who is not a member of that profession to elicit why this slur—it is worse than a slur; it is a gross accusation—has been made against members of the legal profession in the North of Ireland. I shall be delighted if others who are members of the legal profession take up this gauntlet.

I know, Sir Michael, that you will allow me to finish my question. Has the Minister's view been conveyed to the Law Society in the North of Ireland? If it has, we have a right to know the terms. If it has not, the Minister is taking unfair advantage of the professional integrity of people working in the area. I find this one of the most astounding statements that I have heard so far in this Committee.

Mr. Hogg: I am sorry about that, but I thought very carefully about the matter and the conclusion that I came to was that it was right that I should make the statement in the form that I have. There

[Mr. Hogg]

are certain solicitors in Northern Ireland who are known to be sympathetic to one or other terrorist organisation. I state that as a fact. I state it on the basis of advice that I have received, guidance that I have been given by those people who are dealing in these matters, and I shall not expand on it further. Certainly, I shall not name individuals or specific cases, and if I may, I shall proceed—at least a little.

If that statement be true, the question is: how does it affect one's attitude to this part of the Bill? The amendment would give solicitors a wide defence, and they could inform their clients of material that is likely to prejudice the investigation. That is the premise which the former Solicitor-General invited us to adopt. I adopt it.

A further related point, which has not yet been made, is that it is wrong to assume that the situation can arise only when the solicitor is the subject of the order. The order of production could be made against a variety of people. The solicitor might learn of that fact entirely coincidentally. Suppose that an order is made under paragraph 2 of schedule 7—which is the general order not related to protected material—against a business or bank and the material was not protected. The solicitor might hear of that quite coincidentally—perhaps through talking to someone, possibly even to the subject of the order. What happens if that solicitor is unduly sympathetic to the IRA? Suppose that he telephones his client and says, "Look out. An order has been issued for the disclosure of this class of document. If I were you, I should get rid of your stuff." If the amendment were accepted as drafted, it is probably that that solicitor would be protected. It would be wrong to extend protection in such circumstances.

Schedule 7 contains a variety of hurdles that must be surmounted before specific documents or material can be producible under the order. That is a proper safeguard. Therefore, I cannot pretend to be especially sympathetic to amendments Nos. 129 and 144. I shall carefully consider the point raised by my hon. Friend the Member for Stafford (Mr. Cash), but I hope that he will not blame me if I start my consideration of his remarks from the standpoint that I outlined to the Committee.

Mr. Cash: As my hon. Friend the Minister acknowledged, we are on a serious point here and one that raises questions about seeking to acheive justice, which is the main issue.

The amendment would remove an area of doubt surrounding legal privilege. However, we admitted that some case law suggests that the expression "a reasonable excuse" would be an adequate basis—some would argue that it remains so—upon which the argument for exempting those with legal privilege would apply in an event. By analogy with section 31 of the Drug Trafficking Offences Act 1986, we start from the standpoint that there is already a prima facie basis upon which a solicitor—no doubt including those referred to by my hon. Friend—already has an exemption. The matter becomes even more complicated, and I suspect that my hon. Friend is digging himself a substantial hole here. Clause 17(3) deals with the defences related to subsection (2)(a). Under subsection (3), a defence for the person who has proceedings against him—here I remind my hon. Friend about the problem on timing in the context of the need for justice itself, as a matter of principle—is

"that he did not know"—

that is, the person against whom proceedings are being taken—

"and had no reasonable cause to suspect that the disclose was likely to prejudice the investigation; or

(b) that he had lawful authority or reasonable excuse for making the disclosure."

5 pm

The point is that if it is open to a person to use the phrase

"reasonable excuse for making a disclosure"

"he" being a person, there is no distinction in the Bill between the psoposition as applied to a person and the propoaition as applied to a solicitor. The amendment arose simply as clarification.

Mr. Hogg: That is true. One question that we must consider is whether the phrase "reasonable excuse" is apt to cover the classes of person that my hon. Friend the Member for Stafford and the former Solicitor-General have described. That is a matter of some doubt, and I shall welcome further advice on it.

A number of situations may arise. Advice may be that it is not apt to include a solicitor in those circumstances. Then we have to come to the policy question of whether it should be. Advice may be turned on its head and it may be considered apt to include a solicitor. Then we may have to consider another policy question that will be raised. My hon. Friend the Member for Stafford is correct to say that the phrase "reasonable excuse" is apt to include what the solicitor seeks to do. I know that on Report we must have a much clearer view of whether the language of the Bill is apt to include the circumstances that we have discussed.

On the question of giving advice and seeking instructions, it sounds jolly good on the surface, but it less good when one probes it. If the solicitor is the subject of the orders—let us say, the solicitor is directed to produce classes of documents—he can act quite well without taking immediato instructions from the client. He has the document and, if he wishes, he can go to court and make representations for a discharge of, or variation in, the order. He does not need to give legal advice or indeed to ask for instructions. He is the object of the order.

A different situation arises where the solicitor has heard on the grapevine that a bank manager, say, has been instructed to give up bank statements. I question somewhat rhetorically what type of legal advice he would be giving at that juncture or what type of instructions he would be receiving, bearing in mind that it is not the client who is the subject of the order.

Mr. Archer: The Minister has been very kind and is giving way most generously. I am most grateful. He has overtaken my intervention because that was what I wanted to point out.

With amendment No. 129, what is in issue is not the motive behind what the solicitor is doing, but his purpose for giving the information. On the examples that the hon. Gentleman gave, the solicitor would, quite properly, not be protected. That is precisely the argument in favour of the amendment. If he were trying to give legal advice or to seek instructions, he would be protected. The amendment introduces that criterion.

Mr. Hogg: We have a problem about what are the ostensible motives and what are the real motives. We return to the point at which we started, which I know causes great offence to the hon. Minister for Newry and Armagh (Mr. Mallon). I did not intend offence, but I did intend that the Committee knew the facts. We may be dealing with a few, but a number, of solicitors who are unduly sympathetic to the IRA and other terrorist organisations. We cannot ignore that. It has to be taken into account when granting drafting legislation.

Ms Marjorie Mowlam (Redcar) *rose—*

Mr. Hogg: I shall go on for a little while because one of the problems about giving way frequently is that the line of argument becomes a little distorted. No one can say that I have not given way frequently during this debate, or indeed generally. I will speak on clause 18 and then I shall give way.

A different situation applies with clause 18 because here the defence is different. The offence is withholding information. Two questions that overlap must be considered. First, in the context of amendment No. 129 my hon. Friend for Stafford asked whether the phrase "reasonable excuse" gives a solicitor a defence in respect of the traditional protection that attaches to legal privilege. I must seek further legal advice, because it is an extraordinary difficult question. Secondly, whichever way that advice goes, is it right that a solicitor should have that defence, which would be adjudicated by the court, in respect of traditional classes of legal privilege? Those are two specific issues that must be clearly resolved. The proper time to answer those questions will probably be on Report.

Ms. Mowlam: Will the Minister clarify three points? In his statement about Northern Ireland solicitors, at one point he said "believes", and at another, "knows". Is it a matter of belief, knowledge or reasonable suspicion? We have already been through that today.

Secondly, given the Minister's knowledge, which he is unable to share, does he accept that he is causing unnecessary offence to legal folk in Northern Ireland who do not come into that category? I am sure that he would want to take the chance to acknowledge that he is in not impugning the reputation of the majority who, in his words, work hard in extremely difficult conditions in Northern Ireland.

Thirdly, does the Minister accept that legislation such as we are discussing—the problem will be expanded when we reach schedule 7—puts people in the legal profession in Northern Ireland in an almost impossible position?

Mr. Hogg: It is true that the majority of solicitors in Northern Ireland are honourable people acting with courage in difficult circumstances. It is also true that there are a number—a small number—of solicitors who are unduly sympathetic to the cause of the IRA; a small number, but a number. I am asked how I state that. I do so on advice. Does that mean that I know or I believe? That is a nice question. I am advised as a Minister that those are the facts. I believe them to be true and I state them as facts on advice that I have received.

Mr. Allen Adams (Paisley, North): As I am not a lawyer, may I probe the Minister in simple layman's terms and ask for replies in simple layman's terms, so that I and others listening to the debate outside may have a better perception of what we are talking about?

The Minister used the phrase "unduly sympathetic". Will he define that more precisely? Would the Home Secretary or the Minister consider someone who was in broad, general terms sympathetic to the Republican cause or to a united Ireland "unduly sympathetic"? The question is where do we start and where do we stop?

The next question is, who decides? That is partly a rhetorical question, because obviously the Home Secretary will decide. Perhaps the Minister will confirm that.

The provision contains a breach of civil liberties. Let us assume that a solicitor is broadly sympathetic to a cause. Surely in a democracy a solicitor, like anyone else, is entitled to be broadly sympathetic to anything he wishes, provided that as a consequence of his broad sympathy he does not maim, kill or carry out acts of terrorism. If the solicitor is entitled to be broadly sympathetic, is he not entitled to listen confidentially to someone who carries those broadly-held views two or 10 steps further? If not, we are saying that someone accused of terrorism has no right to go to a solicitor in confidence. Is that fundamental right being taken away?

Mr. Hogg: The hon. Gentleman misunderstands the position. We are dealing with whether a solicitor should have a specific defence not available to other people to a charge of disclosing information likely to prejudice the investigation. Certain solicitors in Northern Ireland are known to be sympathetic to one or other terrorist organisation—the phrase was "terrorist organisation". An organisation is not a terrorist one unless it uses violence.

Mr. Adams: I understand that the Minister was a practising solicitor. Suppose he represented a client who was accused of murder and he knew, because of confidential discussions with his client, that he was guilty of the crime. What would his position be if the state had the right to ask for that information? We always try to discuss Northern Ireland in the context of a vacuum—what can be applied to Northern Ireland cannot be applied elsewhere. But that is not true.

Mr. Hogg: The hon. Gentleman raises a fair point, although he does so under clause 18 and not clause

[Mr. Hogg]

17. The lawyer could not sit idly by if his client went into the witness box and asserted his innocence; that would be in contravention of all the traditional ethics of the profession. It is true that a solicitor or barrister in such a case could properly act if what he sought to do was to put the prosecution to the task of proving the charge, but the lawyer could not allege that someone else had committed the crime or that his client had, but that is a narrow point.

The hon. Gentleman is asking what the position would be under clause 18 if, in the course of a legal relationship, a terrorist client says to his lawyer either, "I did this and committed other offences" or, "My aunt Sally did this and committed other offences." Should the lawyer be under a duty to disclose that information? That is the precise question that I dealt with previously under clause 18. Should there be a defence in those circumstances and is the defence of "reasonable excuse" apt to provide a defence? There is doubt about that and we must answer those questions. I have already said that on Report we shall have a much clearer view of the position.

5.15 pm

Mr. Archer: I am content with what the Minister has said about the amendments to clause 18. He has said that he will consider the questions which need to be considered, and I am prepared to wait for the result of his considerations.

However, what the Minister said about the amendments to clause 17 was rather different. I hope that the Committee will not discuss further what the Minister said about the political affiliations of certain solicitors in Northern Ireland.

Mr. Mallon: Will the hon. and learned Gentleman give way?

Mr. Archer: May I give way after I finish what I am saying?

No doubt the Minister considered his words carefully, but, as I am sure the hon. Member for Newry and Armagh (Mr. Mallon) will say, these matters will be widely reported in Northern Ireland and will give great offence to many people. I am not sure whether the Minister will earn the thanks of his ministerial colleagues who are trying to reduce the political temperature in Northern Ireland.

Mr. Mallon: The right hon. and learned Gentleman has already answered my question.

Mr. Archer: I think that the hon. Member for Newry and Armagh and I are at one on the matter.

Mr. Mallon: I confirm that the right hon. and learned Gentleman has answered the question that I meant to ask him. As to his request that we should not discuss the Minister's remarks further, I wanted to ask him why? The right hon. and learned Gentleman answered that question before I could ask it, but that does not imply that I am at one with him. The opposite is true. An issue of enormous proportions arises from what the Minister said. It has tremendous implications for the legal profession and the process of justice, not least for people who are represented by solicitors. I know that you would prefer me to keep my comments for the clause stand part debate, Sir Michael, so I shall leave it at that, but I assure the right hon. and learned Gentleman that I am not at one with him.

Mr. Archer: I am grateful to the hon. Gentleman for clarifying that matter. Perhaps he and I have the misfortune to disagree. I fully understand his feeling that what has been said will give great offence in Northern Ireland. He may know that it has always been one of my concerns that one should not broaden and deepen the wounds in Northern Ireland. Some things may be better left unsaid; the hon. Gentleman may disagree with that, and I fully respect his right to do so.

The political affiliations of solicitors do not seem relevant. I agree with my hon. Friend the Member for Paisley, North (Mr. Adams) that what matters is that a solicitor, whatever his political sympathies, should be able to take instructions from his client and give legal advice. That is the privilege not of the solicitor but of the client. A solicitor may disclose information for one of two purposes. One purpose could be to give legal advice or take instructions, as set out in amendment No. 129, he or may wish to tip off someone about what is going on. If he discloses information for the purposes set out in the amendment he should not be deemed to have committed an offence. He should be protected, not to protect the solicitor—although I do not discount the importance of protecting solicitors—but to protect the client. Otherwise the rule of law cannot operate. That is the point that we seek to establish for the Minister.

If a solicitor rings up a client with information to tip him off to get rid of incriminating material, he would not fall within the defence. He would, quite rightly, have committed an offence; his political sympathies are irrelevant. None of the Minister's examples would fall within that covered by the amendment. In those cases, no one would want to say that the solicitor had not committed an offence.

The Minister said "Of course, one has to consider the background and it is so difficult to tell which side of the line something falls." That is the opposite of what he has argued in many of our other debates. Normally, he has said forcefully that the court has to make up its mind what the facts are. If the court could not do that it would be impossible to proceed in a criminal trial. That is one of the duties that falls to a court. The decision must be left to a court, and I do not see why we should not do so.

Whether criminal solicitors exist or not, the hon. Member for Stafford (Mr. Cash) is not trying to allow them to pursue nefarious ends. He seeks, narrowly, to allow solicitors to carry out only the duties of solicitors—to take instructions from their clients and give them legal advice.

I hope that the Minister wil reconsider the matter. He seems to be saying that because some solicitors' motives may be questionable the purposes for which they can talk to their clients may be invaded. That is the thin end of a dangerous wedge.