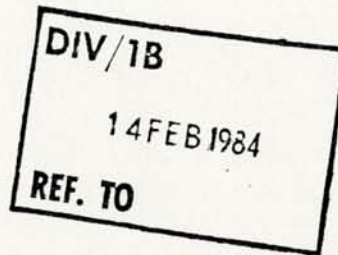




COPY NO 16
 DEPARTMENT OF THE DIRECTOR
 OF PUBLIC PROSECUTIONS
 ROYAL COURTS OF JUSTICE
 BELFAST BT1 3NX

Belfast 35111

Mr Richard Davies
 Stormont House
 Annex
 Stormont
 Upper Newtownards Road
 BELFAST BT4 3SU



13 February 1984
 Our Ref: ED.53/9 Vol IV

Dear Mr. Davies,

WORKING PARTY ON FURTHER MEASURES TO CURB TERRORISM

I refer to the meeting held on 8 February 1984.

You will recall that I undertook to furnish you with a copy of the ruling of the Lord Chief Justice, Lord Lowry, in *Regina v Gerard Adams*. I enclose a copy for your information. There were two counts on the indictment against Adams, namely, belonging to a proscribed organisation and professing to belong to a proscribed organisation both contrary to section 19(1)(a) of the Northern Ireland (Emergency Provisions) Act 1973. An application was made to the Trial Judge under section 2(3) of the Grand Jury (Abolition) Act (Northern Ireland) 1969 to order an entry of "No Bill" in the Crown Book in respect of the indictment. The entire ruling will be of interest to you and in particular I would draw your attention to the following portion which is found at page 8:-

"Neither membership of Ard-Chomhairle nor what was said at the Mansion House is any evidence of IRA membership. Fighting talk and military metaphors are the current coin of politics, especially revolutionary politics and, going even further, support for violence is not equivalent to actual membership."

I also undertook to let you have a short note on several minor points relating to the workings of the law on membership of a proscribed organisation and giving support to a proscribed organisation.

I refer to section 21(1)(b) of the Northern Ireland (Emergency Provisions) Act 1978. This makes it an offence to solicit or invite "financial or other support" for a proscribed organisation or to knowingly make or receive "any contribution in money or otherwise" to the resources of a proscribed organisation. The meaning of the words in quotation marks are not clear. It is uncertain whether they include all material or physical contributions, whether financial or otherwise, to the resources of a proscribed organisation.

A very similar difficulty is to be found in the interpretation of section 10(1) and (2) of the Prevention of Terrorism (Temporary Provisions) Act 1976. You will see reference is made to "money or other property". In the recent case of *Regina v Kelly & Kelly*, the Lord Chief Justice, at the conclusion of the Crown case, acquitted

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Mr Kelly by direction, inter alia, on a count under section 10(2) of the Prevention of Terrorism (Temporary Provisions) Act 1976. In short, the case against Kelly was that as a householder he made available his home to known terrorists on the night before the murder of a Mr Hamilton (a Member of the Ulster Defence Regiment) with the object, to his knowledge, that the terrorists would shelter in his house and change their clothing prior to going out to murder their victim. The Lord Chief Justice, while not saying he was making an authoritative pronouncement, considered that he doubted whether property within the terms "any money or other property" would include a house. While a more comprehensive meaning to the words "any money or other property" is to be preferred to the view expressed by the Lord Chief Justice the matter remains open to doubt.

You may also wish to consider section 25 and 26 of the Northern Ireland (Emergency Provisions) Act 1978. Section 25 makes it an offence to dress or behave in a public place in such a way as to arouse reasonable apprehension that you are a member of a proscribed organisation. Section 26 makes it an offence to wear in a public place, or within the curtilage of a dwelling house other than one at which the defendant is residing, any hood, mask or other article used for concealing the identity or features of that person. Both offences are summary. I should observe that such conduct as is contemplated by these sections is often associated with more serious conduct such as the possession of firearms at para-military funerals. This is particularly so in relation to section 25 supra. You may wish to consider whether it is now appropriate that these offences be made hybrid.

As you know, although subject to the superintendence and directions of the Attorney General, the Director of Public Prosecutions for Northern Ireland acts independently and in a quasi-judicial capacity in reaching his decisions, most importantly the decision whether to prosecute or not to prosecute. The Director has always been and remains closely concerned that neither he nor any member of his staff should become involved with any matters which might be thought - however wrongly - to interfere with this proper independence. The creation of new offences and Government policy in regard to them is an area which can give rise to difficulties in this context. It follows that on a Working Party such as the present one my role is limited by the constraint which I mention but it is the Director's wish, as it is mine, that I should offer whatever assistance I can on the "practicality" and prosecution implications of proposals which are made. This is something distinct from "policy" advice about new offences which is for others.

Yours sincerely,
A M Fraser

A M FRASER
Senior Assistant Director

Enc:

AMF /BN

REGINA

v

GERARD ADAMS

RULING

of

The Right Honourable

THE LORD CHIEF JUSTICE

SIR ROBERT LOWRY

at

BELFAST CITY COMMISSION

on

7th SEPTEMBER, 1978

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[]
7/12 Sept
BEGIN

-v-

GERARD ADAMS

LOWRY, L.C.J.

Gerard Adams, whom I shall call "the accused" is charged on two counts:-

(1) Belonging to a proscribed organisation, contrary to section 19 (1) (a) of the Northern Ireland (Emergency Provisions) Act 1973.

The particulars of the offence allege that between 1st April 1976 and 25th February 1978 in Belfast and elsewhere the accused belonged to a proscribed organisation, namely, the Irish Republican Army.

(2) Professing to belong to that proscribed organisation contrary to the same provision and between the same dates.

Section 2 (3) of the Grand Jury (Abolition) Act (Northern Ireland) 1969 gives the presiding judge power to order an entry of "No Bill" in the Crown book in respect of any indictment presented to the court if he is satisfied that the depositions or, as the case may be, the statements of the witnesses intended to be examined do not disclose a case sufficient to justify putting upon trial the person against whom the indictment is presented. If such an entry is ordered, the entry must be made before the accused is arraigned, the accused must be discharged but such discharge shall not prevent or prejudice /any

any other indictment (whether or not founded on the same facts or evidence) being presented at another court.

Formerly the Grand Jury required to be satisfied that there was a prima facie case before finding a true bill. Here the onus is reversed because the trial ought to proceed unless the judge is satisfied that the evidence does not disclose a case sufficient to justify putting the accused on trial.

Mr. McSparran, for the accused, invites me to exercise my powers under section 2 (3) while Mr. Appleton, for the Crown, contends that there is a prima facie case and rightly argues that I must take the evidence at its best for the Crown at this stage. I am grateful to counsel on both sides for highlighting the important portions of the evidence in a concise and relevant way.

Belonging to a recognisable organisation means being a member of it. To profess, in its ordinary connotation, means to declare openly, announce, affirm, avow, acknowledge or confess. A profession may be made not only by words but by conduct, but to profess something is a positive intentional act and the conduct relied on must therefore be deliberate and clear. Mr. Appleton contends that a person may profess to belong to an organisation by acting so recklessly as to convey an impression of membership to persons with sufficient knowledge to draw a reasonable inference to that effect, and he referred me to D.P.P. v. Morgan [1976] A.C. 182 and D.P.P. v. Majewski [1977] /A.C.

A.C. 443. For the purpose of this ruling I shall assume, without so deciding, that his proposition is correct. Mr. Appleton conceded that some of the evidence of Sergeant Major Grant was hearsay but, again for the purpose of this ruling, I shall assume that everything in the statements which is capable of being first hand evidence is admissible. Except in a plain and obvious case this, in view of the burden of proof, will be the best approach under section 2 (3) whether on the law or on the facts.

I now examine the matters on which the Crown rely.

One must read carefully the entire evidence of the Sergeant Major, who was stationed at the Maze Prison from March 1974 to November 1976. Some of the main points are:-

1. Compounds 9, 10, 11, 12 and 13 housed prisoners who were "generally known in the prison and recognised in the compounds" as the 4th sentenced prisoners' battalion of the Provisional I.R.A.
2. Compound 11 was known as 'B' company. The accused entered the compound in March 1975.
3. The republican prisoners held parades most Mondays and special parades on anniversaries.
4. The only republican prisoners not to parade were those who claimed affiliation to the I.R.S.P.
5. At the Monday parade in compound 11 most of the men had a

/military

military type drill parade in three ranks.

6. Anniversary parades were different. On Easter Sunday 1976 most of the prisoners were formed into three ranks. There was a colour party with republican flags. Each compound had its own flag and compound 9 had a "C" company flag. Half a dozen men came out of a hut and faced the parade. The accused stood in front facing the parade, and the colour party led the parade past him. All were smartly dressed. In most respects this parade had the appearance of a military parade.

7. The accused took part in other parades in a similar manner.

The Crown invite me, from this and other evidence, to say that an inference can be drawn that the accused was or professed himself to be a member of the Provisional I.R.A. They also rely on the evidence of a prison officer that the accused on 24th June 1978, when awaiting trial on the present charges, was on a parade in the rear of two ranks, which commemorated two Provisional I.R.A. volunteers who had recently been shot by the Army.

The next item of evidence is by way of excerpts from a speech made by the accused at the Ard Fheis of Sinn Fein at the Mansion House, Dublin, on 23rd October 1977, when he is reported to have said:

1. "At present in the war zone itself necessity, if nothing else, forces the republican movement into a complete and utter reliance upon the people's support. We could not survive almost eight years of war unless people want it - to billet us, to look after us, to drive us about, unless they wanted to support us."

/2.

2. "There is no need to debate the issue here. We are either for the people or we are opposed to them. I think it must be a basic tactic, a basic principle of republicanism, that we fight on behalf of the people, we fight because the people want us to fight and we struggle for a situation where their welfare will benefit and where they will be left in control of their own destinies."
3. "And I can tell you, very basically, that our organisation is very slow in involving itself in community affairs and sometimes I think that perhaps we hope to free the people whether they wish to be freed or not."

This was broadcast on 15th December 1977 on the B.B.C.

"Tonight" programme and the evidence contains notes of questions put to the accused by the police and his answers, in which, little turns. He did, however, say "Sinn Fein is there to organise, agitate and manipulate."

There is evidence that the accused was at a meeting between the Official and Provisional I.R.A. at the time of the feud in an attempt to stop the fighting.

I turn now to the Belfast headquarters of Provisional Sinn Fein at 170A Falls Road, where the accused is reported to have said that he spent most of his time. When asked by the police on 20th February whether he was working, he is said to have replied "No, I live very well and I am paid expenses by Sinn Fein." Another time he said (a self-serving statement, as Mr. Appleton remarked) that he went to 170A Falls Road to check on it but had no responsibility for it.

The accused's connection with Sinn Fein headquarters

/brings

brings me to the next point relied on by the Crown, that the walls (as the photographic exhibits show) were covered with posters advocating support for the I.R.A. and the overthrow of British rule, and depicting armed men upholding the republican cause: this manifested clear support for the republican cause and for terrorist violence.

Lastly the Crown rely on and exhibit the constitution of Sinn Fein and the accused's standing in that organisation. Sinn Fein was a proscribed organisation under the 1973 Act but was deproscribed in May 1974 and so remains. No charge is made against the accused in this connection.

The Constitution states:-

"The name of the Organisation shall be Sinn Fein.

The organisation is based on the following fundamental principles:-

- (a) That the allegiance of Irishmen and Irishwomen is due to the Sovereign Irish Republic proclaimed in 1916.
- (b) That the sovereignty and unity of the Republic are inalienable and non-judicable.

The objects of Sinn Fein are:-

- (a) The complete overthrow of English rule in Ireland, and the establishment of a Democratic Socialist Republic based on the Proclamation of 1916.
- (b) To bring the proclamation of the Republic, Easter 1916 into effective operation and to maintain and consolidate the Government of the Republic, representative of the people of all Ireland, based on that Proclamation.
- (c) To establish in the Republic a reign of social justice based on Christian principles, by a just distribution and effective control of the Nation's wealth and resources, and to institute a system of government suited to the particular needs of the people.

/(d)

- (d) To promote the restoration of the Irish language and Irish culture and the widest knowledge of Ireland's history; to make Irish citizens conscious and proud of their traditional and cultural heritage, and to educate the citizens of the Republic in their rights and responsibilities as citizens.

MEANS:

- (a) Through Sinn Fein organising the Irish people into a united and disciplined movement for the restoration of the Republic and the achievement of the above ideals.
- (b) Through Sinn Fein assisting, as directed by the Ard-Chomhairle, all Organisations working for the same objects.

The accused is one of two Ulster members on the Executive Ard-Chomhairle of Provisional Sinn Fein.

In approaching this case it should be borne in mind that this is a trial for a political offence but it is not a political trial. It is an ordinary criminal trial under the 1973 Act (now replaced by the 1978 Act) procedure in the course of which it is my duty to apply the rules of logic and the rules of evidence which must govern any criminal trial. There is only one standard of adjudication. The accused may, for all I know to the contrary, be a member of the I.R.A. or he may not. Clearly he is a member of Provisional Sinn Fein and holds an important position in that organisation. Clearly also, as its constitution shows, Sinn Fein supports the aims of the I.R.A. and many of its members, not least those who have authority at 170A Falls Road, support the I.R.A.'s violence and terrorism. It would also be passing strange if the accused, who is one of two Ulster members of Ard-Chomhairle and actually on the pay
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roll of Sinn Fein, does not endorse its general policy and also the particular policy of supporting violence as manifested by the posters at the Belfast headquarters.

All this is not to say that there is prima facie evidence that the accused is or professes to be a member of the I.R.A. The objects of Sinn Fein, the vehemence with which the accused proclaimed them at the Mansion House and the tone of violence in the Belfast headquarters are quite enough to make it likely that he would actively associate himself with the I.R.A. There must be many people of whom this can be said, but some are undoubtedly not members of the I.R.A. while others cannot be shown to be so.

Let me go a little more into detail. Neither membership of Ard-Chomhairle nor what was said at the Mansion House is any evidence of I.R.A. membership. Fighting talk and military metaphors are the current coin of politics, especially revolutionary politics and, going even further, support for violence is not equivalent to actual membership. The same considerations apply to all the evidence based on the posters at the headquarters.

The Crown's real case depends on the accused's being in compound 11 and what he did there. The first point is that no evidence is proposed to be given to show that the accused reached compound 11 in any way except as a republican sympathiser. Nor, it seems, is it practicable to give evidence that there were different compounds for members of Sinn Fein or for

/persons

persons who were of republican sympathies without belonging to anything. Whatever admissible evidence can be given about compound 11 will only show what is already clear that the accused is of republican leanings.

So far as the Easter parade in 1976 goes, there is no logical reason for saying that all those who fell in were members of the I.R.A. I do not think that this inference would be supported for a moment by evidence based on similar parades outside the prison. Nor is there any warrant for holding that a man who occupies a top position in Sinn Fein and may be (as the Crown suggest) dedicated to supporting violence is necessarily or even probably a member of the I.R.A. because he, so to speak, takes the salute at a march past of a parade (whether all those on parade are I.R.A. members or some may be just sympathisers or people who conform with the conventions of the compound).

Nor can I give any weight, as proving membership, to the accused's participation in a commemorative parade on 24th June 1978 while awaiting trial on a charge of membership.

With regard to the charge of professing membership and adopting Mr. Appleton's approach for the sake of argument, the Crown could get to trial only on the basis of recklessness because it is obvious that the accused has not deliberately held himself out as a member - quite the contrary.

But there is no evidence to persuade a logical man that

/by

by parading in a compound run on quasi-military lines (as inevitably happens where the inmates wish to regard themselves as prisoners of war) a man of the accused's outlook is identifying himself with membership of the I.F.... As I have said, he may be a member, but speculation can never be allowed to take the place of inference.

Accordingly, I order the entry of "No Bill" on both counts.