

CENTRE FOR CRIMINAL JUSTICE STUDIES

FIFTH ANNUAL REPORT

1992-93

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INTRODUCTION

The Centre for Criminal Justice Studies was provisionally established in 1987 and was formally approved by the University in March 1988. Its object, as set out in its Constitution (see [Appendix 1](#)), is the pursuit of research and study into all aspects of criminal justice systems. This remit, as undertaken by the Executive Committee (see [Appendix 2](#)), has in practice included the encouragement of postgraduate students and research projects, and the arrangement of seminars and conferences. The Centre's members comprise both lawyers and non-lawyers, and its work is generously assisted by an Advisory Committee, which consists of academics and practitioners in relevant fields of experience ([Appendix 2](#)).

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1 October 1993

THE WORK OF THE CENTRE

A Research projects

The following research projects are currently in progress.

(a) Reporting of Crown Court proceedings and the Contempt of Court Act 1981.

This project was originally funded by the Leverhulme Trust and investigate the frequency and nature of orders under sections 4 and 11 of the Contempt of Court Act 1981. That phase of the research has now been fully reported (see: Clive Walker, Ian Cram, and Debra Brogarth, *The reporting of Crown Court proceedings and the Contempt of Court Act 1981* (1992) 55 *Modern Law Review* 647), but related research is under way into the corresponding practice in Scotland (involving Clive Walker and Ian Cram) and comparative responses in the USA (which has involved research funded by the University of Louisville, Kentucky).

(b) Leeds Young Adult Offenders Project.

Ian Brownlee has conducted an evaluation study of the above which is funded by the National Children's Home and the West Yorkshire Probation Service. Three reports have been submitted to the funding bodies covering the operation of the project

during its initial funding period. Two articles based on the research have appeared in the Criminal Law Review [1990] p.852) and the British Journal of Criminology (Vol.33 No.2 Spring 1993, p.216). Further analysis of reoffending after involvement with the project is in hand and publication of the results is anticipated.

(c) Pre-trial reviews in the Magistrates' Courts.

The Home Office has funded research into the working of the above. The research is concentrating on procedures in the Bradford and Leeds Magistrates' Courts and has been in progress since January 1990. The grant-holders are Ian Brownlee, Peter Seago and Clive Walker. The fieldwork has been completed and the draft final report has now been submitted to the Home Office (see: Mulcahy, A, Brownlee, Ian, and Walker, Clive - An evaluation of Pre-trial reviews in the Bradford and Leeds Magistrates' Courts (1993) 33 Home Office Research Bulletin 10), and an article summarising the research findings will appear shortly in the Howard Journal of Criminal Justice.

(d) The administration of legal aid in the Magistrates' Courts.

This project, directed by Adrian Wood with assistance from Clive Walker and Allan Blake (Leeds Metropolitan University), is supported by E.S.R.C. funding and is surveying four courts and their relevant Criminal Legal Aid Committees. The research commenced in January 1992, when a full-time research officer, David Wall, was appointed. The research team has since obtained a further grant from the ESRC to consider the impact of the Criminal Justice Act 1991 on legal aid.

(e) Urban Crime Fund

Ian Brownlee and Clive Walker of the Centre, together with colleagues from the Department of Geography at Leeds University, the Management Centre at Bradford University and the Institute of Environmental and Policy Analysis at Huddersfield University, are evaluating for the West Yorkshire Police Authority the 43 projects which are being set up pursuant to the Urban Crime Fund. Reflecting the diversity of the projects, a number of different research techniques and levels of evaluation will be applied. The study commenced in August 1992, and a full-time research officer, Christina Hart, is in place.

(f) Mediation and criminal justice within West Yorkshire

A pilot study is being conducted by Adam Crawford into the operation of such schemes, particularly in West Yorkshire

(g) Family contact centres

A pilot study is being conducted by Clare Leon and Norma Martin-Clement into the operation of such schemes, particularly in West Yorkshire

B Postgraduate study

(a) Postgraduate research degree schemes.

The Centre wishes to encourage applications from anyone wishing to pursue research into the criminal justice system. This subject may be taken to include, for example, the judiciary, the prosecution system, the police and policing authorities, the prison and probation services, criminology and penology, criminal law and terrorism. Any relevant research topic in these or related areas will be considered. A number of possible areas of research have been considered with our Advisers and can be suggested on request, but applicants are not precluded from devising their own proposals. Comparative studies will be considered. The work of students may be assisted by practitioners in our Advisory Committee or by other contacts in the field. Formal instructions in research methodology and joint supervisions in interdisciplinary subjects can be arranged. Scholarships may be available, and the Centre has been recognised as a Mode B institution for the receipt of E.S.R.C. scholarships.

The relevant degree schemes on offer (all by research and thesis only) are as follows:

- *Master of Arts (M.A.)* -

one year full-time or two years part-time;

- *Master of Philosophy (M.Phil.)* -

two years full-time or three years part-time;

- *Doctor of Philosophy (Ph.D.)* -

three years full-time or four years part-time.

The entrance requirements common to all three schemes are that applicants must normally possess a good honours degree, but those with professional qualifications or substantial professional experience will be considered. The detailed ordinances and regulations governing the above degree schemes are set out in the prospectus of the Faculty of Law which is available on request.

(b) Current postgraduate research students

O'Gorman, Christopher, LL.B. - The detention and questioning of suspects by the police: safeguarding the suspect and the role of the legal adviser (Ph.D., October 1989)

Pinkney, Ian, LL.B. - The taking of motor vehicles without consent (M.A., October 1991)

Okoye, Cyril, B.A., M.P.A. - Cross-cultural perspectives on the social disorganisation of prisons in Canada and the U.K. (Ph.D., October 1991)

Laing, Judith, LL.B. - Mentally disordered offenders and their diversion from the criminal justice system (Ph.D., September, 1992)

Boland, Fay, B.C.L. - Diminished responsibility as a defence in Ireland having regard to the law in England, Wales and Scotland (M.Phil., October 1992)

Davies, David Ioian, LL.B. - Identification evidence (M.A., October 1992)

Moraitou, Areti, LL.B. - The law and practice in relation to fingerprinting by the police with respect to England and Greece (M.A., October 1992)

Gagic, Leanne, B.A. - A study of young women whose mothers are in custody (M.A., February 1993)

Joliffe, Paul, LL.B. - The use of interpreters in Magistrates' Courts (April 1993, part time)

Palfrey, Terry, B.A., - The development of an inquisitorial system in fraud investigation and prosecution (Ph.D., April 1993, part time)

Glew, Nigel, LL.B. - The evidence of children in the criminal justice system (M. Phil, September 1993, part time)

Ogden, Neil, LL.B. - The private security sector (MA, September, 1993)

English, James, LL.B., - The rise and fall of the Criminal Justice Act 1991 (M.Phil, September 1993)

(c) Postgraduate research degrees awarded

Shanks, Rachel, LL.B - Freedom of movement in the U.K. and France and the prevention of terrorism with special reference to European Community law (M.A., June 1992)

Ford, Lindy C., M.Sc, B.Sc. - Homelessness and persistent petty offenders (Ph.D., June 1993)

Acharya, Neena, LL.B. - The Police and Race Relations (M.A., June 1993).

Ghosh, Saumya, LL.B. - A comparative study of some exceptions to the hearsay rule with special reference to England and India (M.A., June 1993)

Harrison, Bronwyn, B.A. - The development of juvenile cautioning and its implications for police practice and procedure (M.A., June 1993).

(d) Postgraduate taught courses

The following schemes for taught postgraduate courses commence in 1993-94 for the first time. There are 14 full-time students to be registered for that session.

M.A. (Criminal Justice Studies)

Duration: 12 months full time; 24 months part time. Note that some of the courses offered can be taken as free standing units with later accreditation.

Entry requirements: A good honours degree in law, social sciences or related subjects.

Objectives: To enable students to acquire new theoretical perspectives on, and wider knowledge about, criminal justice systems as well as a grounding in research methodology and the capacity to undertake research projects.

Contents: There is a compulsory course on research theory and methods and a compulsory dissertation. Students must select from additional courses on criminal law; deviance; policing; criminal procedure; evidence; philosophical aspects of criminal justice; criminal justice institutions; issues in criminal justice; Emergencies; European aspects of criminal justice; international law aspects; forensic science.

Diploma in Criminal Justice Studies

Duration: 9 months full time, 18 months part time. Note that some of the courses offered can be taken as free standing units and later accreditation can be granted.

Entry requirements: A good honours degree in law, social sciences or related subjects. Persons without degrees but with professional qualifications or experience will be considered.

Contents: Students select from the courses listed for the M.A. scheme. There is no compulsory course or dissertation.

Certificate in Criminal Justice Studies

Duration: 9 months part time. Note that some of the courses offered can be taken as free standing units and later accreditation can be granted.

Entry requirements: A good honours degree in law, social sciences or related subjects. Persons without degrees but with professional qualifications or experience will be considered.

Contents: Students select from the courses listed for the M.A. scheme. There is no compulsory course or dissertation.

C. Relevant papers and publications by members of the Centre during 1992/3

((a) Courts and court procedures

Brownlee, Ian - Paper at XI International Congress on Criminology, Budapest, Hungary on Alternatives to Prosecution in England and Wales (August 1993)

Mulcahy, A, Brownlee, Ian, and Walker, Clive - An evaluation of Pre-trial reviews in the Bradford and Leeds Magistrates' Courts (1993) 33 Home Office Research Bulletin 10

Seago, Peter - Guidelines for Training of Chairmen of Magistrates' Courts and for their Appraisal (Lord Chancellor's Dept, 1993)

Seago, Peter - Magistrates' Courts' Clerks, Training Conferences, November 1992, January 1993, March 1993

Seago, Peter - Custodial sentences: are they a thing of the past?, paper to conference of Manchester Magistrates, September 1992

Walker, Clive - Justice in Error (Blackstone Press, 1993)

Wall, D.S., and Wood, A., 'The Grant and Refusal of Criminal Legal Aid', Current issues in Criminal Legal Aid Conference, York September 1992.

Wall, D.S., and Wood, A., 'Legal Aid Decisions' Magistrates Clerks Conference, Scarborough, Jan. 1993.

Wall, D.S. 'Access to Justice Compared: Canadian and British Legal Aid Delivery Models', British Association of Canadian Studies Conference, Cambridge University, March 1993.

Wall, D.S., 'Access to Justice or Justifying Access: Note on the Legal Aid Trade,' Socio-Legal Studies Association Annual Conference, Exeter, March 1993.

Wall, D.S. 'The Canadian First Nations and Access to Justice,' Colloquium on Aboriginal Issues, University of Leeds, 2nd April 1993.

Wall, D.S., 'Court in the Act,' Crown Prosecution Service Conference, Harrogate, 4th April 1993.

Wall, D.S., and Wood, A., (1993) Submission to the House of Commons Select Committee on Legal Aid, 24th Feb. 1993

Wall, D.S., and Wood, A., (1993) Submission to the Lord Chancellor's Department on the Legal Aid Board's Proposals for the take-over of Criminal Legal Aid, 24th April 1993

Wall, D.S., and Wood, A., 'Buying time for the debate over criminal legal aid,' New Law Journal, 5/3/93

Wall, D.S., and Wood, A., (1993) 'Press, lies, and the Criminal Justice Act', LAPG News, Spring 1993.

Wall, D.S., 'How Independent will the Royal Commission's New Criminal Cases Review Authority be?', LAPG News, Summer 1993.

Wall, D., 'The Legal Aid Trade,' *New Law Journal*, 30 July 1993, pp 1096-1097.

Wood, A. and Wall, D.S., 'Wither Legal Aid', *The Magistrate*, June 1993.

(b) Criminal and evidence law

Hogan, Brian - *Cases and Materials on Criminal Law* (5th ed, Butterworths)

Seago, Peter - *All England Law Reports, 1993 Annual Review - Criminal cases*; Butterworths

Hogan, Brian - Address to CPS Conference, Harrogate, The House of Lords and the Criminal Law, April 1993

Storey, Hugo - *Rethinking UK Immigration Law and Policy*; (I.P.P.R., forthcoming 1993)

(c) Criminology and penology

Brownlee, Ian - *Hanging judges and wayward mechanics* (paper to the Fullbright Colloquium on Penal Theory and Penal Practice (Stirling, 1992)

Cram, Ian - *Interfering with gaol mail - prisoners' legal letters and the courts* (Legal Studies, forthcoming)

Crawford, Adam - Review of Stenson and Cowell (eds), *The Politics of Crime Control* (1993) 33 *British Journal of Criminology*

Crawford, Adam - *The politics of crime prevention*, paper to the European Research Centre, Loughborough University, March 1993

Hogan, Brian, Seago, Peter, and Wood, Adrian - *Sentencing Practice and Procedure*, Update for Yorkshire and Humberside Court Clerks, Wetherby, September 1992

(d) Policing and police powers

Crawford, Adam - *Crime Prevention and the Multi-Agency Approach*, Report published by the University of Hertfordshire, 1993

Crawford, Adam - *The Partnership Approach*, paper at the Socio-Legal Studies Association Conference, Exeter University, March 1993

Crawford, Adam - *Researching Inter-Organisational Contexts: A study of community based crime prevention*, paper at the British Sociological Association Conference, Essex University, April 1993

Crawford, Adam - *Inter Agency Co-operation and community based crime prevention*, paper at the British Criminology Conference, University of Wales, Cardiff, July 1993

Walker, Clive - The detention of suspected terrorists in the British Islands (1992) 12 Legal Studies 178

Walker, Clive - Para- military displays and the prevention of terrorism legislation (1993) Juridicial Review 90

Walker, Clive - Seminar on Forensic evidence and terrorist trials in the UK (Onati University, Spain, May 1993)

Wall, D.S., Review of The Politics of the Police: 2nd Edition by Robert Reiner, The Howard Journal of Criminal Justice, Vol. 32, No. 1, May 1993.

Wall, D.S., 'Controlling the Police: The Home Office, The Chief Constable and the Police Authority', British Criminology Society Conference, Cardiff 29 July 1993.

Wall, D.S., 'The Open Secret', Police Review, 8 January 1993, pp 22-23.

Wall, D.S., 'The Outsiders', Police Review, 30 July 1993.

D. Seminars, Conferences and Continuing Education

STAFF, STUDENTS AND VISITING SPEAKERS

The following events were arranged in conjunction the Centre:

(a) Seminar on "Offences against the person and general principles", the Law Commission's Consultation Paper no.122, presented by Professor Brian Hogan (July 1992)

(b) Training programme for visiting Indian Senior Police Officers, August 1992 (in association with West Yorkshire Constabulary).

(c) Seminar on "Recent developments in the Hungarian Criminal Justice System" by Dr Ilona Pocsik, Szeged University (December 1992)

(d) Seminar by Dr Joanna Shapland, University of Sheffield, "Policing and crime prevention" (January 1993)

(e) Seminar on "Pre-trial reviews in the magistrates' courts", by Ian Brownlee and Clive Walker, February, 1993)

(f) Seminar on the Greek criminal justice system by Areti Moraitou, February 1993

(g) Seminar about "Proposals on identification evidence to the Royal Commission", Ioan Davies, March 1993

(h) Seminar on "Aspects of the history of provocation as a defence in criminal law", Faye Boland, March 1993

(i) Seminar on the meaning of mentally disordered offenders, Judith Laing, March 1993

(j) Seminar on "Counting the coppers", Professor Robert Reiner, LSE, March 1993

(k) Seminar on reform of the Penal Code in Belgium, March 1993

APPENDIX 1

CONSTITUTION OF THE CENTRE

Object of the Centre

1. The object of the Centre shall be to develop, co-ordinate and pursue research and study into, and the dissemination of knowledge about, all aspects of criminal justice systems.

Membership of the Centre

2.1 Any members of the academic staff of the Department of Law may be a member of the Centre.

2.2 Other individuals may be appointed to membership of the Centre by the Council on the nomination of the Executive committee.

Membership of the University is not a prerequisite of appointment to membership of the Centre.

Administration of the Centre

3.1 The Centre shall be administered by a Director, a Deputy Director and an Executive Committee.

3.2 The Director and Deputy Director, who shall be appointed by the Council on the nomination of the Head of the Department of Law after consultation with members of the Centre, shall each normally hold office for a period of five years, and shall be eligible for immediate re-appointment.

3.3 The Director shall be responsible to the Executive Committee for the running of the Centre and the representation of its interests. The Director shall have regard to the views and recommendations of the Executive Committee and the Advisory Committee. The Director shall be assisted by a Deputy Director.

3.4 The Executive committee shall consist of the Director and the Deputy Director together with the Head of the Department of Law, and up to six others who shall be appointed by the Director, Deputy Director and head of the Department of Law and up to two of whom may be members of the teaching staff of the Department of Law.

3.5 The Executive Committee shall meet at least twice a year, with the Director acting as convener. Special meetings may be held at the request of any member of the Executive Committee.

3.6 Minutes of the meetings of the Executive Committee shall be presented by the Director to the following meeting of the Department of Law.

3.7 There shall be an Advisory Committee appointed by the Executive Committee which shall formulate advice and recommendations and which shall consist of:

(i) all members of the Executive Committee;

(ii) up to three persons who shall be members of the teaching staff of the University of Leeds other than the Department of Law whose activities or interests have relevance to criminal justice studies;

(iii) up to twenty persons who shall be practitioners in criminal justice systems (or other appropriate persons).

3.8 The Advisory Committee shall meet once a year, with the Director acting as convener. Special meetings may be held at the request of the Executive Committee.

Amendment to the constitution

4.1 This constitution may be amended by the Council (or any committee acting with authority delegated by the Council) on the recommendation of the Department of Law and the Executive Committee of the Centre.

APPENDIX 2 **MEMBERSHIP OF THE CENTRE FOR** **CRIMINAL JUSTICE STUDIES**

1. Executive Committee

Professor C.P. Walker (Director)

Mr I.D. Brownlee (Deputy Director)

Emeritus Professor N. Jepson

Professor B. Hogan

Mr P.J. Seago (ex officio, Head of Department of Law)

2. Advisory Committee

Emeritus Professor N. Jepson (chair)

His Honour Judge G. Baker

Councillor R. Billheimer (W. Yorks Police Authority)

Sir L. Byford (ex-Chief Inspector of Constabulary)

Mr I. Dobkin (Barrister)

Dr D. Duckworth (Leeds University)
Professor M Green (University of Sheffield)
Mr. K. Hellowell (Chief Constable, West Yorkshire Police)
His Honour Judge Herrod
Mrs P. Hewitt (Stipendiary Magistrate)
Professor E. Jenkins (Leeds University)
His Honour Judge G. Kamil
Lord Justice P. Kennedy
Mr G. Kenure (Probation Service)
Chief Spt. D Lloyd (Commandant, W. Yorks Police Training School)
P.D.G. McCormick (Solicitor)
Miss AE Mace (Probation Service)
Mr R. Otley (Chief Crown Prosecutor)
Rt. Hon. M. Rees (M.P.)
Professor C Smart (University of Leeds)
Mr C. Sampson (H.M. Inspector of Constabulary)
Mr P. Whitehead (Clerk to Leeds Justices)
Mr. J. Whitty (Prison Governor)

3. Lecturer in Criminal Justice Studies

David Wall

4. Research Officers

Christina Hart

5. Visiting scholar

Dr Ilona Pocsik, Department of Criminal Law, Jozsef Attila University, Szeged, Hungary

APPENDIX 3
CENTRE PAPERS
LAW COMMISSION - CONSULTATION PAPER
NO.122 -
LEGISLATING THE CRIMINAL CODE
SUBMISSION FROM THE CENTRE FOR
CRIMINAL JUSTICE STUDIES,
UNIVERSITY OF LEEDS (1992)

1 Preface

1.1 This submission arose out of a seminar at the Centre on 14 July 1992. The discussion was lead by Professor Brian Hogan, and those in attendance included

academics and representatives from the police and prosecution services. The views represented here are purely those of the Centre.

1.2 The seminar was chaired by Dr. Clive Walker, who wrote this submission (with assistance from Edwin Peel) and to whom any inquiries should be addressed.

2 General issues

2.1 It was noted that this paper represents no more than a small tranche of the grander scheme ("A Criminal Code for England and Wales").¹¹¹ Naturally, there must be some disappointment at the very conservative tactics so adopted, but we recognised the political difficulties which would be caused were issues such as homicide, incest and secondary parties to be included. We therefore endorse for the present the strategy of the Law Commission.

2.2 However, we are rather less understanding of the submission deadline of the 17 July. It is hardly likely that such a Bill will be taken up in the first session of the new Parliament and so we cannot see the need for such urgency. We would urge that a period of six months be adopted as the norm for these codification exercises. Otherwise the impression is given that the Law Commission is not really interested in hearing any outside reactions to its views, a feeling which is already well entrenched in regard to government-inspired White Papers.

2.3 Moving to the first issue of substance, there was some concern in the seminar about the "Definition of fault terms" in clause 2. Leaving aside the terms of the actual definitions for the moment, the point was raised that, because clause 2 applies only to Part I offences, the result could be two definitions of mens rea arising in the same case in relation to different offences. Although this problem already exists in regard to recklessness, it would create new confusion so far as offences involving intention are concerned. For example, if D is charged with attempted murder and clause 4 assault, then two separate directions to the jury will have to be given, with obvious dangers of mistake and confusion. This result is a side-effect of the strategy discussed in para. 2.1, we wonder whether it would be preferable to apply the definition of intention in clause 2 to all offences and not merely those in the draft Bill.

3 Answers to question raised in Part IV, para.22.2

3.1 The seminar participants were split on whether the defence of duress should be extended to murder (para.18.14). It was noted that the defence does arise in connection with serious bodily assaults which may happen not to result in death. On the other hand, the view was expressed that murder is a special offence for which society should accept no excuse and that hard cases could (where the facts were available before trial) be dealt with by prosecution discretion. These arguments have been rehearsed by the Law Commission and no new points really emerged.

3.2 A possible compromise position, supported by a minority, was that duress might operate as a partial defence - converting a murder into manslaughter.

4 Answers to questions raised in Part IV, para.22.3

4.1 We were very doubtful whether there should be a special defence of authority or superior orders (para.3.10). It was noted that such a defence might be raised in connection with the application of torture, and English law would then contravene the European and U.N. Torture Conventions.^[2]

4.2 We all accepted that ss.18, 20 and 47 of the 1861 Act should be replaced and simplified (para.7). A number of supplementary matters were then explored.

- We felt that the word "injury" was preferable to other formulations (para.8.9). In particular, there might be dangers with the notion of "personal harm" being extended to issues such as personal reputation which were not the proper business of the criminal law.

- There is no definition of what is "serious" for the purpose of the distinction between clauses 4 and 5 on the one hand and clause 6 on the other (para. 8.15). Although there might be some inconsistencies arising between juries if left undefined, we could envisage no distinct formula which would not be either confusing or subject to loopholes. Thus, we would rely on the ordinary meaning of the word.

- As for the inclusion of "impairment to mental health" (para. 8.20), we noted that such a form of injury had to some extent already been recognised by the courts.^[3] The possibility was raised of a more precise definition being derived from cases in tort dealing with nervous shock (such as recognised psychiatric illness).^[4] However, we would accept the term without qualification.

4.3 Aside from the general point raised in our para.2.3 above, we found the definitions of mental state in clause 2 broadly acceptable (para.5).

4.4 There was some discussion as to whether assault and what is presently termed battery should be divided into distinct offences (para.9.7). It was accepted that the two forms of "assault" do markedly differ in terms of actus reus. However, given that the two forms of activity are often found together and that no distinction is made in terms of procedure or sentence, we were content to leave both in clause 8 as alternative modes of commission of one new offence of "assault".

4.5 The question asked about "trivial touchings" (para.9.17) prompted a general discussion about the availability and extent of the defence of consent. A number of points were made.

- There was some concern that the notion of consent was undefined. This was felt to be a missed opportunity to deal with the unsatisfactory rules relating to "consent" obtained by fraud.^[5]

- The case of Brown^[6] convinced some of us that the defence of consent should also be amended so that it applies not only to clause 8 type assaults but also to clause 6 type assaults.

4.6 The separate offences in clause 9 (para.26) and 10 (para. 9.29) should be retained as signals to the community of the special protection which the police, as persons with a duty to enforce the law, deserve. The differentiation already has express sentencing

implications in the case of clause 10, and is likely to lead to some extra penalty in practice under clause 9. Such results would be acceptable to us.

4.7 In regard to the defences selected in Part II (para. 14.1), we feel that there may be a number of other defences which could have been included. These comprise infancy and mistake of fact.^[7] We were also concerned about the suggested approach to the "defence" of intoxication. If the Law Commission itself is not convinced (at para.2.15) that the provisions contained in the Bill are satisfactory, it may be preferable to preserve the status quo under clause 1(3) pending further review.

4.8 Transferred malice is retained by clause 25 (para. 16.7). The seminar was split on whether this was desirable. Some thought that a charge of attempt was adequate to penalise such conduct. Others felt that the doctrine achieved a just solution through perhaps illogical means.

4.9 The extent of the defence of duress (paras. 18.8, 18.9, 18.12) would be more restricted than at present, especially in the light of clause 26(3).^[8] There were several responses.

- Most of us accepted that the threat of prosecution would not in most cases stop the person under perceived duress committing the crime. Therefore, the limitations on the defence (such as non-application to murder and chance to ask for official protection) can only be supported if they are felt to be a necessary policy signal to the public. This argument is perhaps at its strongest in regard to murder (because of the heinous nature of the offence) and in regard to perjury (in a court-room situation, any mention of a threat will be taken seriously, and the decision to suppress will have been calculated and reflected upon).

- It in any event appeared unfair that the defence is not available even where official protection will, as opposed to may, be ineffective. Surely, it is asking too much of persons to refrain from acting under threat in those circumstances.

4.10 In regard to clause 28, we welcome the need for an immediate necessity for the use of force and the reversal of the precedent in the Reference under s.48A of the Criminal Appeal (Northern Ireland) Act 1968 (No. 1 of 1975).^[9] The reform is, however, a modest one, and the issue of the application of lethal force by official agencies remains deserving of a distinct, more precise clause. Such use of force causes great controversy not only in relation to terrorism^[10] but also in other, more "normal" policing contexts, and since part of the controversy is produced by the very vagueness of existing provisions, the opportunity for a real improvement is here being wasted.

Submission to
The Home Affairs Select Committee
Inquiry into the Lord Chancellor's Proposals for
Changes in

**Eligibility for Criminal Legal Aid in the Magistrates
Courts**
24th February 1993
**Recent Developments in Criminal Legal Aid: Falling
Prosecution Rates, the Response of the Media and the
Implications of Fewer Applications for Criminal
Legal Aid.**

David S. Wall and Adrian Wood:

Centre For Criminal Justice Studies, University of Leeds.

Abstract^[11]

This submission considers two related issues, firstly, the fall in prosecution rates and the media response and secondly, the implications of fewer applications for criminal legal aid.

Drawing upon ongoing research for the E.S.R.C. ^[12] into the administration of criminal legal aid in the Magistrates Courts the authors observe that contrary to the simplistic picture presented by the media of a criminal justice system in a state of collapse there are in fact a number of logical reasons to explain the fall in prosecutions. Reasons which are in fact, the unpopular but successful conclusion to recent policies designed to ease the overburdened criminal justice system.

Of particular interest to the Home Affairs Select Committee is that the subsequent drop in applications for criminal legal aid creates savings that will be approximately equal to the Lord Chancellor's anticipated savings on legal aid expenditure. The authors suggest that this saving could be used to allow time for a full debate over the Lord Chancellor's policy intentions, and indeed the future of criminal legal aid.

In response to recent criticisms levelled by, amongst others, the Public Accounts Committee and the National Audit Office, the Lord Chancellor's Department has sought to increase its fiscal accountability to the Treasury and decrease net expenditure on criminal legal aid. The methods used to achieve these goals are the introduction of Standard Fees, the use of circular directives to control discretionary decision-making (with the implicit aim of reducing legal aid grants) and the introduction of cuts in eligibility for legal aid. Each proposal has met with fierce opposition from the legal profession, human rights groups and the Judiciary.

Independently of the debate over the Lord Chancellor's plans for legal aid, and despite a national increase in recorded crime of between five and ten percent ^[13], a cocktail of policies operating elsewhere within the criminal justice system has conspired to reduce both court workloads ^[14] and applications for criminal legal aid. This submission seeks to explain the drop in prosecutions, examine how this reduction is reflected in recent legal aid statistics and consider the implications of these trends for the debate on criminal legal aid.

1. *The drop in the number of cases coming before the courts*

The recently discovered fall in court work load was first reported in *The Lawyer* ^[15] when solicitors associated with the Legal Aid Practitioners Group (LAPG) and the Criminal Law Solicitors Association (CLSA) in the south of England commented that 'business was quiet'. This was confirmed by members of the Manchester Law Society's Magistrates' Courts Committee and has subsequently inspired much discussion. On further investigation it is mooted that a number of processes have conspired to cause a reduction in cases coming before the courts.

POLICE TACTICS - The police have become reluctant to pursue cases for a number of reasons. Firstly, it is an acknowledged fact that there is an increasing tendency for police managers to only allocate resources to complaints which show a strong probability of conviction or alternative resolution, particularly in property cases. Secondly, police morale has fallen due to a backlash caused by the recent (and widely publicised) miscarriages of justice and internal police investigations. Officers may feel despondent about the unlikelihood of their work leading to prosecution and are therefore more likely to pursue cases where the evidence is strongest and there exists a strong chance that their casework will lead to a prosecution. Thirdly, the police have been wary of, and somewhat discouraged by, the recent changes to court sentencing powers by the Criminal Justice Act 1991 and have looked increasingly towards proceeding via the use of cautions and high profile deterrence tactics. ^[16]

CAUTIONING - Home Office recent policy on cautioning ^[17] has clearly had an impact upon prosecutions. In Wolverhampton, for example, there was a 17.8% drop in prosecutions between 1991 and 1992 and the main reason given for this has been a dramatic increase of 50.1% in the use of cautions as an alternative to prosecution. In another city (wishing to remain anonymous) cautions have increased by 49% (39% force wide) and prosecutions have dropped by 15%. These experiences appear to be fairly typical of the situation found in most other areas.

JUVENILE POLICIES - The Criminal Justice Act 1991, since its introduction in October 1992, has considerably changed the way in which young people are dealt with by the courts. For example, s.68 with schedule 8 causes most 17 year olds to now be dealt with by the Youth (formerly Juvenile) Courts whilst s.69 allows 16 year olds to make guilty pleas by post. Greater efforts are now being made to divert under-14 year olds away from the criminal justice system. Collectively, these measures reduce the overall numbers of young offenders in court whilst removing many of the 17 year olds from the adult court statistics.

PROSECUTION POLICIES - The Crown Prosecution Service (CPS) appears to be discontinuing weak cases and reducing charges to both reduce overall legal costs and secure convictions. The effects of recent celebrated examples of miscarriages of justice are reputed to weigh heavily upon CPS thinking. Defence lawyers have even suggested that, external to pre-trial review, there is a national CPS policy on reducing certain frequently contested offences. They cite examples of offences of assault under s.20 and s.47 of the Offences Against the Person Act 1861 being reduced to common assault if Crown Court is elected.

2. The media and public expectations of criminal justice

In their recent coverage of the fall in prosecution rates the popular press have had a field day presenting the public with, as they see it, yet further evidence of the criminal justice system's general failure to cope with the ever-rising tide of crime. But it is quite clear, that the reasons for the fall in prosecutions and in cases coming before the courts are both numerous and complex, and that a number of very different processes are at work. What is also clear is that this phenomenon does not arise solely as a result of the failure of the criminal justice system to cope with either an overwhelming rising tide of crime, nor can it be attributed to its own uncaring cost-cutting internal policies. What we are in fact witnessing, is the successful (albeit unpopular) conclusion of a number of policies that have been introduced in response to earlier concerns about overcrowding in British prisons, the overburdening of the courts, the treatment of juveniles and the inefficiency of the system. It is, then, quite ironical that these concerns were championed by the very media that are now claiming that the criminal justice system is in a state of disarray. It is also an unfortunate fact of life that whatever the state of the system, criminal justice issues will always generate great media attention and thus create (often false) demands and agendas for reform.

3. *The effect of the fall in court workload upon applications for criminal legal aid*

Whilst the overall drop in prosecutions between September 1991 and September 1992 was 4.3% (Sir Nicholas Lyell in a written reply to M.Ps 11/2/93) the reduction in the prosecution of the more serious offences is hidden by a rise in road traffic offences, and private prosecutions. It is estimated, from the above statistics and available court data that the number of indictable and summary non-motoring offences reaching court fell by as much as 15% during 1992.

The following sample of quarterly statistics illustrate the changes in the grant and refusal of legal aid in seven English courts during 1992.

Table 1: - The Grant and Refusal of Legal Aid in Seven English Magistrates' Courts (Both adult and youth courts)

Quarter End	All Apps	Grant	Refuse	%Grant	%Refuse
Dec91	7032	6668	363	94.8%	5.2%
Mar92	7214	6817	397	94.5%	5.5%
June92	6310	5920	390	93.8%	6.2%
Sept92	6396	5958	438	93.2%	6.8%
Dec92	6044	5598	446	92.6%	7.4%

Table 2: Change Between December 1991 and December 1992

Overall refusal rate = +2.2% Legal Aid Applications = -14.1% n

Tables 1 & 2 clearly show that there has been a small increase in the refusal of legal aid applications and a marked decrease of 14% in the number of applications for criminal legal aid: which is roughly similar to the estimated decrease in the number of cases reaching court. These changes would appear to support the predictions of legal aid policy makers, the legal profession and the courts that the reduced likelihood of custody under the new sentencing regime would lead to fewer legal aid applications being granted. Whilst the logic of this argument is suspect it is nevertheless the case

that legal aid decision makers rely very heavily upon the custody criterion when determining criminal legal aid.^{[18] & [22]}

In addition to the projected rise in the refusal of legal aid applications it was thought that solicitors, anticipating the low risk of a custodial sentence, would filter out cases which they felt would not stand much chance of being granted. In short their role as gatekeeper to the legal aid system would increase.^[19]

Further analysis finds little evidence, as yet, to substantiate the predictions of the effects of the Criminal Justice Act. Whilst there exists some anecdotal evidence to suggest that solicitors were indeed 'filtering out' weak cases it is found that this practice has not increased and that legal aid application practices have not changed significantly since the introduction of the Act. More importantly, it is very clear from Tables 1 & 2 that the increase in refusals has been gradual and not immediate, thus discounting the effects of the Act on either the number of legal aid applications or on the refusal rate. These findings contradict earlier claims that the refusal rate has risen dramatically since October 1992.^[20] However, it is early days and given that all new legislation requires a 'lead in' period during which the decision makers internalise the rules of a newly imposed normative structure the full effects of the Act upon applications for legal aid will probably not be realised until the middle of 1993.^[21]

4. The implications of the reduction in criminal legal aid applications

Based upon the Legal Aid Board's own figures for expenditure on criminal legal aid of £286.1 million for 1991-1992, a reduction of 15% would result in a saving of £43 million, precisely the figure that the Lord Chancellor is hoping to save. It could be argued that these figures fail to account for the fact that many of the cases that are not now coming before the court will have been lesser charges that would not attract legal aid but evidence of legal aid determination practices shows that ninety percent, or more, of these applications, would have been granted legal aid had they reached court.^{[18] & [22]}

Whilst it is widely acknowledged that there must be changes in the administration of criminal legal aid, there is, quite justifiably, a great deal of debate over what these changes should be and how and when they should be introduced. The current policy of dictating changes without adequate consultation, or research, is clearly causing great upset and much hostility. Hostility which creates its own agenda and dominates the policy making process.

The potential savings in legal aid expenditure created by this shortfall in applications could be used to buy time in order to allow a discussion of the full implications of the proposed changes to take place. Thus, the opportunity now exists to bring to a halt the present highly charged and counter-productive wrangling over the future of criminal legal aid.

5. Summary

a) There has been a drop in prosecutions and a subsequent reduction in cases coming before the courts of between 10 and 15 percent.

- b) Contrary to the simplistic picture presented by the media of a criminal justice system in a state of collapse, there are in fact a number of logical reasons to explain the fall in prosecutions. Reasons which are, in fact the unpopular but successful conclusion to recent policies the have been designed to ease the overburdened criminal justice system.
- c) The fall in the number of prosecutions has led to a drop in applications for criminal legal aid of between 12 and 15 percent.
1. The drop in legal aid applications will create savings in criminal legal aid expenditure that will approximately equal the Lord Chancellor's intended saving of £43m for 1993. The authors suggest that this saving could be used to allow time for a full debate to take place over the Lord Chancellor's intended eligibility changes, and indeed the future of criminal legal aid.

AN EVALUATION OF PRE-TRIAL REVIEWS IN LEEDS AND BRADFORD MAGISTRATES' COURTS

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SUMMARY

Case settlements arising from pre-trial reviews can constitute a significant benefit to the courts, enabling their lists to be re-organised at an earlier stage and so enhancing their efficiency.

INTRODUCTION

Strategies to increase the efficiency of the criminal justice system have included the provision of legislative and administrative guide-lines, increased resource allocation for courts, and the establishment of various forms of pre-trial hearings. The use of pre-trial reviews (PTRs) in Magistrates' Courts represents one such court-based attempt to increase general efficiency. In this article we evaluate the operation of PTRs in Leeds and Bradford Magistrates' Courts by examining the impact they have on *case streamlining* and *case settlement*.

PRE-TRIAL REVIEWS IN MAGISTRATES' COURTS

Although PTRs take different forms in different courts, typically they are informal meetings held between defence and prosecution solicitors, presided over by a court clerk, at which a discussion takes place about issues likely to arise in cases proceeding to trial. Although various forms of pre-trial hearings had been a well-established feature in civil courts in England and in the higher criminal Crown Court for a number of years, PTRs only began to make an appearance in some Magistrates' Courts in the early 1980s. The absence of provisions for advance disclosure in magistrates courts led to the emergence of PTRs primarily as an extra-statutory mechanism whereby information could be informally exchanged between prosecution and defence in advance of the trial date and in the expectation that a fairer and more focused trial would ensue.

Following the introduction of advance disclosure into the Magistrates' Courts in 1985, some courts and court-users claimed that much of the utility of PTRs had dissipated. A number of prosecutors had become reluctant to participate, claiming that the advance disclosure dimension of PTRs unduly favoured the defence, and that some defence solicitors abused the system by using it to obtain unnecessary adjournments, thus adding to rather than reducing delay. In addition it remained the case that even with the inclusion of a PTR, a large proportion of trials did not proceed as scheduled, often due to guilty pleas being entered immediately prior to trial. As a result of negative perceptions such as these, several courts which had pioneered the development of the PTRs subsequently either curtailed their use or totally abandoned them. Leeds Magistrates' Court, for instance, among the first to experiment with PTRs, greatly reduced its emphasis on this procedure, while the PTR systems which used to operate in Nottingham, Coventry and Wolverhampton were discontinued.

Despite this somewhat negative climate, however, we found from a national survey of all petty sessional districts in England and Wales that the number of Magistrates' Courts which continue to operate the procedure is substantial and continues to grow. Of the 218 courts which responded to our survey, forty three Magistrates' Courts currently operate a formal PTR system, while a further thirty Magistrates' Courts operate PTRs on an informal or ad hoc basis. Additionally, the introduction of PTRs is being actively considered in twenty one other Magistrates' Courts. This continuing and growing interest in the potential of PTRs for alleviating some of the immense pressures under which the criminal justice system currently operates suggests that for at least some courts the benefits of PTRs appear to outweigh the costs.

PRE-TRIAL REVIEWS IN LEEDS AND BRADFORD

In Leeds, the PTR takes place in open court with the defendant present, while in Bradford, the PTR is held informally outside the court-room with the defendant available for consultation with his or her solicitor.

The data for our present study were collected from records of criminal cases processed in Leeds and Bradford Magistrates' Courts between April and September 1991. In all, data on the cases of 272 defendants in Leeds and 462 defendants in Bradford were collected, comprising every case in both courts in which there had been a PTR during the research period, together with a control group of all cases of a roughly equivalent trial length-estimate in which PTRs were not held.

Although other indicators of efficiency are examined in our main report, we concentrate in this paper on detailing our findings in relation to what we take to be the main indicators of court efficiency: the overall number of appearances made by each defendant during the progress of his or her case, the number of trial hearings for which each defendant was listed, and the length of time required overall to dispose of the cases. We go on to provide data on the proportion of case settlement reached at PTR. In this way we attempt to assess the success of PTRs on the basis of their impact on *case streamlining* and *case settlement*.

Case Streamlining

Court Appearances

In the Leeds cases, the mean number of appearances for PTR defendants was 5.8 (Std. Dev. = 2.8), while that for non-PTR defendants was substantially lower at 4.9 appearances (Std. Dev. = 3.0). However, once the number of PTRs held for each defendant is excluded from the analysis, no statistically significant differences exist between the two groups. Indeed, the mean number of appearances (excluding PTRs) is slightly higher for non-PTR defendants than for PTR defendants (4.9 and 4.6 appearances respectively). In other words, apart from the PTR itself, the inclusion of some sort of review hearing does not bring with it a plethora of other additional remands, but may actually assist in streamlining case progression to some extent.

The data in Bradford echoed those in Leeds. Defendants who had PTRs had a significantly higher ($p=0.031$) mean number of court appearances than non-PTR defendants, requiring 5.5 (Std. Dev. = 2.7) and 4.8 (Std. Dev. = 3.4) appearances respectively. However, when the PTR appearances themselves are removed from the analysis, the mean number of appearances for PTR defendants is reduced to 4.2, a figure which is considerably lower than that for non-PTR defendants (although not significantly so, $p=0.72$).

Clearly there is some additional cost in holding PTR hearings, and given that 17.5 % of defendants in Leeds and 16.2 % of defendants in Bradford required more than one PTR, these costs are not insignificant. Nevertheless, this part of the analysis reveals that in neither court in our study did the holding of PTRs result in or encourage a proliferation of extra hearings. The additional cost of PTR cases appears to be confined to the cost of the PTR hearings themselves, and that is a very modest outlay given that very few PTRs last more than a few minutes.

Trial Hearings

The mean number of trial hearings for PTR defendants in Leeds was 1.16 and that for non-PTR defendants 1.38, a difference which is statistically significant, ($p=0.012$). However, if one excludes from the analysis those cases which were settled at PTR and for which, consequently, there was no trial hearing, we find virtually no difference at all between PTR and non-PTR defendants (with means of 1.37 and 1.38 trial hearings respectively). In Bradford, defendants having PTRs had a slightly smaller mean number of trial hearings than defendants not having PTRs (with means of 1.28 and 1.31 trial hearings respectively). However, when the cases settled at PTR are excluded from the analysis, the mean number of trial hearings for PTR defendants rises to 1.44. Although this difference is not statistically significant, it is almost so ($p=0.062$). It is

likely that the relatively greater complexity of PTR cases in Bradford contributes to this difference.

These findings suggest that once defendants proceed beyond a PTR, they are not any less likely to have their first trial adjourned than are non-PTR defendants. Given that our samples for comparison were drawn up on the basis of time-estimate rather than any more rigorous assessment of complexity, it may be the case that PTR cases contain more elements of complexity and that, therefore, parity of trial delay with non-PTR cases is a positive outcome. However, it seems safer to conclude merely that the only sure saving of court time arises when cases are settled at PTR and that cases not settled there may well be just as protracted by trial adjournments.

Case Disposition Times

In terms of the mean number of days from first appearance to final disposition for cases processed in Leeds, PTR defendants took 173 days (Std. Dev. = 102; Median = 161) compared with 164 days (Std. Dev. 92; Median = 137) for non-PTR defendants. This nine day difference was not statistically significant ($p=0.475$). In Bradford also, the cases of PTR defendants took longer to process. The mean case disposition time for PTR defendants there was 104 days (Std. Dev. = 67 days) while for non-PTR defendants it was 93 days (Std. Dev. = 74 days). While this difference is substantial, it is not statistically significant ($p=0.11$).

The necessity for the additional appearance of the PTR has implications for the speed at which cases can be processed. In Bradford, when a case proceeding to trial is also listed for PTR, the PTR hearing date is set at the same court hearing at which the trial date is fixed. In this way, the PTR hearing is "slotted in" without inviting extra delay in fixing the trial. However, for those cases listed for PTR in Leeds, the practice is not to fix a trial date *until* the outcome of the PTR is known. Therefore, unless the case is disposed of at PTR, the case is inevitably prolonged to some degree, usually for between two to three weeks. This delay in fixing a trial date may help account for the longer case disposition times of PTR cases in Leeds, although the more leisurely pace may prove advantageous in deriving the maximum benefits from case settlement, as shall be discussed shortly.

These findings suggest the insertion of the inevitable extra hearing only marginally slows down the whole process. It appears that while the inclusion of a PTR increases somewhat the case disposition time, it does not do so to any appreciable extent, whether in the relatively short timetable of Bradford or the relatively long timetable of Leeds.

Case Settlement

Immediate Case Settlement

In Leeds, almost one fifth (18.1 %) of all defendants who were involved in PTRs had their cases disposed of at that hearing. In 9.5 % of the cases the defendant pleaded guilty to all or some of the charges laid against him or her. An almost equally high proportion of defendants had all charges withdrawn by the prosecution. Since these withdrawals did not involve the entry of any guilty pleas, and thus no "gain" for the prosecution, this figure is higher than might be expected. In Leeds, given that trial

hearings are not fixed until the PTR itself, there is the added benefit of settlement of not even having to amend the court's lists of planned trials.

TABLE 1
Case Settlement at PTR in Leeds and Bradford Magistrates' Courts

<i>Outcome of PTR Leeds Bradford</i>	Leeds n	Leeds %	Bradford n	Bradford %
No Settlement Reached	95	81.9	245	80.6
Prosecution Withdraws	10	8.6	14	4.6
Defendant Pleads Guilty	11	9.5	35	11.5
Provisional Settlement	-	-	10	3.3
<i>Total</i>	116	110.0	304	100.0

The rate of immediate case settlement achieved in Bradford, while lower than that in Leeds, was nonetheless substantial. Approximately one sixth (16.1 %) of all cases which went to PTR were settled there, either as a result of guilty pleas or withdrawn charges or a combination of both. In addition to the cases settled at PTR, firm indications were given (which in every case were fulfilled) in respect of a further ten defendants that, at trial, either guilty pleas would be entered (seven defendants) or the charges would be withdrawn (three defendants). If these cases are considered together with those directly settled at PTR, the rate of case settlement at PTR rises to 19.4 %.

Advance Notice of Case Settlement

In addition to the case settlements reached at the PTR itself, courts also benefit when cases discussed at PTR are settled in the period of time between the PTR and the trial. These benefits are greatest when the length of notice of settlement is sufficient for the court to alter its lists and use the vacated trial time for other business. In the vast majority of trials which collapsed in Leeds, the court received no advance warning, suggesting that the settlements were agreed, often literally, at the doors of the court. However, in the cases of PTR defendants, the court was warned in advance of either a withdrawal by the prosecution or a change of plea in 16.4 % of cases, compared with only 5.3 % of non-PTR defendants. Furthermore, the average length of notice given in PTR cases was twenty four days, as compared with a mere four days in non-PTR cases.

In Bradford no advance notice of compromise was given in the great majority (85 %) of instances where trials did not proceed as scheduled. When PTRs had been held, however, the court was twice as likely to receive advance notice of a trial compromise than when no PTR had been held, being informed in 18.5 % and 8.9 % of cases respectively. Overall, an average of ten days' advance notice was given, with PTR cases giving an average of four days more notice than non-PTR cases.

CONCLUSION

Our evaluation of the effectiveness of the PTR systems in Leeds and Bradford Magistrates' Courts involved comparing various features of the cases of two groups of defendants, one which had PTRs and one which did not. A substantial proportion of cases which were listed for PTR were settled there. In addition, when advance warning was given to the court that a trial was not to proceed as scheduled, the proportions of defendants giving notice was higher and the length of the notice longer when the defendant had a PTR. Once the defendant proceeded beyond the PTR hearing, however, few differences were evident between the groups. Indeed, if anything, PTR cases were likely to involve more hearings, no fewer trials, and last longer than non-PTR cases.

Case settlements arising from PTRs constitute a major benefit to the courts. Of course, even if no PTR had been held in these cases, it is possible that at least some of the cases settled there would have been settled at some other stage in the court process. But the early settlements achieved at PTR or between PTR and trial enable the courts to re-organise their lists at an earlier stage and so operate with greater efficiency, fluidity, and certainty. It is in relation to this enhanced information control that PTRs are of the greatest benefit to the court system. As the costs of PTRs are low, and the benefits of case settlement substantial, Magistrates' Courts may well feel that PTRs have much to commend them. At the same time, we suggest it would not be helpful for policy-makers to impose a rigid blue-print upon all courts considering introducing a PTR system. Formal rules and guide-lines are unlikely, of themselves, to achieve the desired economies of speed and efficiency. Indeed, they may even contribute to their own downfall by undermining the conciliatory, non-adversarial ethos essential to their working. Instead, we suggest that account should be taken of local factors and the level of co-operation contained within each court before embarking upon any formal system of pre-trial review

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1 Law. Com. no.177, 1989.

2 Cmnd.9593, 1985; Cm.339, 1988.

3 Miller [1954] 2 Q.B. 282.

4 Hinz v. Berry [1970] 2 Q.B. 40.

5 See: Clarence (1888) 22 Q.B.D. 23; Bolduc and Bird (1967) 63 D.L.R. (2d) 82 (S.C.C.).

6 [1992] 2 W.L.R. 441.

7 There is of course some legal controversy here as to whether the test should be objective or subjective. Compare: Gladstone Williams (1983) 78 Cr. App. R. 276; Tolson [1971] 2 Q.B. 202.

8 Compare: Hudson and Taylor [1971] 2 Q.B. 202.

9 [1977] A.C. 105.

10 See: Walker, C.P., *The Prevention of Terrorism in British Law* (2nd ed., 1992, Manchester University Press) pp.163-4.

11 The points raised in this submission are largely drawn from two recent articles written by David Wall and Adrian Wood they are 'Buying time for the debate over criminal legal aid,' *New Law Journal*, 5/3/93 and 'Court(ing) Disaster: Media Hype and Falling Prosecution Rates', *LAPG News*, Spring 1993.

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