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PROSECUTIONS OF SOLDIERS - NORTHERN IRELAND

The discussions between GOC Northern Ireland, the Attorney General and DALS on 8th January 1974 were most cordial and did much to allay fears and restore mutual confidence.

The Attorney General stated that he had decided that Sgt Crossland should not be brought to trial since there was some evidence that the offence had been dealt with summarily by the Commanding Officer, thus providing a bar under s.133(1)(b) of the Army Act 1955.

In the case of Rfn Ross, which was the GOC's other main concern, there was evidence from two independent witnesses on the Attorney General's file which was unknown to the Army. The GOC tells me that this additional evidence could throw a different light on the case. This evidence from non-military sources, if it is reliable and sound, shows that Ross could not have been misled by Mitchell's behaviour into believing that a genuine and dangerous attack was being mounted either on Springfield Road Police Station or on Ross himself. Nevertheless, although I can see no grounds for further contesting the decision to prosecute, I am not at all easy about this case. We shall, of course ensure, as always, that the soldier gets the best possible defence, as should he be found guilty, we could have a serious morale problem in his Battalion on our hands.

/During

During further very detailed discussions in Belfast on 15th January 1974 between the Attorney General, DALs, DPP and the senior members of his staff, the Attorney General agreed to the following arrangements which should be of great value:

- a. Whenever the conduct of a soldier on duty is investigated by the RUC or RMP the full military background will be given to the RUC by the Commanding Officer and will thereafter be treated as "expert evidence".
- b. In cases where a prosecution seems likely ADALS may consult DPP or if necessary the Attorney General. The latter will provide the background information in his possession on which a prosecution might be based. Although the whole contents of the police file will not be divulged, this background evidence should enable ADALS to advise the GOC as to the likelihood of, and reasons for, a prosecution and should avoid the sort of misunderstanding that arose in the Ross case.
- c. If the GOC considers that a prosecution in any particular case would be contrary to the public interest he should make representations to the Attorney General.
- d. Where in relation to the prosecution of a soldier, a direction is sought from the Attorney General by the Director of Public Prosecutions for Northern Ireland, the Attorney General will, where he considers it proper, request the GOC to furnish him with such information as may assist the Attorney General to determine if a prosecution is in the public interest.

The GOC for his part has assured the Attorney General that he will do all he can to maintain confidence in the administration of justice in Northern Ireland and to ensure maximum co-operation between the military authorities at all levels and the RUC.

I think these meetings have been highly successful, although there still remains a danger of a soldier being tried as a criminal when the GOC considers that he was performing his military duty properly, or was guilty of no more than a bona fide error of judgement in difficult circumstances. It seems to me that it is only in these unlikely circumstances that Ministerial intervention might become necessary. In the meantime there seems every reason to hope that there will never be a conflict between the Attorney General and the GOC as to what sort of conduct merits a criminal trial.

As the Attorney General has given so much time to the GOC and DALs and gone out of his way to help, I believe that it would be good tactics for you to write to him and I attach a suggested draft.

24 Jan 74

B.S.
AG

DRAFT

ATTORNEY GENERAL

I have heard of the very useful and from our point of view, reassuring discussions which you have had with General King and the Director of Army Legal Services about the worries which we all feel when soldiers in Northern Ireland have to be prosecuted for alleged offences on duty. The GOC is much relieved to know the extent of your personal interest and to have your explanation of the position. This letter is merely to let you know how grateful I am to you for giving up so much time to consider the matters put to you.

For my part, I readily appreciate how concerned you have been to allow for the very difficult position of the soldier in circumstances which are certainly not war, but cannot with accuracy be described as peace, and although I am bound to feel uneasy about the danger to morale of prosecutions for serious offences on duty, I accept that in present circumstances there are no politically practicable ways of avoiding this.