

# NATIONAL ARCHIVES

## IRELAND



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Basic problems of the Supergrass SystemA System

1. The first problem is that it is a system. As Northern Ireland judges point out, the evidence of accomplices has been accepted in British and Irish courts for hundreds of years. For over three hundred years, however, courts have warned of the dangers of abuse and injustice inherent in giving accomplices immunity or other inducements to give evidence. In 1650, Chief Justice Hale wrote: "the truth is that more mischief hath come to good men, by these kinds of approvements (granting of immunity) by false accusations of desperate villains, then benefit the public by the discovery and convicting of real offenders." In 1975, in regard to the use of supergrasses by the London Metropolitan Police, Lord Justice Lawton warned that these comments, should be remembered by the Director of Public Prosecutions. A practice developed in the British Courts, and it is now a rule of law, that where an accomplice gives evidence for the prosecution, it is the duty of the judge to warn the jury that, although they may convict on his evidence, it is dangerous to do so unless the evidence is corroborated. "Corroboration" is independent evidence which affects the accused by connecting or tending to connect him with the crime.

2. It will be seen from this that the use of accomplice informers has been suffered rather than encouraged and that the tenor of British Court decisions until very recently at least is that it can be justified only in exceptional and isolated cases. The modern practice of supergrasses, on the other hand,

has come in for severe criticism from lawyers and from organisations such as Amnesty International and the Cobden Trust, precisely on the grounds that the practice is being encouraged, has become systematic rather than isolated and in the case of Northern Ireland, lacks safeguards. Since the first Northern Ireland supergrass, Christopher Black, began to inform in November 1982, there have been no fewer than nine supergrass trials involving hundreds of defendants and hundreds of charges. The resort by the police to accomplice informers in so many cases, for so many defendants, on so many charges, over such a short period of time as four years, must be considered as a conscious and systematic use of the legal provision for accomplice evidence.

### Uncorroborated Evidence

3. The second problem is uncorroborated evidence. There had been little corroborated evidence in the supergrass trials. In one case, that of John Grimley, a man with a history of psychiatric illness, the court had no option but to dismiss many of the charges because of the blatantly ludicrous lies of the witness. In other cases, however, many people have been sentenced to long terms of imprisonment on the uncorroborated evidence of supergrass, or on supergrass evidence "corroborated" by dubious other evidence, including alleged "confessions". The Northern Ireland judges have duly "warned" themselves against convicting on the evidence of the supergrass unless it is corroborated, but in many cases notably in the recent judgement of Mr. Justice Carswell in the Kirkpatrick case, have stood on their heads to rationalise their acceptance of the uncorroborated supergrass evidence. At best the provision for a judge to warn himself in the absence of a jury is "an unreal mental operation" as described by Lord Gifford (pamphlet for the Cobden Trust, page 5). At worst in Northern Ireland, it provides a spectacle for the nationalist and Catholic population of a unionist and Protestant Judge acting in an unscrupulous and unfair manner.

Burden on the Judge

4. It is impossible to accept that a judge acting entirely alone can be both a fair arbiter of the law and an accurate decider of fact in both the preliminary hearing and the trial, where the trial can last for a year or more, the number of defendants can exceed thirty, the charges can run into hundreds and the evidence is supplied almost entirely by one man sitting opposite the judge for long periods in the witness box. The demands on the individual judge are simply so overwhelming as to make the ultimate decision of the court seriously open to question even if the judge concerned were considered to be a paragon of fair-mindedness and the equivalent or better of twelve jurymen in assessing fact. Of course, judges are not so considered in Northern Ireland and that compounds the problem.

Delays and long remand periods

5. Delays in preparing for the trial and the subsequent appeal, the refusal of bail and the frequent granting of adjournments to the prosecution, have led to defendants being remanded in custody for long periods, in some cases for three years or more. The delays in preparing for trial are caused by preparation of the prosecution case (including coaching by the police of the supergrass), by time consuming court procedures, in particular the preparation of transcripts for appeals, by the addition of fresh charges, often by other supergrasses, and by the overloading of the court system which is due itself to the relatively small number of judges on the Supreme Court judicature (nine in all). The lengthy periods in remand custody cause perhaps the greatest sense of grievance among the defendants and among the nationalist population in general. They say that it amounts to internment under another name. The police naturally believe that they have the right people in remand and at least off the streets, and are also naturally concerned with ensuring that people who have killed members of

the RUC as well as ordinary members of the population should be kept off the streets. The Police had the same view, however, of internment itself, and in that case it was later discovered that they had made appalling mistakes in respect of many cases.

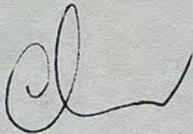
### The Police/Supergrass relationship

6. The early supergrasses were given immunity from prosecution; Black, Bennett, Grimley, Quigley, Morgan, Gilmore and others. McGrady was not given immunity and neither were Kirkpatrick and Allen more recently. Several of those who became supergrasses but retracted their statements were also given immunity including Sean Mallon and Jackie Goodman of the INLA and Robert Lean and Patrick McGurk of the IRA. There is also the inducement of financial and other assistance in establishing a new life after the trial. The existence of this inducement was confirmed by the Attorney General to the House of Commons in 1983. These inducements encourage the emergence of supergrasses especially among people who are likely to spend most if not all of their lives in prison. The relationship between the police and the potential supergrass, as it has been analysed by Lord Gifford, shows that the potential supergrass may say anything which will interest the police, whether true or false, and may even have statements prepared for him by the police which he knows to be false. Gifford's interview with Robert Lean and his assessment of Lean's story is evidence of the police intervention just described. Whether the police intervene or not, however, the supergrass clearly has a strong incentive to stick to his story and to make it appear credible in court. There have, therefore, been allegations of coaching and rehearsal of supergrasses by the police which seem to be well-founded. In some cases the combination of the resourceful supergrass with careful coaching and rehearsal has produced a "brilliant witness" (Mr. Justice Kelly's view of Christopher Black). On other occasions, for example in the case of Grimley, it has not succeeded. In yet other cases, for example, in the case of Kirkpatrick, the judge has chosen to

ignore lies which he himself recognised in the witness' testimony, in favour of the view that the witness was telling the truth because he did not wish to be found out by the judge, and so lose the case for the prosecution and forfeit the inducements offered to him (apart from being charged with perjury).

Received Bias against Nationalists

7. The <sup>last</sup> ~~fourth~~ problem is that the supergrass system has weighed most heavily against the nationalist community. Only two of the nine trials which have taken place have involved loyalist supergrasses and because of the dismissal in one case and the successful appeal in the other (Allen and Bennett respectively) loyalists do not at present feel threatened by the supergrass system. The prisoners now behind bars as a result of the evidence of supergrasses are all on the nationalist side.



Declan O'Donovan  
December 1985.