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IRISH CATHOLICS IN BRITISH COURTS:  
AN AMERICAN JUDICIAL PERSPECTIVE OF THE  
GILBERT ("DANNY") MCNAMEE TRIAL

ANDREW L. SOMERS \*

I. INTRODUCTION

In August 1986, Gilbert "Danny" McNamee travelled on a daily basis from his home in Crossmaglen, Northern Ireland, to his place of employment at an electronics shop in Dundalk, Southern Ireland.<sup>1</sup> He lived peacefully in Crossmaglen until that night in August when British Special Air Services (SAS) soldiers arrested him at his flat.<sup>2</sup> For two days he was detained in Armagh, Northern Ireland, suspected of being in possession of information relating to terrorist crimes in the United Kingdom.<sup>3</sup> He then was whisked to a London police station where he was charged with conspiracy to cause explosions.<sup>4</sup>

For over one year, he and his lawyer were led to believe that he would answer for some fingerprints found on bomb fragments and on electronics equipment discovered in three Irish Republican Army (IRA) bomb caches unearthed in Britain.<sup>5</sup> Two weeks before trial began, the Queen's forces decided to add the Hyde Park bombing incident to the conspiracy with which he was charged.<sup>6</sup>

After a three-week trial, whose tension was interrupted only by a hurricane, an eleven-man jury unanimously found Danny guilty of conspiracy to cause bomb explosions.<sup>7</sup> The judge decided that twenty-five years in prison was the proper sentence.<sup>8</sup>

In October 1987, I attended the trial of Danny McNamee at Old Bailey, London. The family requested that I attend the trial as one who

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\* Judge, City of Fitchburg, Wis.; J.D., 1960, New York Law School.

1. Record at 5, Oct. 19, 1987, R. v. McNamee (Crim. Ct.) (No. 861708).

2. Record at 61-63, Oct. 15, 1987; Record at 13-14, Oct. 19, 1987; Record at 34-36, Oct. 21, 1987.

3. McNamee was detained under section 12 of the Prevention of Terrorism (Temporary Provisions) Act, 1984. Record at 64, Oct. 15, 1987.

4. McNamee was released from the provisions of the Prevention of Terrorism Act and rearrested for the conspiracy to cause explosions under section 3(1)(c) of the Explosive Substances Act, 1883 and section 7 of the Criminal Jurisdiction Act, 1975. *Id.* at 69.

5. *Id.*

6. *Id.* at 9; Record at 17, 43, Oct. 26, 1987.

7. Record at 1, Oct. 27, 1987.

8. *Id.*

is experienced in criminal matters, so that I could report about what transpired. The family believed that in England, if you are seeking justice, Irish need not apply. After three weeks of trial, I found that I was fascinated and almost seduced by the English trappings, but my conclusion was that the performance I watched was a symphony orchestrated for guilt. No one thing may be identified as the key to the result. When I left England, I felt very alone when I attempted to explain what I had seen. Remember that this was pre-Guildford Four<sup>9</sup> and the revelations about a mysterious police unit called the West Midlands Serious Crimes Squad.<sup>10</sup> To most of my listeners, England represented the apogee of justice. After all, we borrowed all our beginnings for a legal system from England.

Since Danny's trial, the Guildford Four have been released.<sup>11</sup> After fifteen years of incarceration, one would think that the English hierarchy would be profusely apologetic. Nonetheless, even in the midst of reporting to the appellate court that there was a defect in the proceedings because all the confessions had been coerced, the Crown never apologized for either the evidence or the conviction.<sup>12</sup> It was only after the ruling affirming the conviction, the appearance of a lovely book called *Time*

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9. The Guildford Four were convicted in 1975 of the bombings of two English pubs, in which seven people were killed, solely on the evidence of written confessions made to the police. Rule, *New Investigation Urged in I.R.A. Case*, N.Y. Times, Oct. 28, 1989, at A15, col. 1. The defendants asserted that the confessions were made under duress and retracted them at their trial. *Id.* The British government quashed the convictions in 1989 after police investigations revealed that detectives in the case had rewritten, altered and suppressed important interviews with the defendants and then lied in court to secure convictions. *Id.*; see also Toolis, *When British Justice Failed*, N.Y. Times, Feb. 25, 1990, § 6 (Magazine), at 32, col. 1.

10. The West Midlands Serious Crime Squad was disbanded in 1989 over allegations that it was involved in corruption and fabricating interviews. Rule, *Britain Opens Inquiry into '74 Pub Bombings*, N.Y. Times, Mar. 22, 1990, at A10, col. 1. Some policemen in this special unit were involved in interrogating the defendants in the Birmingham Six case. *Id.* The Birmingham Six case involved six men who were convicted in 1988 of murdering 21 people in the bombings of two Birmingham pubs in 1974. *Id.* The defendants claimed that the police beat them and forced their confessions. *Id.* Upon the revelations and disbandment of the West Midlands unit and the quashing of the Guildford Four convictions, the British government announced a new inquiry into the Birmingham Six case. *Id.* This inquiry prompted the government to send the case to the Court of Appeal. Rule, *Britain to Allow Appeal for 6 Convicted of 1974 Pub Murders*, N.Y. Times, Aug. 30, 1990, at A10, col. 1. One week before the appeal was heard, on March 4, 1991, prosecutors conceded that they believed there was not enough evidence to support the convictions. Prokesch, *British Moves to Free 6 Linked to I.R.A.*, N.Y. Times, Feb. 26, 1991, at A3, col. 4.

11. See *supra* note 9.

12. See Toolis, *supra* note 9, at 62.

*Bomb*,<sup>13</sup> and the strident cries for justice were raised in Parliament that the appeal was reopened and subsequently granted.<sup>14</sup>

The purpose of the foregoing digression is to underscore the strong prejudice that exists against Irish people in England and to demonstrate that the English people do not enjoy a healthy skepticism toward their public officials. The revelations emanating from the Guildford Four case, foreshadowed by the trial of Danny McNamee, have revived anxieties about British justice for Irish Catholics and have raised serious questions about the likelihood of an Irish person getting a fair trial in a British court.

## II. APOLOGIA PRO VITA SUM

When I approached this task of reporting about the Irish problem in the English courts, I tried to conceive of a law review article on English justice. I immediately consulted *Corpus Juris Secundum* and *American Law Reports* and began collecting quotes as to the importance and purpose of an impartial jury. Then I discarded the quotes and resumed my account of the Danny McNamee trial. This is not an attempt to ridicule the British system. We have our system and they have theirs. This is not an attempt to patronize anyone.

Let me explain my difficulty and my role as I saw it. I came to Old Bailey as a former prosecutor of some twenty-five years, a lecturer to police organizations for ten years and a municipal judge for eleven years. When I approached Old Bailey, it was with awe and respect. To a trial lawyer, there is something exciting about a trial; nonetheless, I had to remind myself why I was there. Upon entering the Old Bailey criminal courts, I was searched and subjected to a metal detector twice.<sup>15</sup> Finally, it was only when I explained that my bulk was only my bulk that they let me enter. Once I took my seat, I began humbly to readjust my sights so as to report the action.

## III. OBSERVER AND ANALYST

My role was to observe a beautiful form and discern what might be missing from the picture. In other words, I became a reporter listening

13. See G. MCKEE & R. FRANEY, *TIME BOMB: IRISH BOMBERS, ENGLISH JUSTICE AND THE GUILDFORD FOUR* (1988).

14. See Toolis, *supra* note 9, at 72. See generally J. MAY, *RETURN TO AN ADDRESS OF THE HONOURABLE THE HOUSE OF COMMONS DATED 12 JULY 1990 FOR THE INQUIRY INTO THE CIRCUMSTANCES SURROUNDING THE CONVICTIONS ARISING OUT OF THE BOMB ATTACKS IN GUILDFORD AND WOOLWICH IN 1974* (1990).

15. See *Irishman Accused in Bombing Which Killed Four British Soldiers*, Reuters, Oct. 12, 1987.

to the pretty words and watching for dissonant chords. At first, I was surprised that our judge, the Honorable Mr. Justice McCowan, was wearing a red robe. Then, I remembered the story of Queen Anne's death and the black robes.<sup>16</sup> I was impressed with the bright red robe with white cuffs. The judge's grey wig was a gentle sight until I was reminded of Oscar Wilde's words in *The Ballad of Reading Gaol* about "the man in red who reads the Law" and pronounced death.<sup>17</sup> Then, I scanned the jury (they had been picked) and I noted them to be alert and serious. The two trial lawyers (barristers) were set up facing the jury surrounded by a retinue of clerks and solicitors. All was well; then the first discord began. I looked way up to the highest gallery and saw the public's section where Danny's brother and sister-in-law sat. I found out later that they were cut off from the witnesses and the jury.

I then focused my attention on the defendant, and the dissonance grew louder. Danny looked studious, neatly dressed and very serious. Near him were two uniformed officers. This appeared to be an orderly scene, until I realized that Danny was sitting on a raised platform about ten feet from his barrister, Richard Ferguson. During the trial, Danny had to send notes through the police to his barrister. Throughout the trial, on each new day or with the receipt of each new note, the barrister never looked at his client.

This separation of client and lawyer is not an Irish treatment; all who walk through Old Bailey's door are treated the same way. The impression I had, and which the jury must have experienced, was that absolutely no relationship existed between this attorney and his client. It is crucial, however, for the jury to identify with the defendant's humanness. So much trial success is based upon whether the jury likes and trusts the lawyer. Thus, interaction between client and attorney is critical. When you add to this picture a complete denial of visible family, I believe that the defendant has been depersonalized.

Later in the trial, Danny took the stand to testify on his own. When he approached the witness stand, he was accompanied by a uniformed officer who stood right behind him. I was aghast at this. Danny was a slight fellow in his twenties with no prior history of violence. He was being tried in a tomblike fortress with army marksmen on the roof, helicopters hovering overhead and armed personnel everywhere.<sup>18</sup> What

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16. See R. WARNIZKE, *THE RISE AND FALL OF ANNE BOLEYN: FAMILY POLITICS AT THE COURT OF HENRY VIII*, at 232 (1989).

17. Wilde, *The Ballad of Reading Gaol*, in *BRITISH POETRY AND PROSE 1870-1905*, at 200, 218.

18. *Irishman Accused in Bombing Which Killed Four British Soldiers*, Reuters, Oct. 12, 1987. The security in Old Bailey for this trial was described as "unprecedented." Lion, *IRA Master Bomber Was a Bookworm*, United Press Int'l, Oct. 30, 1987.

type of violent activity could he begin and why must the policeman stand right behind him? Think of how Danny looked to the jury, especially after they themselves were searched daily and put through a metal detector. This was not a flattering picture for the jury who were thus given to believe that this was not an honest man, but a dangerous one.

#### IV. MANIPULATION OF THE CHARGES

Danny McNamee was in remand (custody) for over one year. He was arrested and charged with conspiracy to cause explosions likely to endanger life or cause serious injury to property in the United Kingdom.<sup>19</sup> He was charged in connection with electronic equipment found in three bundles of explosives—one found at Pangbourne (1983),<sup>20</sup> one at Philimore Gardens (1983)<sup>21</sup> and one at Salcey and Annesley Forests (1984).<sup>22</sup> He was connected to these explosive caches by three fingerprints, one of which was found on a piece of tape on an encoder tin at the Pangbourne site,<sup>23</sup> another on a Duracell battery at the Philimore Gardens<sup>24</sup> and the third on tape around a bundle of firearms at the Salcey Forest site.<sup>25</sup> Danny and his barrister were prepared for this charge.<sup>26</sup>

At Hyde Park, London, on July 20, 1982, an explosion occurred in a Morris Marina motor car parked at South Carriage Road.<sup>27</sup> This incident elicited an extremely emotional response from the public whom the English press treated with gruesome pictures of slain troopers and their horses.<sup>28</sup> Two weeks before his trial, the prosecution added responsibility for the incident to the charges facing McNamee.<sup>29</sup> When his barrister requested a continuance to be able to prepare for this new (and sensational) crime, his request was denied.<sup>30</sup>

At the end of the trial, to prosecutor Roy Amlot's chagrin, it was

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19. Record at 2, Oct. 12, 1987.

20. Record at 3-17, October 13, 1987.

21. *Id.* at 17-30.

22. *Id.* at 30-45.

23. *Id.* at 6-7, 14.

24. Record at 24-26, Oct. 14, 1987.

25. Record at 42-45, Oct. 13, 1987.

26. Record at 69, Oct. 15, 1987.

27. Record at 46, Oct. 13, 1987.

28. *Id.*

29. Record at 69, Oct. 15, 1987.

30. This denial would become one of the appeal issues to be argued to the High Court of Appeal in December 1990. Grounds for Appeal, para. 2, *R. v. McNamee* (Nov. 18, 1987).

revealed that there was no evidence that Danny had ever done anything in the United Kingdom.<sup>31</sup> Danny lived in Crossmaglen, Northern Ireland, but worked at an electronics factory in Dundalk, Southern Ireland.<sup>32</sup> Danny had never been to Pangbourne, Salcey or the like.<sup>33</sup> Nevertheless, the judge accommodated the prosecutor again and allowed the indictment to be amended to read "in the United Kingdom and *elsewhere*."<sup>34</sup>

## V. JURY SELECTION

My travel to court was delayed and I missed the selection of the jury. I was surprised to learn that the jury was picked quickly in the morning. It was not until I reviewed the trial transcript, two years later, that I understood what the method of selection had been.

The portion of the trial transcript dated October 12, 1987, discloses that the defense barrister was present and that Danny answered to his name.<sup>35</sup> This transcript, purporting to represent the entire jury impaneling, is only five pages long and contains no statement or remark by the defense as to the jury's selection or qualifications.

I will quote from the transcript to describe the jury selection:

**MR. JUSTICE McCOWAN:** Members of the Jury, will you listen to what I am about to say? Will each of you ask yourselves the following questions? The first is this: have you or any close member of your family served in the past or are now serving or any close member of your family now serving in the police or security services in Northern Ireland? That is the first question. The second question is have you or any close member of your family at any time been a victim of a terrorist incident or alleged terrorist incident or alleged terrorist incident? If the answer to either of those questions is "yes," then you should disqualify yourself from serving on the jury which is now about to be sworn to try this case. If the answer is "no" then you are entitled to serve on the jury. Now, what is going to happen is that persons will be called to the jury box to serve on this jury. As each name is called out, if the answer to either of those questions in respect of the name called out is "yes," then would you please say "I am

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31. Record at 2, 5, Oct. 12, 1987; Record at 4-9, Oct. 23, 1987.

32. Record at 5-6, Oct. 19, 1987.

33. Record at 68-69, Oct. 15, 1987; Record at 10, Oct. 19, 1987.

34. Record at 6, 10, 17, Oct. 23, 1987.

35. Record at 1, Oct. 12, 1987.

disqualified," and you will not have to come to the jury box. If you say nothing then we shall assume that the answer to each question was "no." Is that clear? Very well, call the names please.<sup>36</sup>

In our system, we come to recognize the subtle and insidious prejudice which may be present in jurors. A fair trial would call for a fair jury. In light of this excerpt, I am not sure what kind of jury was picked. The judge's do-it-yourself technique is interesting, but hardly a model of fairness.

A meaningful voir dire to screen prospective jurors for bias or prejudice is the most fundamental safeguard to the promised fair trial. In a sensational and well-covered (by the press) trial, an assortment of historical, cultural, religious and class ghosts will invariably suffuse the halls. Even if the questioning did not reveal any overt discrimination, the fact that it was openly discussed would alert the jurors to the need for fairness and open-mindedness. I have quoted the "questioning" above to allow you, the reader, to decide. The responsibility for assuring a fair trial rests solely with the judge, and he has an obligation to see that the jurors approach their duties solemnly and honestly.

## VI. THE PRESS WRITES ITS OWN STORY

The news side of this trial was totally ignored. I cannot understand why. The British system had been tested before with sensational trials; the McNamee trial was not a first in sensation or security.<sup>37</sup> Since the allegations were that Danny played a part in the IRA conspiracy, the British spared no efforts in securing the courthouse and searching the public and Danny's family and friends.<sup>38</sup>

On October 13, 1987, Mr. Ferguson, complained to the judge about inaccurate press coverage.<sup>39</sup> This was at the outset of the trial. There was no sequestration of the jury. No warning to the jury about outside information. Here is the discussion:

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36. *Id.* at 4.

37. See generally J. BLACK, *THE ENGLISH PRESS IN THE EIGHTEENTH CENTURY* 81 (1987); L. BROWN, *VICTORIAN NEWS AND NEWSPAPERS* 147 (1985); *THE MEDIA IN BRITISH POLITICS* 19 (J. Seaton & B. Pimlott eds. 1987); *NEWSPAPER HISTORY: FROM THE SEVENTEENTH CENTURY TO THE PRESENT DAY* 26, 107, 257 (G. Boyce, J. Curran & P. Wingate eds. 1978); Whitaker, *News Limited: Why You Can't Read All About It*, 5 *MINORITY PRESS GROUP* 31 (1981).

38. See *supra* note 18 and accompanying text.

39. Record at 1-2, Oct. 13, 1987.

MR. FERGUSON: My Lord, I have taken the liberty of asking you to come into court without the jury. Unfortunately, it is a recurrent problem in trials of this nature: it is the coverage by the media of what took place during yesterday's proceedings. I am not going to make any application to discharge the jury, and so propose to put your mind at ease as far as that is concerned, but I am concerned about what I have been told—reliably informed—that the 12:30 ITV bulletin—which of course went out before my learned friend Mr. Amlot had finished his opening—included not only references to the Hyde Park bombing but to the Regent's Park bombing.

What already appeared, certainly to my own knowledge, in the edition of the Sunday Times of Sunday week past, was that a man who had reportedly been identified as this defendant was going to be charged not only with Hyde Park but also with the murders which were perpetrated in Regent's Park.

Then—I speak of my own knowledge—yesterday evening the BBC 6 p.m. News had references not only to Hyde Park to the Wimpey Bar explosion and to the Ebury Bridge Road explosion, both of which, of course, occurred in 1981 outside the parameters of the present proceedings. Fortunately, the mistake was not repeated in the 9 o'clock bulletin.

My concern, obviously, as I am sure you will be the first to apprehend, is that the jury might think that there are other charges outstanding as against this defendant which, for some technical reason, are not being proceeded with at this stage, and that there is a possibility that from matters gained outside the court they may form a prejudged view towards the defendant.

As I say, I do not make any application to discharge the jury, I had merely made a note to say this to you yesterday morning before the trial commenced, but it did not seem to me that one would have to remind the media of such an elementary thing. I did not do it, which was my mistake.

Perhaps it can be made clear to this jury, at a stage suitable to your Lordship the only offense with which they are concerned, and the offense which Mr. Amlot has very carefully outlined to them, and they are to eliminate from their minds, if there be in their minds, any suggestion of any other offense. I am concerned that should be done at an appropriate stage in the trial.

MR. JUSTICE McCOWAN: Two things seem to me to arise. First of all, as far as the Press are concerned they will have heard what you have said, which is surely accurate as far as what has gone on in this Court: I cannot say what has occurred on news bulletins I have not seen. But you are perfectly right, the jury must only be concerned with what we have heard from Mr. Amlot foreshadowing the evidence, and that has certainly nothing whatsoever to do with Regent's Park, Wimpey Bar, Ebury Bridge explosions. I am sure if there has been any misunderstanding about that it will not exist any longer.

But so far as the other matter is concerned, I would not have been minded myself to say anything about it to the jury, until my summing-up. Are you asking for any earlier stage? Is that wise?

MR. FERGUSON: No, my Lord. I think if it were done at perhaps an earlier stage it might, if anything, increase any damage that has been done.

MR. JUSTICE McCOWAN: That is what went through my mind.

MR. FERGUSON: I make the point because of what has arisen yesterday and it is on the record at the earliest stage at which I could make the point, and I am sure you will bear in mind when you come to the summing-up that it is a point which is cause for concern.

MR. JUSTICE McCOWAN: Yes, indeed. I will mention it then. There is nothing you want to say Mr. Amlot?

MR. AMLOT: My Lord, no. . . . There is one thing I ought to say: would your Lordship make an order, to apply from now, that anything said in the absence of the jury is not to be reported?

MR. JUSTICE McCOWAN: There is no doubt about that, Mr. Amlot. Yes, I make that order in the interests of a fair trial of the defendant. Of course, the order is only to apply until the jury have brought in their verdict or any other order is made.<sup>40</sup>

I tried to gather a few headlines in the newspapers to show the suggestive influence the press may have had on its readers (including the

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40. *Id.*

jury): "Prints 'Identify IRA Bomber,'"<sup>41</sup> "Why My Prints Were on Bomb,"<sup>42</sup> "Hyde Park 'Bomb-maker' Says He Never Belonged to the IRA,"<sup>43</sup> and "McNamee Denies Link With IRA."<sup>44</sup>

I was unable to note the radio and television reports, but those I heard were quick to link Danny with the IRA and to assert that his prints were on the bomb. This led to the inevitable conclusion that the prints were on the Hyde Park bomb.

It looked as if everyone attending this trial had great confidence in the strength and integrity of the jury, but a good set of instructions would have set the record straight.

## VII. "SECURITY"

The British soldier who arrested Danny at his flat in Crossmaglen, Cpl. Robert Beswick, was called to testify.<sup>45</sup> When he was questioned by the defense as to where he was situated, he refused to answer.<sup>46</sup> He became very flustered because he was unable to explain his recalcitrance. Finally, Mr. Amlot, jumped up with the words "security."<sup>47</sup> The judge instantly recognized the words of protection and would not allow Mr. Ferguson to ask any more questions touching on national security.<sup>48</sup> This was unfortunate because Mr. Ferguson was attempting to educate the jury as to the armed camp nature of Crossmaglen.<sup>49</sup> The jury was to see through the soldier's experience; that is, it would have been very difficult for Danny to carry on with any part of the conspiracy when he lived right next to the huge fortress of the Royal Ulster Constabulary (RUC).<sup>50</sup>

I realized too the power that was set against Danny. Danny's lawyer did not even try to argue with the magic words: "security."

## VIII. DANNY AND THE IRA

When Danny took the stand (with his officer by his side), he was quizzed on cross-examination about his involvement with the IRA.<sup>51</sup>

41. Murtagh, *The Guardian* (London), Oct. 13, 1987, at 1, col. 5.

42. *London Evening Standard*, Oct. 19, 1987, at 1, col. 1.

43. *The Guardian* (London), Oct. 20, 1987, at 3, col. 5.

44. Mills, *The Independent* (London), Oct. 20, 1987, at 2, col. 1.

45. Record at 61-63, Oct. 15, 1987.

46. *Id.* at 62.

47. *Id.*

48. *Id.*

49. *Id.*

50. See Record at 1-2, 10, Oct. 19, 1987.

51. *Id.* at 37-38.

Danny admitted that he was a "nationalist."<sup>52</sup> He was also asked whether his father was a "republican,"<sup>53</sup> and Danny answered, "No, he was not a republican . . . . He was a nationalist."<sup>54</sup> Danny went on to explain that both his father and he believed in a "united Ireland."<sup>55</sup> Danny emphatically denied his or his family's membership in the IRA.<sup>56</sup> This distinction, I believe, the jury failed to grasp.

Danny gave, on cross-examination, two strong arguments against his involvement in the IRA. First, he spoke of his father being seriously wounded in a pub explosion at Crossmaglen in 1974.<sup>57</sup> He died in 1975 after being attended to by Danny for a year.<sup>58</sup> Danny expressed his belief that the explosion was the work of the IRA.<sup>59</sup> This was an emotional and touching account and as great a defense as anyone could muster.

The next account Danny gave was of the execution of his two elderly cousins who were shot by the IRA.<sup>60</sup> The IRA claimed they were "informers" whereas Danny described them as old men who gave information to the police (the RUC).<sup>61</sup>

By relating these incidents, Danny gave the most compelling arguments against his involvement in the IRA: one, that he would not join a group that hurt his family as the IRA did; and two, that the IRA would not have him as a member with his family history.<sup>62</sup>

One jarring note unsettled me during the direct examination. The judge constantly interrupted Danny because his voice was too soft or too low.<sup>63</sup> When the cross-examination began and Mr. Amlot asked the questions, the judge did not interrupt once.<sup>64</sup> Apparently, his hearing or Danny's voice became stronger.

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52. *Id.* at 38.

53. *Id.* at 37.

54. *Id.* at 37-38.

55. *Id.* at 38.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* at 38-39.

60. *Id.* at 39.

61. *Id.*

62. *Id.* at 51, 56.

63. *See id.* at 1-37.

64. *See id.* at 37-71; Record at 1-29, Oct. 20, 1987; Record at 1-31, Oct. 21, 1987.

## IX. THE MASTER'S TOUCH

The prosecution went forward with three fingerprints, two on tape and one on a Duracell battery, found at three explosive caches.<sup>65</sup> These fingerprints were identified as Danny's prints.<sup>66</sup> Danny's family asked three fingerprint experts to come from America (Wisconsin) to check the identification marks, as well as the areas where the prints were found.<sup>67</sup> They had no quarrel with the identification, but when they quizzed Mr. Ferguson about the possibility of "planting" fingerprints, the barrister told them to cease those thoughts as "no English jury would believe that of their police."<sup>68</sup> This may have been so before the revelations emanating from the Guildford Four case. Mr. Amlot made a great deal on cross-examination of Danny's American connection (experts) and inferred sinister motives from this association.<sup>69</sup>

The great leap forward by the prosecution was the testimony of the British police science expert, Alan William Faraday, that the circuit boards found in the explosive caches and the New Hyde Park bombing bore strong similarities and were created by a master craftsman.<sup>70</sup> The exploding devices were set up with a Memopark timer which was controlled by a cropped oval wire nail for timing.<sup>71</sup>

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65. See *supra* notes 23-25 and accompanying text.

66. *Id.*

67. Record at 65, Oct. 19, 1987.

68. Conversation with Richard Ferguson, in London (Oct. 12, 1987).

69. Record at 65, Oct. 19, 1987. On cross-examination, Mr. Amlot went directly after Danny's efforts toward a defense. Mr. Amlot wanted to know who paid for the two Americans. *Id.* Mr. Amlot questioned how a poor man could afford the "American" experts. *Id.* Danny could only explain that his older brother, a draughtsman, paid for them. *Id.* It then became necessary for the defense to address this new piece of non-evidence.

William Fagin, solicitor for the defense, was called by Mr. Ferguson, to testify as to the two American experts who helped the defense. Record at 1, Oct. 22, 1987. The battle here was forcing the defense to explain who and why people worked for the defense. The inference created by Mr. Amlot's questioning of Danny as to the provenance of the money.

Mr. Fagin explained that the money given him by the McNamee family and neighbors was used to assist the legal investigation. *Id.* at 1-2. Mr. Fagin testified that he paid £2185 (approximately \$3,000.00) to a travel company in Northern Ireland. *Id.* He went on to state that the experts were put up at private residences. *Id.* at 4.

On cross-examination, Mr. Amlot came in with a smile as sweet as a razor with this question: "As a respectable solicitor, if money had been forthcoming, by whatever means, from the IRA, you would not know anything about it, would you?" *Id.* Mr. Fagin's answer, "Certainly no, my Lord." *Id.*

70. Record at 16-17, Oct. 15, 1987.

71. Record at 49-51, Oct. 14, 1987.

The bomb at Hyde Park was powered by batteries.<sup>72</sup> The wires were similar to the ones found at the caches,<sup>73</sup> and the micro-switch found at Salcey Forest looked like the one found in pieces after the Hyde Park bombing.<sup>74</sup>

They did not gather any of Danny's work at Kimbles electronics repair shop to argue the similarities of the master's signature. When Danny testified, he inspected the circuit boards and described them as crudely done and inefficient.<sup>75</sup> He insisted that his talents were of a better degree.<sup>76</sup> Danny was followed by John Henry Jarlett, an electronics manufacturer of twelve years experience.<sup>77</sup> Mr. Jarlett inspected the soldering of the circuit boards and stated that the workmanship was "absolutely atrocious."<sup>78</sup> He opined that the circuit boards were manufactured for another use and adapted by the bombmaker for this particular use.<sup>79</sup>

By the end of the trial, everyone had a better picture of Danny. Danny was a graduate in physics from Queens University in Belfast, Northern Ireland.<sup>80</sup> He took the only job he could get at Kimbles shop in Dundalk, Southern Ireland.<sup>81</sup> He was growing up out of a tortured childhood and was approaching the dreams of youth. He was engaged to be married and a child was soon to arrive.<sup>82</sup> He hated violence and strongly criticized both the IRA and the British forces.<sup>83</sup> He stated that with his family background of death and murder, he rejected the IRA and the IRA rejected him.<sup>84</sup>

Danny endeavored to explain how his prints could have been on the pieces of tape and battery. He worked in an electronics shop repairing CB

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72. *Id.* at 1-6.

73. *Id.*

74. Record at 29, Oct. 13, 1987.

75. Record at 27-28, Oct. 19, 1987.

76. *Id.* at 30, 44.

77. Record at 9, Oct. 22, 1987.

78. *Id.* at 11.

79. *Id.* at 13. The defense had an Irish expert ready to testify on the same points, but halfway through the trial, Mr. Jarlett was summoned because the barrister and the McNamee family believed that an English witness was necessary. The theory was that no English jury would believe an Irish witness.

80. Record at 4-5, 40, Oct. 19, 1987.

81. *Id.* at 5.

82. *Id.* at 9.

83. *Id.* at 4, 38, 51.

84. *Id.* at 51, 56.

radios and circuit boards for gambling machines.<sup>85</sup> He worked with tape, boards and batteries.<sup>86</sup> He never approached the thought of "planting." There was no reason to anger the jury.

The testimony and exhibits were joined and the trial was finished. The jury returned a verdict of guilty.<sup>87</sup>

#### X. THE SUMMING UP

At the conclusion of the trial, Mr. Justice McCowan began to sum up the facts and questions for the jury.<sup>88</sup> This surprised me as, of course, our judges do not present the facts to the jury, but reserve this task for counsel. This proved to be an interesting presentation which, unfortunately, since only one person was asked to record this, would live only in the memories and notes of the parties. This does not present a good appeal issue because, even if we were given an accurate transcription of the summing up, there would be no recording of the half smiles, the eyebrow movements and the significant pauses.

Mr. Ferguson rose to challenge the judge's memory.<sup>89</sup> This was an unusual move by the defense. There was little lighting at this trial and everyone would dutifully answer "yes, my Lord." Danny was the only witness who did not address everybody and his brother as "my Lord."

There were many times I wished that some of our Wisconsin lawyers could ask a few questions. But there was none of the boisterous, challenging and delightful American hurly-burly, so that when Mr. Ferguson reminded the jury that the judge's memory was not complete, it was very effective as drama, but not apparently as to result.

#### XI. DANNY'S SENTENCE

On October 27, 1987, the foreman of the jury announced the jury's finding of guilty.<sup>90</sup> Mr. Justice McCowan then stated:

Gilbert Thomas Patrick McNamee, it is only necessary to read out the statement of offense for its seriousness to appear. It is a conspiracy, you knew full well that the pretty well inevitable result of what you did was that life would be endangered.

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85. *Id.* at 5-6.

86. Record at 11, 17, 51, 53, 61, 66, Oct. 19, 1987.

87. Record at 1, Oct. 27, 1987.

88. Record at 1-45, Oct. 26, 1987.

89. *Id.* at 45.

90. Record at 1, Oct. 27, 1987.

I say no more. This is a very serious offense, which must be seriously punished. You go to prison for twenty-five years.<sup>91</sup>

No pre-sentence, no arguments, no discussion of prior record, no hesitation. Twenty-five years.

## XII. CONCLUSION

No person, no matter how wise, can prophesy how a jury of twelve people would react individually or as a unit to any given information or circumstances. Looking at the prosecution's evidence of three fingerprints, we may only conclude that this was sufficiently compelling to support a finding of guilty. A thorough look to the defense, in which Danny denied any membership in the IRA and related the touching history of family death, discloses a strong showing of noninvolvement. To this defense was added the reality of his work, that of repairing circuit boards and CB radios, as an explanation of where and how the prints originated. If only the jury were presented with the full thrust of this defense one might have seen a hung jury.

But add a few trappings and stir the air with those things insidious and invisible and the scales start to move:

If the jury were screened for fairness?

If the jury were admonished to only listen to evidence and to ignore all newspapers, TV, radio and news reports?

If English people did not scorn the Irish and generally hold them to disfavor?

If the specter of the IRA were, if not kept out, at least tempered so that Danny would not have had to explain why and how he got expert help?

If Danny and his lawyer could talk together, sit together and look like a team?

If Danny could have testified without an armed guard?

If the jury recognized that the master craftsman theory was fantasy and accepted that the circuit boards were amateurish and crude?

If the judge's summation had been fair to both sides?

If . . . ?

If . . . ?

No more ifs, the world must proceed. I give you my opinion: the trial was not a fair trial, but a completed symphony orchestrated for guilt. I understand the verdict, but I do not understand the trial.

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91. *Id.* at 2.

