Britain: Another legal Rubicon—"juryless trials"

Richard Tyler
14 April 2010

A legal Rubicon was crossed earlier this month when, for the first time in 400 years, an English court passed sentence in a criminal case heard by a judge sitting alone without a jury.

Four men accused of committing armed robbery at a Heathrow Airport warehouse were given lengthy prison sentences at the Old Bailey, England's central criminal court. The verdicts were handed down by Mr. Justice Treacy, who had heard the case in the absence of a jury following the collapse of three previous trials.

The first trial had been halted after one of the accused suffered a heart attack; the following two trials were then abandoned amid allegations that jurors had been "nobbled", or compromised. The cost of these aborted trials is estimated to be £25 million, more than 14 times the amount that was stolen.

When it came to the fourth trial, the prosecution applied to have the case heard without a jury under the Criminal Justice Act 2003, introduced under the then-Home Secretary David Blunkett. The application was initially turned down by Mr. Justice Calvert-Smith, who ruled that although there was a "real and present danger" that jury tampering might occur, he believed "reasonable steps" could be taken to protect the jury from this happening.

Calvert-Smith is certainly no soft-touch; in his long career as a prosecutor—as Director of Public Prosecutions and the most senior prosecutor at the Old Bailey—he will have faced the issue of jury tampering many times. This makes his ruling against sending the case to be heard before a single judge all the more significant.

However, the prosecution appealed against this ruling, and in June last year the Court of Appeal overturned the judgement by Calvert-Smith.

The defendants were to be sent to face trial for serious criminal charges, before a single judge, on the basis of evidence presented to the Appeal Court that neither they nor their defence team were able to challenge. In both cases, the prosecution had produced secret evidence to support their claims of jury tampering, evidence that was never shown to the defence attorneys or that was put directly to the accused because of its alleged "sensitivity".

Commenting on the case for *Channel 4 News*, criminal barrister Alex McBride said, "Juries signify freedom and fairness. Taking away rights for administrative convenience, because it's expensive to have coppers looking after jurors, is the thin end of a perilous wedge. The courts should be upholding citizens' rights, not whittling them away."

The ancient democratic right to face a "jury of one's peers" is something that has been part of English jurisprudence since Magna Carta in 1215. And not since the abolition of the Court of Star Chamber in 1641 has an English court passed judgement in a serious criminal case without a jury first reaching a verdict as to the guilt of the accused.

The only exception in modern times has been the Diplock Courts, established in Northern Ireland in 1972 during the "Troubles", when a judge sitting alone would hear cases against Republican and Loyalist paramilitaries accused of terrorism.

In their book, "Judge Without Jury: Diplock Trials in the Adversary System", legal academics Sean Doran and Professor John Jackson write, "In the ensuing years, well over 10,000 defendants have passed through the system, the annual average having dropped from about 1,000 at the peak of the Troubles in the Seventies to about 400 in the early Nineties. These figures represent about a third of all serious criminal cases in Northern Ireland, a statistic in itself revealing of the huge impact of the emergency regime on the legal process as a whole."

Before the bombing of the World Trade Centre in 2001, legislation curbing the right to jury trials was first introduced by Home Secretary Jack Straw. He argued that this would prevent defendants "playing the system",

delaying proceedings by electing to have their case heard in the Crown Court before a judge and jury, rather than in a Magistrates Court before a bench of magistrates. Since then, the government has also introduced new legislation enabling the courts to hear "complex" fraud cases without a jury.

Following 9/11, the Labour government has used the "war on terror" to justify the introduction of a swathe of anti-democratic measures, and to curtail or abolish long-standing democratic and legal norms.

This includes the Criminal Justice Act 2003, under which the recent Heathrow Airport robbery case was heard. This act also vastly extends police powers, introduces the notion of prosecution appeals and overturns the previous rule on double jeopardy, by which a defendant once acquitted cannot be tried again for the same offence.

Listing just some of the other legislation introduced by the Labour government shows the extent to which the framework for a police state has already been established.

• Freedom of association and assembly: Demonstrations within one kilometre of Parliament are banned, unless prior police permission has been obtained. The police are able to place restrictions on the precise location and numbers that can participate, as well as the size and quantity of banners they may have. (Serious Organised Crime and Police Act 2005)

• Free speech: New offences of "glorifying terrorism" or "praising or celebrating terrorism" can lead to a criminal conviction. Those professing their support for a proscribed organisation can also face prosecution. (Terrorism Act 2000 and 2006)

• Presumption of innocence and right to silence: A jury can now be invited to draw negative inferences about a defendant who has exercised their right to silence or who refuses to answer questions when charged. (Counter-Terrorism Act 2008)

• Surveillance and interception: The state has taken far-reaching powers to conduct covert surveillance, including bugging and intercepting phone and internet traffic. Internet Service Providers must keep details of all email and internet traffic for up to five years. (Regulation of Investigatory Powers Act 2000)

• Control Orders: Used to confine an individual who is suspected of "terrorism", but who has not been found guilty of a crime by a court. Measures imposed can include house arrest, electronic tagging, restrictions on movement and association, the use of phones and the Internet. Control Order proceedings can be held *in camera*, without the presence of the accused or their legal representatives, and without any right to see the evidence against them. (Prevention of Terrorism Act 2005)

• "28-day Rule": This extends the time a terror suspect can be held in custody. When introduced, it was only to remain on the statue book for one year, but it is now a permanent feature. (Terrorism Act 2006)

• Stop & Search: The Terrorism Act 2000 and the Anti-Terrorism, Crime and Security Act 2001 have given police wide-ranging powers to stop and search individuals and cars without suspicion. Currently, some 180,000 people are being stopped and searched each year. (Terrorism Act 2000, and Anti-Terrorism, Crime and Security Act 2001)

• Anti-Social Behaviour Orders (ASBO): These place restrictions on where a named individual may go or who they may associate with. The burden of proof to impose an ASBO is the lower standard in civil cases—the "balance of probabilities". However, breaching an ASBO can incur a criminal penalty, leading to a sentence of up to five years imprisonment. (Crime and Disorder Act 1998)

• DNA database: England has the most oppressive form of biometric surveillance. DNA samples are routinely taken from all those arrested for a recordable offence. These samples are then kept indefinitely, even if the individual is released without charge or are found not guilty. This also applies to DNA taken from witnesses. (Criminal, Justice and Police Act 2001)

• Emergency Powers: Perhaps the most chilling anti-democratic legislation introduced by the Labour Government has been the Civil Contingencies Act 2004. This enables the abrogation of virtually all democratic and legal rights on the say-so of a minister without any recourse to Parliament. By making an "Order in Council" declaring a public emergency "threatening the life of the nation", it is possible for the state to confiscate property, order the equivalent of internal deportation, prohibit travel, create new offences, courts and tribunals, and impose forced labour. According to law professor Clive Walker and Dr Jim Broderick, the Civil Contingencies Act "contains within it the tools for dismantling civil society."